No. 25-95

In the
Supreme Court of the United States

MICHAEL PUNG,
Personal Representative of the
Estate of Timothy Scott Pung,
Petitioner,

v.

ISABELLA COUNTY, MICH.,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

1. Whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the Takings Clause of the Fifth Amendment when the compensation is based on the artificially depressed auction sale price rather than the property's fair market value?

2. Whether the forfeiture of real property worth far more than needed to satisfy a tax debt but sold for a fraction of its real value constitutes an excessive fine under the Eighth Amendment, particularly when the debt was never actually owed?

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The unpublished opinion of the Court of Appeals (Pet. App. 1a) is available at 2025 WL 318222; US App. LEXIS 2149 (6th Cir. Jan. 28, 2025). The District Court's final opinion and order granting in part and denying in part summary judgment (Pet. App. 23a) is published at 632 F. Supp. 3d 743 (E.D. Mich. 2022).

JURISDICTION

Petitioner Michael Pung filed his petition on July 22, 2025, which was granted on October 3, 2025. The District Court had jurisdiction under 28 U.S.C. §§ 1331, 1343. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the Constitution provides, in relevant part, "nor shall private property be taken for public use without just compensation." U.S. Const. amend. V.

The Eighth Amendment to the Constitution provides, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

The Fourteenth Amendment to the Constitution provides, in relevant part, "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

INTRODUCTION

When government takes more than it is owed, it crosses constitutional lines. The Fifth Amendment mandates just compensation; the Eighth Amendment forbids excessive fines as punishment. Both clauses converge in this case. Isabella County took the Pung family home, which it acknowledged was worth $194,400 at the time, to pay a disputed tax bill of approximately $2,200 that was never actually due. The County auctioned off the house and surrounding land for barely forty cents on the dollar and kept every penny. A federal court later forced the County to return only the surplus proceeds from its inferior auction (plus interest), and the County now insists that the liability for the Pung family's seized equity ends where the auctioneer's gavel fell. That is not what the Constitution condones.

When private property is taken for public use, the owner is constitutionally due "just compensation, *not inadequate compensation*." *Jacobs v. United States*, 290 U.S. 13, 16 (1933) (emphasis added). Historically, this has always been based on the property's "fair market value," not the residue of an inferior distressed auction. The lower courts erred by measuring compensation from the County's auction, rather than from the property's known fair market value. The Constitution requires compensation measured by the owner's loss—not by the government's chosen disposal method.

The heart of this case is not whether the government may ever seize and sell property for unpaid taxes. It has that option, among others. The question is *how much* the Constitution requires the government to pay for the taking, and whether the same conduct, when punitive in character and grossly disproportional to any debt, also violates the Excessive Fines Clause.

This case seeks to restore the constitutional equilibrium between the citizen and the state. Government may collect what it is owed but may not enrich itself at the citizen's expense or sacrifice property in excess of what is due. A taxpayer must render unto Caesar only what is Caesar's. And Caesar, in turn, must neither take nor destroy more than what is due without just compensation.

STATEMENT OF THE CASE

In 1991, Timothy "Scott" Pung purchased his American dream, a three-bedroom, 3,000-square-foot suburban home, in Isabella County's Union Township for $125,000, and lived there with his wife, Donnamarie, and children Katie and Marc. Like most Michigan homeowners, Scott applied for and received a property tax credit known as a Principal Residence Exemption (PRE),[1] which exempts owners from paying a local tax on their primary residences. Pet. App. 3a.

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[1] https://www.michigan.gov/taxes/property/principal

Fourteen years later, Scott unexpectedly passed away, leaving his wife and two children. Donnamarie continued to live in the residence until she passed away in 2008. Pet. App. 3a. After her death, Marc continued to reside there. *Ibid.*

In March 2010, Union Township assessor Patricia DePriest retroactively revoked the PRE exemption for 2007-2009 because Scott's probate estate did not resubmit an affidavit that the home was a primary residence. Pet. App. 4a. Petitioner Michael Pung, as the personal representative of Scott's probate estate filed a challenge in the tax tribunal. *Ibid.* While that challenge was ongoing, DePriest refused the PRE for 2010 and 2011, and the Pungs refused to pay the extra tax arising from the denial for those years. *Ibid.*

DePriest, however, misread the law. Resubmission of another PRE affidavit was never required. The tax tribunal reversed the denial for the 2007-2011 tax years, holding that so long as the family and beneficiaries of Scott's estate remained in the home, no further paperwork was ever necessary. Pet. App. 4a-5a.

When the first tax bill following the ALJ's decision was issued, in 2012, it properly included the PRE. App. 5a (despite DePriest's "reservations"). "But DePriest did not let the matter rest." *Ibid.*

In a subsequent state court hearing, DePriest tried to explain her incongruous actions:

> Q. You had been told by the administrative law judge that the estate

> was entitled to the principal residence exemption.
>
> A. And it is, you have to have someone come forward for in the law (sic) to get it.
>
> Q. That's not what the administrative law judge—
>
> A. I don't care what he says; the law says that you do.

JA-61.

Despite the ALJ's ruling "expressly rejecting DePriest's reading of the law," Pet. App. 5a, the assessor again revoked the property's entitled PRE credit for the 2012 tax year, Pet. App. 6a, after the 2012 tax rolls officially closed on December 31. JA-7-8; Michigan Compiled Laws (M.C.L.) § 211.2(2). Because the initial 2012 tax bill properly exempted the Pung property from the tax, and the Estate never received a revised bill, Petitioner Michael Pung earnestly went to the township offices to pay the taxes on tax day with a pre-written check for the amount on the original bill. JA-63. There, a clerk told him that DePriest had revoked the exemption after the tax roll had finalized (without formal notice), and that Pung's check for the amount due was insufficient because it lacked the unbilled amount of the un-owed tax. JA-96-97; Pet. App. 5a-6a.

Understandably frustrated, Pung refused to return home for a new check and submitted the check for what was, according to all courts and tax tribunal judgments, the proper amount due. JA-96-97.

DePriest, nonetheless, reported the Pung property as delinquent, and the Isabella County Treasurer began foreclosure proceedings on a home worth nearly $200,000 to recover a $1600 local tax, which, with penalties and interest, eventually totaled $2,242. Pet. App. 7a. This disputed tax bill is the only unpaid tax in the Pungs' history. Without any change in the underlying circumstances, DePriest paradoxically recognized and granted the PRE from 2013 until the County took title to the property. JA-97.

At the same time, the County appealed the tax tribunal's decision to the Michigan Court of Appeals. During the appeal, Isabella County acquired the 2012 tax delinquency from Union Township, JA-68, and never told the court that its imminently pending foreclosure of the property for that purported delinquency would moot the case. JA-97-98, 104. Nor did the County mention the matter to Pung (despite seeing him or his lawyer repeatedly in court). *Ibid*. On February 10, 2015, the Michigan Court of Appeals confirmed that the Pung family was always entitled to the tax-reducing exemption through 2011 (the last year at issue in the court proceeding). Pet. App. 6a. Just ten days later, Isabella County foreclosed on the Pungs' house for the disputed 2012 tax. Pet. App. 7a.

