

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, MICHIGAN,

Respondent.

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

**BRIEF OF JOSEPH DONALD BOURGEOIS
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	4
I. Numerous State Tax Forfeiture Schemes Lead to Severely Deflated Foreclosure Sale Prices and Loss of Homeowner Equity.....	4
A. Alternative Tax Foreclosure Systems Do Not Protect Homeowner Equity	9
B. By Incorporating Fair Market Value into Tax Foreclosure Processes, States Can Prevent Homeowner Equity Loss	11
II. Severe Equity Loss Rises to an Excessive Fine in Violation of the Eighth Amendment.....	13
A. The Tax Foreclosure Process is Punitive	13
B. The Tax Foreclosure Process is Often Grossly Disproportionate	16
III. Fair Market Value Is a Reasonable and Achievable Constitutional Requirement..	17
CONCLUSION	19

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Alexander v. United States</i> , 509 U.S. 544 (1993).....	16
<i>Austin v. United States</i> , 509 U.S. 602 (1993).....	13-15
<i>Bigelow v. Dunphe</i> , 197 So. 328 (Fla. 1940)	12
<i>Edmondson Cmty. Org., Inc. v.</i> <i>Mayor & City Council of Baltimore</i> , No. CV 24-1921-BAH, 2025 WL 2430345 (D. Md. Aug. 22, 2025).....	10-11
<i>In re New Jersey Tax Sales Certificates</i> <i>Antitrust Litig.</i> , Civ. No. 12-1893 (MAS) (TJB), 2016 WL 5844319 (D.N.J. Oct. 3, 2016).....	10
<i>Jones v. Flowers</i> , 547 U.S. 220 (2006).....	18
<i>McDonald v. Chicago</i> , 561 U. S. 742 (2010).....	13
<i>One 1958 Plymouth Sedan v.</i> <i>Pennsylvania</i> , 380 U.S. 693 (1965).....	15
<i>Rummel v. Estelle</i> , 445 U.S. 263 (1980).....	16
<i>Solem v. Helm</i> , 463 U.S. 277 (1983).....	16
<i>Timbs v. Indiana</i> , 586 U.S. 146 (2019).....	13, 14

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Tyler v. Hennepin County</i> , 598 U.S. 631 (2023).....	3-4, 15, 18
<i>United States v. Bajakajian</i> , 524 U.S. 32 (1998).....	13, 14, 16
<i>United States v. Romer</i> , 148 F.3d 359 (4th Cir. 1998).....	7
<i>United States v. Ward</i> , 448 U.S. 242 (1980).....	14-15

CONSTITUTION

U.S. Const. amend. IV.....	15
U.S. Const. amend. VIII.....	2-4, 13, 14, 17, 18

STATUTES

Ala. Code § 40-10-182 (2025)	9
Alaska Stat. Ann. § 29.45.460 (2025)	11
Ariz. Rev. Stat. Ann. § 42-18101 (2025)	9
Cal. A.B. 418, 2025–2026 Reg. Sess. (2025)	12
Cal. Civ. Code § 2924(g)(4) (West 2025)	9
Colo. Rev. Stat. Ann. § 39-11-108 (2025).....	9
D.C. Code § 47-1303.04 (2025).....	9
Fla. Stat. § 197.502 (2025)	5
§ 197.502(6)(a).....	6, 18
§ 197.502(6)(c)	12
§ 197.502(7)	6

