

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

**REPLY IN SUPPORT OF THE PETITION
FOR A WRIT OF CERTIORARI**

PHILIP L. ELLISON
Counsel of Record
OUTSIDE LEGAL COUNSEL PLC
530 West Saginaw St
Hemlock, MI 48626
(989) 642-0055
pellison@olcplc.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
I. The Fifth Amendment Protects the Owner’s Equity, Not the Government’s Auction Price	2
II. The Eighth Amendment Applies to Punitive Economic Deprivations Like This One	5
III. Policy Concerns Do Not Override Constitutional Rights.....	6
IV. This Case Is the Ideal Vehicle	7
CONCLUSION	8

TABLE OF AUTHORITIES

Cases

<i>Austin v. United States</i> , 509 U.S. 602 (1993)	5
<i>BFP v. Resolution Trust Corp.</i> , 511 U.S. 531 (1994)	4
<i>Hall v. Meisner</i> , 51 F.4th 185 (6th Cir. 2022)	4
<i>Jacobs v. United States</i> , 290 U.S. 13 (1933)	4
<i>Rafaeli, LLC v. Oakland Cnty.</i> , 952 N.W.2d 434 (Mich. 2020)	1
<i>Timbs v. Indiana</i> , 586 U.S. 146 (2019)	5
<i>Tyler v. Hennepin Cnty., Minn.</i> , 598 U.S. 631 (2023)	1, 6
<i>United States v. 564.54 Acres of Land</i> , 441 U.S. 506 (1979)	3
<i>United States v. Bajakajian</i> , 524 U.S. 321 (1998)	5
<i>United States v. Causby</i> , 328 U.S. 256 (1946)	3

<i>United States v. Miller</i> , 317 U.S. 369 (1943)	2
---	---

<i>Webb’s Fabulous Pharmacies, Inc. v. Beckwith</i> , 449 U.S. 155 (1980)	3
--	---

Constitutional Provisions

U.S. Const. amend. V	2, 7
U.S. Const. amend. VIII.....	5, 7

INTRODUCTION

This case is the obvious sequel to *Tyler v. Cnty., Minn.*, 598 U.S. 631 (2023). In *Tyler*, this Court held that a government violates the Takings Clause when it keeps value beyond what is owed in taxes after foreclosing on a home. But *Tyler* did not decide the measure of “just compensation” owed in such cases. That question—whether compensation is based on the full fair market value of the equity taken, or merely the “surplus proceeds” from a distressed, government-run auction—is now plaguing takings victims and dividing lower courts.

The decision below cements one side of that split, adopting the narrowest possible measure of compensation and inviting local governments to depress auction prices to minimize their obligations. In the Sixth Circuit’s view, a county that takes \$192,158 of equity for a \$2,241 debt owes only the *auction* residue—here, \$73,766.07—not the actual value taken. Others, by contrast, have recognized that the Fifth Amendment protects the owner’s full equity and requires a “just compensation” formula based on its “fair market” value. *Rafaeli, LLC v. Oakland Cnty.*, 952 N.W.2d 434, 466-487 (Mich. 2020) (Viviano, J., concurring). That latter view is the correct one.

This case cleanly presents that post-*Tyler* question in a simple, undisputed factual posture. It also presents a second, independently cert-worthy

issue: whether the Eighth Amendment’s Excessive Fines Clause applies to massive, punitive forfeitures in the tax foreclosure context. The Sixth Circuit held it does not—“categorically.” That ruling squarely conflicts with this Court’s precedents in *Austin*, *Timbs*, and *Bajakajian*, and it precisely entrenches the error the *Tyler* concurrence warned lower courts to avoid.

Both questions matter nationally, affect tens of thousands of property owners every year, and can be decided on a clean record here. If the Court does not act now, governments will continue to exploit forced-sale pricing to strip owners of most of their home equity while evading full compensation, and to impose regular six-figure windfalls under the guise of “tax collection” without any Fifth or Eighth Amendment check. This is the case to answer the questions *Tyler* left open and to close the loopholes it identified.

ARGUMENT

I. The Fifth Amendment Protects the Owner’s Equity, Not the Government’s Auction Price

The Takings Clause guarantees that when the government takes property for public use, it must pay “the full and perfect equivalent in money of the property taken.” *United States v. Miller*, 317 U.S. 369, 373 (1943); U.S. Const. amend. V. For more than a century, this Court has held that “just compensation”

is measured by “the fair market value of the property at the time of the taking” plus interest from that date. *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979). It is the owner’s loss, not the taker’s gain, that is the constitutional measure. *United States v. Causby*, 328 U.S. 256, 261 (1946).

The County’s position is that none of that applies in the tax foreclosure context. In its view, “compensation in the tax-foreclosure context is measured by the ‘overplus,’ ‘excess’ or ‘surplus’ of proceeds generated by the tax-foreclosure sale beyond the tax debt, interest and fees.” BIO at 6. This means the government, by the simple device of selling property under harsh sale conditions that guarantee a depressed price, can wipe out the constitutional requirement of full compensation. That view is impossible to reconcile with this Court’s precedents, which forbid the government from defining away vested property rights by ipse dixit. *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980).