After a foreclosure judgment is entered, Michigan counties ordinarily send notice to owners that they have until March 31 to redeem the property. But the County waited until after the redemption deadline to mail the foreclosure notice to Pung. JA-9, 53-54. Pung

then moved the state court to set aside the foreclosure for insufficient notice, JA-87, the only basis in Michigan for such a motion. *Rafaeli, LLC v. Oakland Cnty.*, 505 Mich. 429, 452 n.50 (2020). Pung initially succeeded, but when the County appealed, the Michigan Court of Appeals reversed and held that, despite the "unfortunate circumstances of this case," the County's minimal notice was enough. JA-91. On remand in June 2018, Isabella County obtained a final foreclosure judgment on Pung's home, taking absolute title. Pet. App. 25a.

These events occurred before *Rafaeli*, 505 Mich. at 474, and *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 639 (2023), when Michigan's tax laws allowed counties to auction tax-indebted property and keep all proceeds. M.C.L. § 211.78m(1)-(2), (6), (8) (2017). The auction process and rules typically depress prices far below market value. Publicly available records on Isabella County's website suggest the County required full payment in cash or by certified check within two hours after bidding closed.[2] The auction process is far

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[2] *Rules and Regulations*, http://isabellacounty.org/images/stories/pdf/treasurer/tax_sale_info_packet.pdf (visited Nov. 3, 2025). Currently, Isabella and most other Michigan counties contract with a private company to conduct auctions online. *See* Isabella County, *Foreclosed Properties*, https://www.isabellacounty.org/departments/treasurer/services/foreclosed-properties/ (visited Oct. 28, 2025). The online auctions have different, but equally restrictive, rules concerning who may bid and the conduct of the auction. Title Check, *Who is eligible to*

from one designed to achieve maximum value under the circumstances. No one with delinquent property taxes or any other civil fines in the county may bid. M.C.L. § 211.78m(2).

On July 16, 2019, Isabella County auctioned the Pung home for only $76,008 even though its known assessed fair market value was $194,400. Pet. App. 11a. The County conceded that this represented the fair market value of the property. Pet. App. 29a. The successful auction speculator who purchased the property thereafter resold it for $195,000, confirming the home's true market value. Exhibit O to Pung's Response to Motion for Summary Judgment, Dkt. No. 23-16 (E.D. Mich. filed Oct. 12, 2021). Isabella County thereafter kept all the auction proceeds as profit after paying the approximate two thousand dollars in taxes "owed." But the Pungs lost $192,158 more than they owed for the incorrectly imposed debt.

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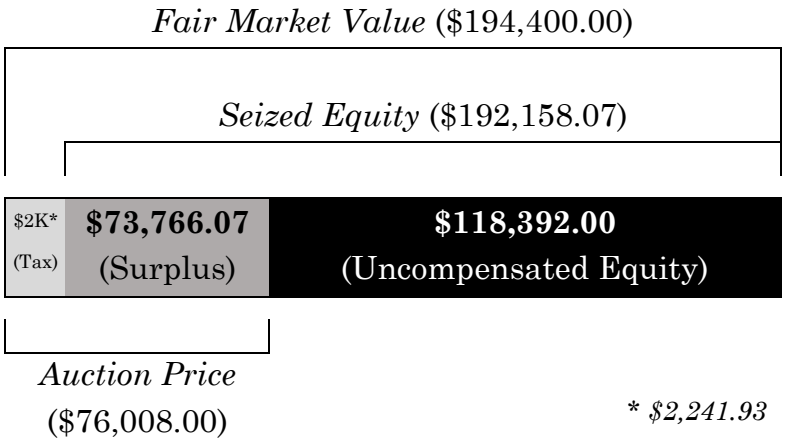
purchase property, https://www.tax-sale.info/faq (visited Oct. 21, 2025).

Figure 1.



Pung sued on behalf of the Estate, raising takings and excessive fines claims under 42 U.S.C. § 1983. Pet. App. 24a. The District Court dismissed the Eighth Amendment claim on the pleadings but recognized a taking. The court began its "just compensation" damages calculation using the "surplus proceeds" from the tax auction rather than the fair market value. Pet. App. 43a. Isabella County denied responsibility and liability throughout. Later, the Sixth Circuit affirmed, holding that "when a municipality sells foreclosed property at a properly conducted public auction, the owner is entitled to the amount of the sale above his debt and no more." Pet. App. 11a (internal quotes and citations omitted). It also upheld the award of interest on that amount from the time of the taking. Pet. App. 12a. Concerning the Excessive Fines claim, the appellate panel

acknowledged Justice Gorsuch's concurring opinion in *Tyler*, Pet. App. 14a, but felt it was bound by Circuit precedent to hold that Michigan's tax forfeiture statute "does not fall within the ambit of the Eighth Amendment." Pet. App. 15a.

SUMMARY OF ARGUMENT

The Takings Clause requires "just compensation" when the government takes private property, meaning the owner must be placed "in as good a position pecuniarily as if his property had not been taken." *United States v. Miller*, 317 U.S. 369, 373 (1943). Isabella County took title to the Pungs' $194,400 home to collect a disputed $2,242 debt. *Tyler* instructs that they were entitled to a refund of their remaining equity, the part of the property that did not belong to the County. The County chose to sell the property at auction under conditions resulting in a severely depressed price. After years of litigation, the Pungs recovered not their equity, but only a fraction of that value represented by the surplus proceeds of the auction. The Takings Clause does not permit that. It requires compensation measured by the owner's loss—what this Court has long called "fair market value"—not the depressed proceeds of an inadequate auction conducted by the taker.

Since the Founding, governments collecting debts owed a duty not to seize or sacrifice more property than necessary. The government violates its responsibility to "prevent sacrificial prices" and avoid "grossly inadequate" sales, *Graffam v. Burgess*, 117

U.S. 180, 191-192 (1886), when it unjustifiably forces the sale of property or sells under conditions that suppress the property's price. When it violates that duty, it must pay fair market value as compensation. Otherwise, it could orchestrate sales yielding only the exact amount of debt, taking or wasting excess property with impunity. "Property rights cannot be so easily manipulated." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 155 (2021).

The Eighth Amendment independently limits the County's forfeiture. Destroying over $118,000 in equity to collect (or punish a protest over) the $2,242 disputed portion of the 2012 tax bill is a punitive forfeiture grossly disproportional to the underlying offense. This is palpably so, considering Pung's lack of culpability—he had a good-faith dispute over a single year's tax exemption he'd already won for prior years, never missed previous or subsequent payments, and paid the undisputed portion of the bill—and the County's apparently predatory behavior.

ARGUMENT

Our Founders placed property among the "first principles of civil society." *See* Alexander Hamilton, *The Farmer Refuted* (Feb. 23, 1775);[3] *Cedar Point Nursery*, 594 U.S. at 147. From the beginning, the Fifth and Eighth Amendments' commands that "private property [shall not] be taken for public use

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[3] https://founders.archives.gov/documents/Hamilton/01-01-02-0057.

without just compensation," "nor excessive fines imposed" were written not as grants of government power but as a restraint upon it. It is a permanent reminder that even a sovereign must be faithful to its citizens because "[i]ndividual freedom finds tangible expression in property rights." *United States v. James Daniel Good Real Property*, 510 U.S. 43, 61 (1993).

By the seventeenth century, English common-law courts enforced this limit zealously. When King Charles' officers entered private homes and lands to dig for saltpeter, an essential ingredient of gunpowder, the courts held firm that the king's officials "are bound to leave the Inheritance of the Subject in so good Plight as they found it[.]" *The Saltpetre Case*, 12 Co. Rep. 13, 77 Eng. Rep. 1294 (K.B. 1606). Even the necessities of national defense could not suspend the rule of property.