TABLE OF AUTHORITIES—Continued

	Page(s)
Fla. Stat. § 197.542(2) (2025).....	5
Fla. Stat. § 197.582(2)(a) (2025)	6
Haw. Rev. Stat. § 667-36.5 (2025)	9
Iowa Code § 446.7 (2025)	9
Ky. Rev. Stat. Ann. § 134.128 (West 2025) .	9
La. S.B. 55, 2025 Reg. Sess. (2025).....	9
La. Stat. Ann. § 47:2154 (2025).....	9
Md. Code Ann., Tax-Prop. § 14-805 (West 2025)	9
Md. Code Ann., Tax-Prop. § 14-817 (West 2025)	9
Mich. Comp. Laws §§ 211.1 <i>et seq.</i> (2025) ...	4
§ 211.78m(1).....	5
§ 211.78m(2).....	5
§ 211.78m(5).....	5
§ 211.78m(8)(b)	18
Miss. Code Ann. § 27-41-59 (2025)	9
Mo. Rev. Stat. § 141.260 (2025)	9
Mont. Code Ann. § 15-17-323 (2025)	9
Neb. Rev. Stat. § 77-1807 (2025).....	9
Nev. Rev. Stat. Ann. § 361.603 (2025).....	11
N.J. Stat. Ann. § 54:5-86.1 (West 2025)	9
Ohio Rev. Code Ann. § 5721.19 (West 2025)	12, 17

TABLE OF AUTHORITIES—Continued

	Page(s)
34 R.I. Gen. Laws § 34-15-1 (2025).....	10
44 R.I. Gen. Laws § 44-9-8 (2025).....	9
44 R.I. Gen. Laws § 44-9-8.1 (2025).....	11
44 R.I. Gen. Laws § 44-9-19 (2025).....	10
44 R.I. Gen. Laws § 44-9-21 (2025).....	10
44 R.I. Gen. Laws § 44-9-25 (2025).....	10
R.I. H. 7659, 2025 Gen. Assemb., Jan. Sess. (2025).....	12, 18
Tex. Tax Code Ann. § 34.051 (West 2025)...	11
Wyo. Stat. Ann. § 39-13-108 (2025)	9

COURT FILINGS

Compl., <i>DJB Rentals, LLC v. City of Largo, Florida</i> , No. 8:25-cv-1221 (M.D. Fla. May 13, 2025).	2
Pet. for a Writ of Cert., <i>Pung v. Isabella Cnty.</i> , U.S. 2025 (No. 25-95)	2
Pl.’s Verified Mot. for Deficiency J., <i>City of Largo v. DJB Rentals, LLC</i> , No. 21-003065-CI (Fla. Cir. Ct. Nov. 3, 2023)	2

OTHER AUTHORITIES

Beth A. Colgan, <i>Of Guilty Property and Civil/Remedial Punishment: The Implications and Perils of “History” for the Excessive Fines Clause and Beyond</i> , 3 J. Am. Const. Hist. 697 (2025)	14
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TABLE OF AUTHORITIES—Continued

	Page(s)
Christopher Berry & Max Schmidt, <i>Selling Distress: How the Tax Foreclosure System Exacerbates Disinvestment in Cook County Communities</i> , U. Chi. Ctr. for Mun. Fin. (2022).....	8
Detroit Action Commonwealth et al., <i>Looking Back at the 2017 Tax Foreclosure Auction</i> (2020), https://wdwot.s3.amazonaws.com/reports/34/file_140/2017_Tax_FC_Report_FinalDraft.pdf	7
<i>Foreclosed Properties</i> , Isabella Cnty., https://www.isabellacounty.org/departments/treasurer/services/foreclosed-properties/ (last visited Nov. 18, 2025)	5
Fred Schulte & Scott Calvert, <i>Witness says he rigged bids in property tax lien auctions in Maryland</i> , The Ctr. for Pub. Integrity (Mar. 4, 2011), https://publicintegrity.org/inequality-poverty-opportunity/witness-says-he-rigged-bids-in-property-tax-lien-auctions-in-maryland/	10
John Rao, Nat’l Consumer L. Ctr, <i>The Other Foreclosure Crisis: Property Tax Lien Sales</i> (2012)	7, 10
Joshua Simons, SUNY New Paltz The Benjamin Ctr. for Pub. Pol’y Initiatives, <i>Going...Going... Gone</i> (2018).....	8