The authorities Isabella County cites do not change this. Its citation to *Rafaeli* misses the mark. That decision was a state-law outcome establishing the minimum property interest under Michigan’s takings protections. The discussion of remedies was about state law, *not the federal Takings Clause*, and Justice Viviano’s concurrence in *Rafaeli* underscored that the property right taken is “the taxpayer’s

equity,” not auction scraps. *Hall*¹ adopted surplus-proceeds reasoning without addressing the federal standard. *BFP*² was a bankruptcy case about private mortgage foreclosure and expressly limited its holding to that context. Yet the County urges that “the price in fact received at the foreclosure sale” should be deemed the measure—precisely the procedural self-redefinition and property desecration *Webb*’s forbids.

Review is warranted now. If the Sixth Circuit’s view stands, counties across the country will have a green light to engineer foreclosure sales for the lowest possible return, knowing the Constitution will only require them to hand over whatever they choose to collect rather than what was actually taken. Other courts have recognized that the Takings Clause protects the owner’s equity and mandates fair market value compensation. The split is here, and it will deepen with every new post-*Tyler* case. Only this Court can restore the proper and uniform rule – it’s “just compensation, *not inadequate compensation.*” *Jacobs v. United States*, 290 U.S. 13, 16 (1933).

¹ *Hall v. Meisner*, 51 F.4th 185 (6th Cir. 2022)

² *BFP v. Resolution Trust Corp.*, 511 U.S. 531 (1994)

II. The Eighth Amendment Applies to Punitive Economic Deprivations Like This One

The Sixth Circuit also rejected Petitioner’s Excessive Fines Clause claim on categorical grounds, holding that the Clause applies only to “punishment for some offense” after criminal conviction. That is directly contrary to *Austin v. United States*, 509 U.S. 602 (1993), which held that the Clause applies to civil *in rem* forfeitures that serve deterrent or retributive purposes. In *Timbs v. Indiana*, 586 U.S. 146 (2019), the Court reaffirmed that punitive forfeitures, whether civil or criminal, fall within the Clause. See U.S. Const. amend. VIII. And in *United States v. Bajakajian*, 524 U.S. 321 (1998), the Court held that a forfeiture is unconstitutional if “grossly disproportional” to the gravity of the offense.

The County’s own description of its process shows its punitive character. It is designed to seize property, sell it quickly, and keep all value above the debt—even when, as here, the debt is “not a criminal offense.” The County’s rapid auctions prioritize revenue, evidencing a punitive intent. Here, it destroyed over \$118,000 beyond the alleged debt, a forfeiture more than fifty times the size of the obligation. This is not a remedial measure to make the County whole; it is punishment to deter nonpayment and generate revenue. Justice Gorsuch, joined by Justice Jackson, warned in *Tyler* that “economic penalties imposed to deter willful

noncompliance with the law are fines by any other name” and “the Constitution has something to say about them.” 598 U.S. at 650 (concurrence).

Review is warranted because the Sixth Circuit’s categorical exclusion of tax foreclosure from the Excessive Fines Clause is exactly the “mistake” the *Tyler* concurrence cautioned against. If left intact, it will be replicated in every circuit confronting similar claims. The Court should grant review to hold, once and for all, that civil forfeiture schemes disguised as “tax collection” are equally subject to Eighth Amendment excessiveness limits and unconstitutional imposing grossly disproportionate penalties.

III. Policy Concerns Do Not Override Constitutional Rights

The County warns that paying fair market value would make tax foreclosure “nonviable as a means of tax collection.” That argument concedes that the current system depends on intentionally *under-compensating* property owners. But neither the Takings Clause nor the Eighth Amendment contains a profitability exception. Constitutional rights are not contingent on government convenience.

In fact, requiring payment of fair market value would align incentives with constitutional norms. Governments could still collect legitimate debts, but without the motive to conduct quick, low-return

auctions that destroy vast amounts of owner equity. The County's plea for efficiency is no answer to the constitutional questions presented here.

Allowing "efficiency" to trump the Constitution invites abuse. If courts permit governments to avoid full compensation on expedience grounds, the Takings Clause will become a dead letter in precisely the context—involuntary forced seizures of homes—where it matters most.

IV. This Case Is the Ideal Vehicle

Here, the facts are undisputed. The fair market value, the auction price, and the alleged debt are fixed. Both constitutional questions were preserved and decided below. The Sixth Circuit's holdings are clear and broad: only surplus proceeds define the property interest for Takings Clause purposes, and the Excessive Fines Clause "categorically" does not apply to tax foreclosure.

This case offers the Court a clean opportunity to resolve two pressing and recurring constitutional questions with zero procedural complications. If the Court declines review, the split on the Fifth Amendment question will deepen, the Eighth Amendment question will fester, and governments will continue to obliterate vast amounts of home equity without paying for it.

CONCLUSION

For all the foregoing reasons, this Court should grant the petition for a writ of certiorari. In the alternative, the Court should summarily reverse the decision below. Granting review will protect countless homeowners, from Michigan and elsewhere, from losing their life's equity to unconstitutional seizures.

Respectfully submitted,

PHILIP L. ELLISON
Counsel of Record
OUTSIDE LEGAL COUNSEL PLC
530 West Saginaw St
Hemlock, MI 48626
(989) 642-0055
pellison@olcplc.com

September 2025