The Framers absorbed that understanding and incorporated it into the Fifth and Eighth Amendments, which are not rival provisions, but "complementary" shields. *Erlinger v. United States*, 602 U.S. 821, 845 (2024). Together, they prevent government from leveraging errors or even small faults for enrichment and oppression. Every taking without fair payment and every punishment without proportion violates these restraints. The Constitution requires that when government takes a home, it pays for the home minus the debts owed, not the residue of an unfair auction. *Tyler*, 598 U.S. at 647 ("The taxpayer must render unto Caesar what is Caesar's,

but no more."). When it imposes a penalty, it must be proportional to the wrong, not an excuse for the sovereign to profit. *Pimentel v. City of Los Angeles*, 115 F.4th 1062, 1070-1071 (9th Cir. 2024) ("[R]evenue generation alone says nothing about the harm suffered by the government—and thus has no bearing on the proportionality of a fine.").

The Constitution's text, history, and moral design all point the same way: the government must act with restraint and proportion whenever it takes or punishes. Isabella County failed on both counts. It transformed a non-owed $2,242 "debt" into the loss of a $194,400 home and the permanent destruction of over $118,000 in equity, then sought refuge in the fiction that justice was limited by the outcome of its own inferior auction processes. This Court must reject that fiction, hold that the Fifth Amendment requires compensation based on fair market value, and that the Eighth Amendment forbids excessive economic sanctions.

I. Just Compensation Requires a Property Owner to be Left in as Good a Position as if His Property Had Not Been Taken

The Takings Clause provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend. V. The government may "seize and sell property, including land, to recover the amount owed" to it. *Tyler*, 598 U.S. at 637. But the Constitution prevents the government from confiscating more than it is owed,

ibid., and protects property owners from excess seizures and waste. *French v. Edwards*, 80 U.S. 506, 512 (1871) (Tax debt statutes are "to guard against a wanton sacrifice of the property of the taxpayer."). The government's action here strayed widely from those limits: it confiscated the whole property without any protection for the Pung's equity. Just compensation is correctly measured by the owner's loss—the property's fair market value at the time of the taking—not by the amount the government happens to realize in a forced sale that it controls. The remedy granted by the lower courts was not enough. Returning the surplus proceeds from an inadequate and unnecessary auction of property the government took in anticipation of a windfall (far beyond the taxes due) is not "just compensation."

A. Just Compensation Is the Monetary Equivalent of the Property Taken

Just compensation means the "full and perfect equivalent in money of the property taken." *Miller*, 317 U.S. at 373; *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893); *see also Almota Farmers Elevator & Whse. Co. v. United States*, 409 U.S. 470, 473 (1973); *Albert Hanson Lumber Co. v. United States*, 261 U.S. 581, 586 (1923); *United States v. Virginia Electric Co.*, 365 U.S. 624, 633 (1960); *United States v. New River Collieries Co.*, 262 U.S. 341, 343 (1923). Under the Fifth Amendment, an "owner is to be put in the same position monetarily as he would have occupied if his property

had not been taken." *United States v. Reynolds*, 397 U.S. 14, 16 (1970); *Miller*, 317 U.S. at 373 (same).

For this reason, courts focus on the deprivation suffered by the owner rather than the use to which the government puts taken property: "It is the owner's loss, not the taker's gain, which is the measure of the value of the property taken." *United States v. Causby*, 328 U.S. 256, 261 (1946). The fair market value of what is taken, plus interest, is the normal measure of recovery. *Knick v. Twp. of Scott*, 588 U.S. 180, 190 (2019); *Seaboard Air Line Ry. v. United States*, 261 U.S. 299, 305 (1923). Fair market value has been described by this Court as what "a willing buyer would pay in cash to a willing seller." *United States v. 50 Acres of Land*, 469 U.S. 24, 25-26 (1984).

The Sixth Circuit applied a contrary rule in this case and others before it: "the owner is entitled to the amount of the [auction sales price] above his debt and no more." Pet. App. 11a (citing like cases, *Bowles v. Sabree*, 121 F.4th 539, 551 (6th Cir. 2024), and *Freed v. Thomas*, 81 F.4th 644, 659 (6th Cir. 2023)). That rule was parallel to the Michigan Supreme Court's holding in *Rafaeli* concerning Michigan's constitution: former owners have a "right to collect the surplus proceeds that result from a tax-foreclosure sale," 505 Mich. at 458, "if and only if the tax-foreclosure sale produces a surplus." *Id.* at 462.

These rules mischaracterize the property that has been taken as an interest in surplus proceeds of an auction. The actual property at issue is the home and,

specifically, the Pungs' equity in it, not a contingent right to the proceeds of a future foreclosure sale. The unconstitutional taking of the Pung's equity was complete the moment the County took title to the home, given its refusal to promptly pay just compensation.

Former Michigan Justice David Viviano's concurrence in *Rafaeli* presaged the inadequate compensation problem at the heart of this case and provided a constitutional roadmap to the solution. "The better view," he said, "is that the property taken is the taxpayer's equity and that this occurs when title vests in the government with no opportunity for redemption." *Rafaeli*, 505 Mich. at 485 (Viviano, J., concurring). Otherwise, he warned, "if the property does not sell at auction and is simply transferred to a governmental unit, the taxpayer is out of luck: no proceeds, let alone a surplus, have been produced or retained by the government." *Ibid.* "Perhaps worse still," government could engineer sales to itself "for the minimum bid, *i.e.*, for the debt (and costs), and thus obtain it for an amount that will usually be much less than fair market value," leaving the former owner without an adequate remedy. *Ibid.*

Justice Viviano acknowledged that there are cases where the price received in a foreclosure sale could suffice to leave the property owner "in the same position monetarily as he would have occupied if his property had not been taken," *Reynolds*, 397 U.S. at 16, but saw that the *Rafaeli* majority (and now Sixth

Circuit) did not meet the test of just compensation by "rul[ing] out the possibility that 'just compensation' might require something greater than the surplus in a particular case." *Rafaeli*, 505 Mich. at 487 (Viviano, J., concurring). Otherwise, Justice Viviano noted, the government could follow "rules that diminish the probability of obtaining fair market value in the tax-foreclosure sale" and "have little incentive to conduct a sale that earns anything more than the delinquent tax sum." *Id.* at 486.

This view correctly recognizes that, as happened in this case, when government forces a sale under conditions that result in undervaluation and then uses that undervaluation to measure compensation, the takings guarantee becomes illusory. The Takings Clause does not tolerate a system in which the sovereign both controls the mechanism of sale and defines the measure of loss. Partial repayment does not satisfy the Constitution: "The amount recoverable is just compensation, not inadequate compensation." *Jacobs*, 290 U.S. at 16. The throughline is unmistakable: government does not pay what it pleases—it pays what it owes. "More would be unjust to the [government] and less would deny the owner what he is entitled to." *New River Collieries*, 262 U.S. at 341, 344.