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Land Sale Auction Rules and Regulations</i> , Ingham Cnty. Treasurer (2019), https:// docs.ingham.org/Department/Treasurer/ AUCTION%20RULES%20AND%20REG ULATIONS.pdf	8
Memo on S.B. 1079, Senator Hannah-Beth Jackson, California Senate Judiciary Committee (2020) https://sjud.senate.ca. gov/senate.ca.gov/files/sb_1079_skinner_sen ate_judiciary_committee_analysis.pdf	8
<i>Rules and Regulations</i> , Tax-sale.info, https://www.tax-sale.info/forms/Standard- Rules.pdf (last visited Nov. 18, 2025)	5
<i>Tax Deed Sale Process</i> , Pinellas Cnty. Tax Deed, https://www.pinellas.realtaxdeed.c om/index.cfm?ZACTION=HOME&ZMET HOD=TAXD EED (last visited Nov. 17, 2025)	6
<i>Tax Deed Unclaimed Funds 2023</i> , Pinellas Cnty. Clerk of the Cir. Ct. & Comptroller, https://mypinellasclerk.gov/Portals/0/Un claimed%20Monies/2023/508_Tax%20De eds%20UNCLAIMED%20FUNDS%20LI ST%202023.pdf?ver=EkXyfNpQc6WDT6 sTdw8ugw%3D%3D (last visited Nov. 17, 2025)	6
Tax-Sale.info, https://www.tax-sale.info/ (last visited Nov. 18, 2025)	5

TABLE OF AUTHORITIES—Continued

	Page(s)
Thomas R. Miller, <i>Foreclosure Sale Bid-Rigging Illegal</i> , N.C. Real Est. Comm’n Bull. 2012-V43-1, https://www.ncrec.gov/Pdfs/Bulletins/May2012-Vol43-1.pdf (last visited Nov. 18, 2025)	7-8
Wesley Hottot, <i>What is an Excessive Fine? Seven Questions to Ask After Timbs</i> , 72 Ala. L. Rev. 581 (2021)	16

INTEREST OF *AMICUS CURIAE*¹

Amicus Joseph Donald “Don” Bourgeois is a man who, like Petitioner and countless other Americans, lost his property through a county-administered foreclosure system that routinely sells real estate for far less than its true value. He has experienced firsthand the profound personal and constitutional harm caused when county debt collection measures turn punitive.

INTRODUCTION

Don Bourgeois is a former licensed builder and fine woodworker. In 2013, he purchased a rental property in the City of Largo, Pinellas County, Florida, intending to improve it, rent it, and use the income to finance his retirement. In 2015, two years after he began work on the property, the city notified Mr. Bourgeois that he had approximately one month to address several building code violations or else he would be fined \$250 per day. Over the next few years, Mr. Bourgeois continued to seek and receive permits to improve the property, relying on an assurance by Largo officials that these fines would be forgiven once he fixed the alleged code violations. By June 2021, his accrued fines totaled over \$590,000, and the city began foreclosure proceedings.

Mr. Bourgeois asserted that the fines were unconstitutionally excessive, but on appeal, the state court rejected his constitutional challenge, invoking a mandatory 30-day deadline for appealing the municipal order imposing the fines. Just two months later, the

¹ No part of this brief was written by counsel for any party. No party, or any other person or entity other than *amicus* or his counsel, monetarily contributed to the preparation or submission of this brief.

city sold his property at a public auction for \$99,100, despite its tax appraisal value of \$480,000. He suffered an equity loss of nearly eighty percent. *See* Complaint at 14, *DJB Rentals, LLC v. City of Largo, Florida*, No. 8:25-cv-1221 (M.D. Fla. May 13, 2025). To add insult to injury, the city subsequently sought the remaining amount of Mr. Bourgeois’s debt unsatisfied by the auction from him personally. Pl.’s Verified Mot. for Deficiency J., *City of Largo v. DJB Rentals, LLC*, No. 21-003065-CI (Fla. Cir. Ct. Nov. 3, 2023). Mr. Bourgeois filed a new action seeking to vindicate his constitutional rights in federal district court.