B. Isabella County Owes Fair Market Value for Taking Pung's Equity

Under Michigan's tax forfeiture law at the time, the County confiscated the Pung home, taking title and completely extinguishing the Pung Estate's interest in the home with no means to recover remaining equity. *See Rafaeli,* 505 Mich. at 438 ("fail[ure] to timely redeem the property . . . result[ed] in the transfer to [the county] of fee simple title"). Having confiscated title to the whole property and rendering unto itself far more than what was Caesar's, *see Tyler*, 598 U.S. at 647, the County could dispose of it, under state law, as it wished. M.C.L. § 211.78k(5). Isabella County effected the taking when it obtained "good and marketable fee simple title to the property"—and the government became liable under the Takings Clause for damages calculated from a top line number consisting of fair market value when refusing to compensate for Pung's remaining equity (i.e., subtracting any tax debt owed from the fair market value).[4] *Hall v. Meisner*, 51 F.4th 185, 196 (6th Cir. 2022) (the "event" of the taking was the County's acquisition of "absolute title" to the plaintiffs' homes); *W. States Land Reliance Tr. v. Linn Cnty.*, 343 Or. App. 280, 293 (2025) *rev. granted* (Or. Nov. 20, 2025) (taking happened when right to

[4] Because the Pung Estate initially succeeded in vacating the foreclosure judgment, the taking of absolute title occurred on remand in June 2018, after the Michigan Court of Appeal's reversal. Pet. App. 25a.

redeem closed, government took fee simple, and extinguished debtor's equitable interest in excess value). The Constitution requires the County to pay the Pungs for "the owner's loss, not the taker's gain." *Causby*, 328 U.S. at 261.

C. The Government May Not Define Compensation as Proceeds of an Unnecessary Sale It Controls

Governments are entitled to collect tax debts, but they cannot do so through unnecessary deprivation of excess property. When the government forcibly takes more property than necessary to collect a debt, it is liable not just to return the surplus proceeds of the sale, but to pay the fair market value. *See, e.g.*, *Cone v. Forest*, 126 Mass. 97, 101 (1879) (collecting cases and holding tax collector liable to pay fair market value, not just surplus proceeds); *Rafaeli*, 505 Mich. at 466-468, n.94 (excessive distraint or takings not allowed). The underlying property principle, which forbids excessive tax sales, spans from at least Magna Carta well past the founding of this nation. *Martin v. Snowden*, 59 Va. 100, 137-138 (1868) (recounting common law and early American rules that forbade seizure of land if personal property or sale of less valuable goods or chattels were sufficient to pay debt), *aff'd sub nom.*, *Bennett v. Hunter*, 76 U.S. 326 (1869); 2 Edward Coke, Institutes of the Laws of England at *394-396 (1642); *Tyler*, 598 U.S. at 639. Here, the County could have seized Pung's money or placed a lien on personal property to recover the $2,242 "debt."

See, e.g., *Detroit v. Walker*, 445 Mich. 682, 694 n.14 (1994). Instead, it chose to confiscate title to the home and place the entire $194,400 property on the auction block, where Pung was forbidden even to bid on it, conducting a sale in which he was likely to lose the home and a significant amount of equity due to the lower prices inherent in a forced sale. Under these circumstances, surplus proceeds are inadequate as "just compensation." *Cf. Starr v. Shepard*, 145 Mich. 302, 306-307 (1906) (sale of mill and its contents assessed at $8,000 to satisfy $200 tax was illegal when government could have seized and sold less valuable machines to satisfy the tax).

The Takings Clause does not permit governments to define compensation by reference to proceeds from an unnecessary fire sale resulting in depressed auction values. *See, e.g.*, *Gulf Refining Co. v. Perry*, 303 Mich. 487, 490 (1942) (invalidating "scavenger sale" that sold foreclosed property for 25% of its assessed value). What the County describes as "just" compensation is nothing more than the residue of its own flawed sale. The Constitution requires government to make the owner whole, not escape liability by procedures that destroy the equity the Takings Clause protects. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1025 n.12 (1992) ("[T]he Takings Clause requires courts to do more than insist upon artful harm-preventing characterizations."); *Bartram v. Ohio & B.S.R. Co.*, 132 S.W. 188, 190 (1910) (public auction of timber may not represent full value to which owner was

entitled, depending on the "time, place, and conditions under which it was sold."). The governmental auctioneer's gavel cannot supplant the constitutional guarantee that the owner is entitled to the fair market value of what was taken.

The Sixth Circuit's contrary auction-sale standard, adopted at the County's insistence, incorrectly blesses an amount equal to what a risk-adverse profiteer would minimally pay to a seller suffering from a forced sale. This standard invites the abuse that the Pung family suffered here. It incorrectly measures compensation not by "the owner's loss" but by what the government collected from its own inferior forced sale. *See Causby*, 328 U.S. at 261.

D. Tax Collectors Are Constitutional Bailees Who Must Secure the Owner's Equity and Prevent Sacrificial Prices in Forced Sales

Alternatively, even if the government's actions could be fairly characterized as generic, necessary debt collection (instead of a conventional taking of the whole property), the County still owes compensation at fair market value because it failed its duty to care for the equity. Equity is an owner's financial interest in the property after deducting encumbering liens. *Crane v. Commissioner*, 331 U.S. 1, 7 (1947). It represents the stored product of a person's labor, savings, and hope with the remainder of ownership after debts are paid. *Ibid.* It is private property

protected by the Takings Clause. *See Tyler*, 598 U.S. at 639; *Hall*, 51 F.4th at 195; *Rafaeli*, 505 Mich. at 510 (Viviano, J., concurring) (Given "history and caselaw, I would characterize the property right at issue here as the taxpayer's equity in the property.").

When the government takes too much property during debt collection, it has a duty to care for the part of the property that does not belong to it. *See, e.g.*, *United States v. Pittman*, 449 F.2d 623, 627-628 (7th Cir. 1971) (where government failed to promptly sell seized property as required by statute, allowing it to "deteriorate in value," government owed fair market value less the tax debt to the owner); *Matoil Service & Transport Co. v. Schneider*, 129 F.2d 392, 394 (3d Cir. 1942) (A marshal who takes property into custody must keep it "in a safe and secure manner so as to protect it from injury to the end that, whether it be condemned or restored to the owner, its value to the parties will not have been impaired by unnecessary deterioration or damage for which the custodian could be responsible.").

Officials that seize property for delinquent taxes "are bound, by an implied contract in law" to return it if the debt is paid before sale, or to sell it and "render back the overplus." 2 William Blackstone, *Commentaries on the Laws of England* *452 (1766); *Tyler*, 598 U.S. at 639-640. The debt collector may act to secure his rightful share from the sale of a property, but has no legal authority to confiscate the whole thing. *Ibid.* As Blackstone explained, the tax collector's action

reflects the nature of a bailment with a duty of reasonable and ordinary care to protect the value of the property. Blackstone, *Commentaries*, at *452. Stated directly, bailees have a legal duty to care for the property they hold. *See, e.g.*, *Bogie v. Town of Barnet*, 129 Vt. 46, 52 (1970) (for the privilege of wielding such power, the government "must suffer the restraints of fiduciary duty"). And the government's standard of care regarding distrained property is greater given its obligation to *everyone* involved—the public, the debtor, and the government.

Historically, public officials conducting sales are "trustees and agents of both plaintiff and defendant—not selected by them, but imposed on them by the law—and therefore, for the honor of the law, and the purity of the administration of justice, it is vitally essential that their conduct should be watched over with a vigilant and jealous eye." *Carter v. Harris*, 25 Va. 199, 202 (1826); *Collins v. W. Ala. Bank & Trust*, __ So.3d __, 2025 WL 2627910, at *6 (Ala. Sept. 12, 2025) (recounting foundational caselaw that a mortgagee conducting a foreclosure sale "becomes the trustee of the debtor, and" must act "reasonabl[y] . . . to render the sale most beneficial to the debtor."); *First Nat. Bank v. M/V Lightning Power*, 776 F.2d 1258, 1261 (5th Cir. 1985) ("Auctions should not be empty exercises . . . The court must also consider, however, the purpose of the judicial sale, which is to benefit both creditors and debtors."). This is because officials who are collecting a debt are responsible for the well-being of all their constituents, even those who owe debts. *Cf. United*

States v. Blackfeather, 155 U.S. 180, 190-191 (1894) (government violated trust established by treaty by choosing sale process that resulted in lower price and was liable for the difference). Public officials must act scrupulously to serve their constituents and, as Judge Kethledge recently warned, "not prey on them." *Wayside Church v. Van Buren Cnty.*, Nos. 24-1598, 24-1676, 2025 WL 2829601, at *12 (6th Cir. Oct. 6, 2025) (Kethledge, J., concurring); *cf. Winberry Realty P'ship v. Borough of Rutherford*, 247 N.J. 165, 188 (2021) ("[T]he Tax Collector's duty was to facilitate, not thwart, the redemption of the tax sale certificate so that plaintiffs could save their home.").

This was previously the well-understood tradition in Michigan. When county treasurers enforce government liens for unpaid taxes, they must be "careful to guard the rights of individuals." *Clute v. Barron*, 2 Mich. 192, 201 (1851). This means they must not only avoid excessive seizures, but also protect "the right of the owner that [the sale] shall bring the greatest price." *Ibid.* Government has many ways to constitutionally motivate the payment of a delinquent tax, including civil suits, liens, and fines. *See, e.g.*, *Detroit*, 445 Mich. at 694 n.14. When the government chooses to take the extraordinary step of foreclosing property under its charge, and takes far more than needed to satisfy the debt, it is rightly responsible for unwarranted damage

caused by that choice. *Handy v. Clippert*, 50 Mich. 355, 357 (1883) (damages for seizure of excess property).[5]

Tax collectors, who operate under the public trust, have long been recognized as bailees when they seize property for tax collection, creating constitutional and common law obligations to preserve the owner's equity. *Slater v. Maxwell*, 73 U.S. 268, 276 (1867) (Because tax sales present "a great temptation" to corruption, they must be "closely scrutinized" to ensure they are conducted "not merely . . . in conformity with requirements of the law, but that they should be conducted with entire fairness."). This Court has recognized the basic requirement "to prevent sacrificial prices" in forced sales. *Gelfert v. Nat'l City Bank of N.Y.*, 313 U.S. 221, 231 (1941). For instance, tax collectors must reasonably advertise property before an auction and conduct the sale in a fair and reasonable manner. *See, e.g.*, *Cahoon v. Coe*, 57 N.H. 556, 597-598 (1876) (duty to reasonable advertisement of sale); *Daniels v. Holtz*, 794 N.W.2d 813, 822 (Iowa 2010) ("[E]ven without a grossly inadequate price, a court may set aside a sheriff's sale for irregularity, unfairness, or fraud causing a prejudicial effect on the sale."); *Cocks v. Izard*, 74 U.S. 559, 562 (1868) (invalidating unfairly conducted

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[5] By contrast, when collecting on a debt in Michigan by execution, no land can be seized if personal property is sufficient to satisfy the debt, M.C.L. § 600.6004, and "[n]o more of the tracts and parcels may be exposed for sale than appear necessary." M.C.L. § 600.6056.

judicial sale because courts "accord[ ] to every debtor the chance for a fair sale and full price; and if he fails to get these . . . equity will step in and afford redress").

When a tax collector abides by this duty of care, the owner's equity is converted into cash and may represent the debtor's full interest in the property. *See Brown v. Crookston Agr. Ass'n*, 34 Minn. 545, 546 (1886) ("the land is converted into money, and this fund being treated as a substitute for the mortgaged estate"); *Timm v. Dewsnup*, 86 P.3d 699, 703 (Utah 2003) (equity stands in place of the foreclosed property, subject to the same liens and interests that were attached to the land); *Grand Teton Mountain Invs., LLC v. Beach Props., LLC*, 385 S.W.3d 499, 502-503 (Mo. Ct. App. 2012) (same).

Yet, when the government acts with inadequate procedures or with marked indifference for preserving the property's value, damages are due for the lost fair market value of the equity as just compensation. *Merkur Steel Supply, Inc. v. City of Detroit*, 261 Mich. App. 116, 129-130 (2004) (city committed "de facto taking" by "deliberately act[ing] to reduce the value of private property"); *cf.* M.C.L. § 211.78m (requiring payment of fair market value if government entity demands title to tax foreclosed property). Inadequate proceeds from unfair auctions cannot serve as a substitute for the full value of the owner's home equity. *See Ballentyne v. Smith*, 205 U.S. 285, 289 (1907) (relying on the rule in *Graffam v. Burgess*, 117 U.S. 180, 191-192 (1886), that a court of equity "owes

[debtors] something more than to merely take care that the forms of law are complied with."). The Constitution requires "*just* compensation," not inadequate compensation. For that reason, when the government's procedures suppress prices willfully or carelessly, the government cannot blindly rely on the auction price as "just compensation." *Schroeder v. Young*, 161 U.S. 334, 340 (1896); *Fuentes v. Tillett*, 263 Or. App. 9, 23 n.10 (2014) ("It is insisted that the proceedings were all conducted according to the forms of law. Very likely. Some of the most atrocious frauds are committed in that way.") (quoting *Graffam*).

E. "Just Compensation" Is the Fair Market Value, Not the Residue of the County's Unfair Auction

The Sixth Circuit and the district courts below improperly used a bright-line rule that auction prices are the beginning and ending of any question of a property's value. Pet. App. 11a (citing *Bowles*, 121 F.4th at 551; *Freed,* 81 F.4th at 659). That rule is built on the Sixth Circuit's interpretation of *BFP v. Resolutions Trust Corp.*, 511 U.S. 531, 548-549 (1994). *See* Pet. App. 11a; *Freed*, 81 F.4th at 659. But *BFP*—a bankruptcy case about private mortgage foreclosure—expressly limited its holding to that context, noting that "the considerations bearing upon other foreclosures and forced sales (to satisfy tax liens, for example) may be different." *BFP*, 511 U.S. at 537 n.3. It did not touch upon the Takings Clause or otherwise invade the property rights that forbid the

government from engaging in unnecessary or unfair, depressed auction sales. *Id*. at 542 (citing *Ballentyne*, 205 U.S. at 289). *See also id.* at 561 n.13 (Souter, J., dissenting) ("[I]n judging the reasonableness of an apparently low price, it will surely make sense to take into account . . . whether a mortgagee who promptly resold the property at a large profit answers, 'I did the most that could be expected of me' or 'I did the least I was allowed to.'").

The government cannot hide behind the fiction that *any* auction price satisfies the Constitution. Otherwise, it could orchestrate or recklessly cause sales that yield only the exact debt amount, taking excess property with impunity. "Property rights cannot be so easily manipulated." *Cedar Point Nursery*, 594 U.S. at 155. The Fifth Amendment instead requires government to restore the property owner "in as good a position pecuniarily as if his property had not been taken." *Miller*, 317 U.S. at 373. That means fair market value must be the first number in the calculation. It does not matter "whether the government or a private party receives the windfall; what matters is that it is unconstitutionally coming out of the original owner's pocket." *Sharritt v. Henry*, No. 1:23-cv-15838, 2024 WL 4524501, at *11 (N.D. Ill. Oct. 18, 2024). If the government chooses to unnecessarily auction property for far less than its established value, it must compensate for the value of the taken property,

even if it must draw funds from elsewhere to do so.[6] *See Cone*, 126 Mass. at 100-101 (officer who sells excess property to recover unpaid school tax is liable to pay fair market value as decided by a jury); *Denton v. Carroll*, 4 A.D. 532 (N.Y. 1896); *Handy*, 50 Mich. at 357 (potential remedy included value of goods and other damages); *Lane v. Roma Lumber Co.*, 234 Ala. 551 (1937) (after property sold to recover unpaid taxes, owner is entitled to recover "the measure of damages being the value of the property at the time of conversion, less the tax charge"). *See also United States v. Fuller*, 409 U.S. 488, 490 (1973) ("The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness as it does from technical concepts of property law.") (citation omitted).

The County may argue that it is difficult to collect outstanding taxes while faithfully honoring property rights. Yet, this Court has rejected government's perpetual cries of impending poverty when confronted with takings liability. "We have rejected this argument when deployed to urge blanket exemptions from the Fifth Amendment's instruction." *Ark. Game and Fish Comm'n v. United States*, 568 U.S. 23, 37 (2012).

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[6] Although courts in Michigan and elsewhere generally voided excessive or unreasonable auctions of land, *see, e.g.*, *Gulf Refining Co. v. Perry*, 303 Mich. 487, 490 (1942), Michigan's tax statute provides that the proper remedy is compensation for all violations arising from the tax foreclosure statute (except lack of notice). *See Rafaeli*, 505 Mich. at 452 n.50.

Simply put, "[t]he sky d[oes] not fall" when the Constitution is obeyed. *Ibid.* Moreover, administrative convenience offers no appropriate justification for violating the Constitution either. *Kraft Gen. Foods, Inc. v. Iowa Dept. of Rev. and Finance*, 505 U.S. 71, 81 (1992); *Am. for Prosperity Found. v. Bonta*, 594 U.S. 595, 614 (2021) (government may not, for the sake of convenience, take the broadest approach to a problem affecting fundamental rights when narrower options exist).

Isabella County required Pung to satisfy strict rules to challenge its inexplicable denial of a tax exemption that courts already held applied to the Pung home. Those same officials cannot now ask this Court to defer to their own procedures that deprive tax debtors of far more property than was owed. The asymmetry undermines fair dealing by government officials. *See Niz-Chavez v. Garland*, 593 U.S. 155, 172 (2021) ("If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.").

This Court should hold the Takings Clause requires the County to pay the fair market value for the taking of the Pungs' equity.[7]

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[7] The law never requires the government to employ one procedure exclusively. Alternatives include personal property attachment, civil suit, or filing a lien and accumulating larger fines and interest while awaiting voluntary sale or refinancing to collect. The $192,000 difference between the property value

II. The Excessive Fines Clause Limits the Forfeiture of Pung's Property

Isabella County forfeited, foreclosed on, and gained title to the Pung family's entire home, which it conceded was worth $194,400, for failing to pay the remaining $2,242 of a tax bill. Even after a federal court ordered the return of $76,766, discussed above, a staggering $118,000 economic sanction—53 times the underlying bill—remains. The Eighth Amendment stands as a constitutional barrier against governments' unduly devastating economic sanctions. All "excessive fines" shall not be imposed. U.S. Const. amend. VIII. While the Takings Clause addresses compensation, the Excessive Fines Clause addresses the government's power to impose economic penalties. The Excessive Fines Clause limits Pung's loss in this case. First, the County imposed a fine within the meaning of *Austin v. United States*, 509 U.S. 602, 609-610 (1993). Second, that fine was punitive. Third, the forfeiture was grossly disproportionate under *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). This Court should resolve in this case the Excessive Fines question *Tyler* reserved.

A. The Forfeiture Is a Fine

In *Austin*, this Court held that the Eighth Amendment's "excessive fines" limitation equally encompasses "in kind punishments" like *in-rem* civil

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and debt made an auction, inherently likely to sacrifice that equity, particularly and constitutionally inappropriate.

forfeitures. Forfeitures are punishments and "[e]conomic penalties imposed to deter willful noncompliance with the law are fines by any other name." *Tyler*, 598 U.S. at 650 (Gorsuch, J., concurring). Things exacted as punishment include "in kind" assets. *Austin,* 509 U.S. at 610. Constitutional protection now "cuts across the division between the civil and the criminal law" and is broadly meant "to limit the government's power *to punish*." *Id.* at 609 (emphasis added). And "statutory *in-rem* forfeiture" (which is what Michigan uses[8]) "imposes punishment." *Id.* at 614.

When this Court ruled in *Tyler* that a county "could not use the toehold of [a] tax debt to confiscate more property than was due" and, if it does, the former owner has "a claim under the Takings Clause [for] just compensation," 598 U.S. at 639, it remedied the wrong in that case but left an Eighth Amendment claim undecided. Justices Gorsuch and Jackson issued a concurring opinion to help "future lower courts [avoid] emulat[ing]" mistakes in applying the Excessive Fines Clause that the Eighth Circuit had affirmed. *Id.* at 648-650 (Gorsuch, J., concurring). "Economic penalties imposed to deter willful noncompliance with the law are fines by any other

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[8] *See Keweenaw Bay Outfitters v. Dep't of Treasury*, 651 N.W.2d 138, 142 (Mich. Ct. App. 2002) ("In Michigan, in rem proceedings include foreclosures for failure to pay taxes …." (citing *Smith v. Cliffs on the Bay Condominium Ass'n*, 626 N.W.2d 905, 906 (Mich. Ct. App. 2001))); M.C.L. § 211.78h(1).

name. And the Constitution has something to say about them: They cannot be excessive." *Id.* at 650. The economic penalty remaining here, with a ratio of 53-to-1, is clearly excessive, yet the courts below still say the Eighth Amendment is inapplicable. This Court should now hold that the Excessive Fines Clause limits the amount of property a government may confiscate to deter or punish underpayment of a tax.

The Constitution's prohibition against excessive fines "limits the government's power to extract payments, whether in cash or in kind [like the forfeiture of real property] as punishment for some offense," *Bajakajian*, 524 U.S. at 327-329, barring fines that are "grossly disproportional." *Id.* at 334. It applies broadly to economic sanctions that are even "partially punitive." *Timbs v. Indiana*, 586 U.S. 146, 153-154 (2019). A sanction is punitive if it includes "either retributive or deterrent purposes." *Austin*, 509 U.S. at 622. The Clause traces its lineage to English law, where it served, among other purposes, as protection against the sovereign "raising revenue in unfair ways," or for "improper ends," or to "harass [] political foes." *Browning-Ferris Indus. of Vermont v. Kelco Disposal, Inc.*, 492 U.S. 257, 267 & 272 (1989). The Clause's animating concerns are present here.

It is not disputed that the County forfeited the Pung family's $194,400 home for failing to comply with a demand to pay the disputed $2,242 addition to the tax bill. Pet. App. 10a, 29a. Isabella County refused to return anything to the Pungs. Even when

a federal court ordered it to involuntarily return $73,766 to satisfy the Takings Clause, Pet. App. 11a, the forfeiture destroyed an additional $118,000 of the family's wealth—more than 50 times the debt—and forced the Pung family out of their long-time home.[9]

The draconian forfeiture was not necessary. The only basis for the unpaid bill underlying it was the County assessor's stubborn insistence that the Pung family was not entitled to PRE for 2012. This was the same PRE that the assessor denied for tax years 2007 through 2011, was hotly litigated in the tax tribunal, and the Pungs prevailed over the assessor. The assessor granted the exemption for 2013 while refusing to rescind her PRE revocation for 2012. The Pungs had never failed to pay a tax bill and paid in good faith every dollar they believed due for 2012 while protesting the overage. Nevertheless, the County foreclosed on the entire property. The record

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[9] Unfortunately, even this fate is better than what befalls many Michiganders. A post-*Rafaeli* statute enacted to reform Michigan's tax-foreclosure law contains an unusual and complicated administrative claims process that results in vast numbers of former owners receiving nothing while local governments continue to reap windfalls. *See, e.g.*, Pet. for Writ of Cert., *Beeman v. Muskegon Cnty.*, No. 24-858 (pending). Michigan courts uphold the amended statute under the purported authority of *Nelson v. City of New York*, 352 U.S. 103, 105 & n.2, 106 & n.5 (1956), in which two properties worth $52,000 were sold to cover a $3,000 delinquency. *Nelson* was decided before the Excessive Fines clause was incorporated as to the states.

reflects punitive conduct rather than remedial outcomes. *See, e.g.*, Patricia DePriest's Brief in Response to Pung's Motion to Summary Judgment, ECF Dkt. No. 19, at 1 (E.D. Mich. Sept. 7, 2021) (describing Michael Pung as an "overzealous plaintiff" who "takes pleasure in using litigation to vindicate his personal vendettas against the government and government officials who are merely trying to do their jobs," foremost interested in "his pecuniary gain and 'anti-tax' attitude").

Whether the County imposed the catastrophic forfeiture[10] only to punish or deter the offense of failing to pay a (disputed) property tax bill on time, or also aimed to strike Pung's successes in prior litigation, the Eighth Amendment "has something to say." *Tyler*, 598 U.S. at 648-650 (Gorsuch, J., concurring). Namely, the County must return as much of the Pung's property as necessary to eliminate the forfeiture's excessiveness.

B. The Fine Is Punitive in Purpose

Regardless of how the County characterizes its act, the Constitution judges the substance: the forfeiture here operated as a punitive sanction, not mere revenue collection, and therefore falls squarely within the Excessive Fines Clause. An economic

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[10] The terms "forfeiture" and "fine" were used interchangeably in early American history. *See Austin*, 509 U.S. at 623 (Scalia, J., concurring); Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Cal. L. Rev. 277, 302 (2014).

sanction has the hallmark of punishment when it "cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving retributive or deterrent purposes." *Austin*, 509 U.S. at 610-611 (emphasis added); *see also Kokesh v. S.E.C.*, 581 U.S. 455, 464 (2017) ("Sanctions imposed for the purpose of deterring infractions of public laws are inherently punitive.").

Here, the County effected an *in-rem* forfeiture of property fairly valued at $194,400 to satisfy the remaining $2,242 "debt." A sanction beyond "compensating the Government for a loss" cannot reasonably be classified as merely remedial. *Bajakajian*, 524 U.S. at 329; *see also Bennett v. Hunter*, 76 U.S. 326, 335-336 (1869) (forfeiture of title over unpaid taxes is "highly penal"); *Yancey v. Hopkins*, 15 Va. 419, 428 (1810) ("highly penal, that a man may absolutely lose his whole property, for a few days' neglect in the payment of a tax which has never exceeded one hundredth part of the valuation") (Tucker, J., Opinion); *id.* at 436 (Fleming, J., Opinion) ("[T]he laws subjecting lands to be sold for the payment of taxes I consider as highly penal."). It can only be classified as punitive.

Compare the instant facts with the Court's analysis in *Austin*. There, forfeitures under a federal statute were punitive because the amount forfeited was not linked to the amount of public harm caused by the property owner's actions. 509 U.S. at 621. The size of the forfeitures "var[ied] so dramatically that

any relationship between the Government's actual costs and the amount of the sanction is merely coincidental," defying description as "remedial." *Id.* at 622 n.14. The same is true here. The Pung family still lost more than $118,000 of the value of their much more valuable home for the offense of not paying a disputed $2,242 tax "debt." Had their home been larger (or smaller), sited in a better (or worse) neighborhood, or encumbered with a mortgage, the forfeiture over the same $2,242 debt would have caused the Pungs dramatically more (or less) damage. Punishment is the only plausible rationale for taking so much to remedy so little.

Michigan's tax-foreclosure system also operates foreclosure auctions to punish tax debtors. For instance, former owners are statutorily barred from repurchasing their homes, even if they could make a winning bid exceeding all outstanding taxes, interest, fees, and costs to fully compensate the government for its loss. M.C.L. § 211.78k(6); M.C.L. § 211.78m(5). Having to buy back one's home when it should never have been seized or auctioned is not fair, but if the Pungs had the opportunity, they would have suffered less. *Cf* 28 U.S.C. § 3203(f) (allows the owner to redeem property up until it is sold, which is superior to merely being allowed to bid on the property); M.C.L. § 211.78k(5) (right to redeem in Michigan ends March 31, months before sale). This prohibition directly serves to punish.

Other provisions of the tax-foreclosure statutes and auction rules tend to depress prices, effectively imposing a greater economic sanction to the extent the government is not required under the Takings Clause to preserve the former owner's equity interest or pay fair value. For instance, publicly available documents from the County's website (before it switched to its current auction provider in 2020), required purchases to be paid within two hours of the auction closing, precluding most bidders who could bid higher if mortgage financing were acceptable. *Supra* n.2. Michigan counties often bundle properties, requiring bulk sales that depress each individual property's price.[11] Under M.C.L. § 211.78m, the minimum bid equals the taxes, interest, and penalties for each property with no reserve price that might ensure at least roughly fair value. Although the government holds legal title to each property, it offers no pre-bidding inspection, walk-through, or pre-auction examination of them. Because prospective buyers bid based on minimal information, the extreme uncertainty leads to bids far below a property's value. *See Allegheny Ludlum Corp. v. United States*, 29 C.I.T. 157, 165-166 (2005) (rules

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[11] *See, e.g.*, Genesee 2021 Auction Results at Lots 7980-8000, https://www.tax-sale.info/listings/auction/685 (visited Nov. 19, 2025); Alyssa Erwin, *Investors buy bundle of 230 foreclosed homes in Genessee Co.*, ABC 12 News (Oct. 17, 2023) https://www.abc12.com/news/top-stories/investors-buy-bundle-of-230-foreclosed-homes-in-genesee-co/article_3b0595e0-6d2d-11ee-85a7-4b02074da78b.html.

that prevent buyers exercising full due diligence result in auction prices well below fair market value). These rules, again, have the effect of pointlessly depressing bids and, in turn, destroy equity and increase the size of the forfeiture imposed when the former owner's Takings claim for lost equity is limited to auction proceeds over the taxes due (as it is today in Michigan state courts and the Sixth Circuit).

Further, it underscores the punitive operation of Michigan's tax-foreclosure system to compare it to the federal government's approach to delinquent taxes and debt collection under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3203. That statute prohibits the seizure of more property than "reasonably equivalent in value" to the total debt, requires "commercially reasonable" sales of property aimed to approximate fair market value, and instructs that real estate for sale "shall be open for inspection and appraisal" to potential buyers. Even the Internal Revenue Service, the nation's largest tax debt collector, makes the seizure and sale of property a last resort, favoring liens and levies. And when a forced sale is required, Congress instructs it to seize property only to the extent necessary to satisfy the tax debt, interest, and statutory penalties. 26 U.S.C. §§ 6321, 6331.

Finally, one might ask, why would Isabella County foreclose upon and sell a $194,400 property to pay the remaining $2,242 of a disputed bill, which was secured by the property itself, and which the property

owners were plainly capable of paying? The County is already paid additional interest and full administrative fees. *See* M.C.L. §§ 211.78g(2); 211.78a (12% annual interest, 4% administrative fee). That would have compensated the government for its loss, avoided the waste of Pung's equity, and imposed an appropriate fine for what it says was due. The straightforward inference at the current pleading stage is that the forfeiture operated punitively rather than remedially. In short, the County chose the form of recovery most lucrative to itself and most destructive to the citizen. *See Culley v. Marshall*, 601 U.S. 377, 396 (2024) (Gorsuch, J., concurring) ("strong financial incentives" influence government's choice both "to pursue forfeitures" and "how they conduct them"). When the County sold Pung's home, before *Rafaeli* and *Tyler*, it expected all proceeds from the sale of the property to flow into its coffers. These circumstances trigger the protections of the Excessive Fines Clause. *See Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (noting that while most types of punishment "cost a State money; fines are a source of revenue," therefore, "it makes sense to scrutinize governmental action more closely when the State stands to benefit").

The County's forfeiture, needlessly stripping the Pungs of so much more property than owed, can only be explained as serving retributive or deterrent purposes. It must therefore come within the ambit of the Excessive Fines Clause for evaluation.

C. The Forfeiture Is Grossly Disproportionate

The touchstone of the Excessive Fines Clause is proportionality. The Clause traces its roots at least to Magna Carta, which "required that economic sanctions be 'proportioned to the wrong' and 'not be so large as to deprive [an offender] of his livelihood.'" *Timbs*, 586 U.S. at 151. This Court reaffirmed that principle in *Bajakajian*, when it held that "a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity" of the offense it is designed to punish. 524 U.S. at 334.

In *Bajakajian*, the government seized and sought to forfeit $357,144 of legally obtained cash from a traveler because he failed to file a governmental reporting form before leaving the country with it on an airplane. A review of the facts caused the Court to consider the gravity of the offense minor and, most relevant to the instant case, find that the large forfeiture bore "no articulable correlation to any injury suffered by the Government." *Id.* at 339. The Court let stand the lower courts' judgment that reducing the forfeiture to $15,000 was required to satisfy the Excessive Fines Clause. Although this Court has rarely had occasion to apply the "grossly disproportional" test, lower courts that apply it hold that the "Excessive Fines Clause requires the property owner's culpability to be considered." *United States v. Ferro*, 681 F.3d 1105, 1115-1116 (9th Cir. 2012); *von Hofe v. United States*, 492 F.3d 175, 191

(2d Cir. 2007) (excessiveness of *in-rem* forfeiture hinges on the individual culpability of the property owner for the underlying offense).

Here, Pung's "offense" was the failure to timely pay a disputed amount of one year's tax bill and penalties totaling $2,242 that was never properly owed. The "fine" was the forfeiture of a $194,400 home, representing the family's life savings, and causing Marc Pung's eviction from the home. That punishment is not merely "grossly disproportional" in these circumstances; it was repugnant.

The fine was effectively reduced from 86 to 53 times the "debt" when the County was forced by a federal court to return $73,766 to the Pungs to satisfy its Takings Clause violations. The resulting penalty still represents an oppressive forfeiture. On its face, it bears "no articulable correlation to any injury suffered by the Government." *Bajakajian*, 524 U.S. at 339. That makes it constitutionally excessive.

The disproportionality becomes worse the deeper one wades into the facts. While Pung refused to pay the disputed portion of the 2012 tax, he was no scofflaw. The family had never missed a tax payment, and Pung fully paid the undisputed portion. JA-8. Further, he acted reasonably and with good faith in disputing the tax bill. He fully prevailed against the tax assessor in litigation over the same matter of the family's entitlement to the PRE when the state's tax tribunal reaffirmed the family's entitlement for the years 2007 to 2011. Pet. App. 4a. Yet the assessor,

utterly without justification, again irrationally denied it. JA-94. Pung was always diligent in paying property taxes generally and acted reasonably in believing this particular unbilled demand for monies not possibly owed was erroneous. JA-111-112. Those facts must all weigh against his culpability for wrongdoing.

Against Pung's reasonableness, the County's behavior toward him is marked by evasion and telling irregularity. The assessor inexplicably made back-room adjustments to the tax rolls after they were in the County's possession, Pet. App. 6a; JA-8, 63; and the County altered its method of sending notices to only the Pungs, JA-11, 51, 103-104; which effectively withheld meaningful notice of the planned foreclosure and redemption deadline until it was too late, despite frequent personal contact during its pendency. JA-48-49, 104. Isabella County's treasurer was aware of the dispute and the taxing official's losing position in the prior dispute about the same tax exemption. JA-48-49. The County had many options for resolving the dispute it knew existed, but needlessly and for its own benefit, pushed the Pung family's home to foreclosure and auction.

We are limited here in evaluating the factors relevant to excessiveness to a sample of the publicly available facts because the District Court dismissed Pung's Excessive Fines Clause for failure to state a claim under Rule 12(b)(6) before an answer was filed. That precluded discovery and the proper development

of the record that might ventilate the matter, including the extent of the County's inequity versus Pung's culpability for the "offense." What is clear, however, is that the complaint plausibly alleged an excessive fine grossly disproportionate to Pung's purported offense. JA-19-20. And that is all Rule 12(b)(6) required. *Taylor v. City of Saginaw*, 922 F.3d 328, 331 (6th Cir. 2019) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). This Court should remand for the lower courts to determine the extent to which the confiscation of Pung's property was an excessive fine violative of the Eighth Amendment.

CONCLUSION

This Court should hold that the Fifth Amendment requires "just compensation" to be calculated based upon fair market value, and that the Eighth Amendment forbids punishment so disproportionate that it approaches the outcome Judge Kethledge presaged against. *Wayside Church v. Van Buren Cnty.*, 847 F.3d 812, 827 (6th Cir. 2017) (Kethledge, J., dissenting) (likening Michigan's tax foreclosure scheme to "theft"). Because no government is above our Constitution, no citizen is beneath its protection.

The lower court rulings should be reversed and remanded with instructions to reconsider the award of Fifth Amendment just compensation in light of the Pung property's uncontested fair market value at the time of foreclosure and to apply the Excessive Fines Clause to avoid a grossly disproportionate forfeiture as constitutionally excessive punishment.

Respectfully submitted,

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