The city’s seizure of Mr. Bourgeois’s \$480,000 property should have satisfied \$480,000 of his debt. But when the City of Largo’s auction returned a fraction of that value, the city passed the loss onto Mr. Bourgeois. This lost equity penalty is strikingly similar to Petitioner’s case, in which Isabella County, Michigan’s foreclosure sale for \$76,008—despite a valuation of \$194,400—deprived Petitioner of over sixty percent of his equity in the property. Pet. for a Writ of Cert. at 5, *Pung v. Isabella Cnty.*, U.S. 2025 (No. 25-95). As explained in this brief, many other states have similar equity-destroying procedures.

SUMMARY OF ARGUMENT

State foreclosure schemes that severely depress the sale prices of homes are an exorbitant penalty that triggers the Eighth Amendment’s prohibition on excessive fines. The Constitution bars the government from ballooning modest debts into the near total loss of a property’s equity, particularly when the auction process itself ensures that the owner receives far less than the property’s fair market value. Tax foreclosure auction practices vary, but many states’ procedures have structural features that systematically depress

sale prices. Municipalities often have a natural incentive to sell quickly and cheaply, leaving homeowners with little or no compensation for the full value of their property. *Amicus* submits this brief to highlight the systemic harm these practices create. *Amicus* urges the Court to recognize that cases like Petitioner's and his implicate more than mere administrative procedure. Judicial intervention is essential to ensure that individual citizens do not lose substantial equity they have legitimately earned and to guarantee that forced property sales comply with the strictures of the Eighth Amendment.

The loss of equity caused by current tax-foreclosure procedures is an unconstitutional Eighth Amendment excessive fine because it extracts far more from equity-holders than they owe in taxes. A process meant solely to recoup delinquent taxes or fines is thus converted into extraconstitutional destruction of the homeowner's wealth. Mr. Bourgeois, like Petitioner, is the victim of a foreclosure scheme that systematically deprives property owners of their hard-earned property equity. Both Mr. Bourgeois and the Pung estate received a fraction of the fair market value of their property at auction. This is in part due to the auction design, which drives down prices. Because the State's only financial interest is in recovering unpaid debts, it is incentivized to secure a quick sale. And the limited pool of auction buyers is incentivized to bid low to maximize profits. These structural incentives push auction prices far below fair market value and divest homeowners of their equity.

When the government seizes and sells tax-delinquent property, it cannot lawfully retain the surplus value from the sale beyond the amount of taxes and permissible costs. *See Tyler v. Hennepin County*, 598

U.S. 631 (2023). But this protection is hollow unless states ensure that tax-foreclosed properties are sold at or near their fair market value. When governments sell property for far less than its true value, the homeowner bears the loss, effectively punishing the owner by eviscerating equity that should have been protected. Selling a home for a fraction of its fair market value operates as a punitive and grossly disproportionate sanction, violating the Eighth Amendment's Excessive Fines Clause. Moreover, now counties have less incentive to obtain market-value prices at auction: because the government can no longer keep surplus proceeds, it may prefer quick, low-value sales that satisfy only the tax debt. This dynamic underscores the need for constitutional limits ensuring fair-market valuation in tax-foreclosure sales.

ARGUMENT

I. Numerous State Tax Forfeiture Schemes Lead to Severely Deflated Foreclosure Sale Prices and Loss of Homeowner Equity.

Although state tax-sale statutes and county-level procedures vary widely, they share a common shortcoming: their mechanisms often fail to ensure that properties are sold for or assessed at their fair market value. The state laws and county-level procedures governing tax sales in Isabella County, Michigan and Pinellas County, Florida, reveal how forced sale procedures can produce the harm Petitioner and Mr. Bourgeois suffered.

Michigan's General Property Tax Act, Mich. Comp. Laws §§ 211.1 *et seq.* (2025), authorizes the county treasurer or the state to take a tax-delinquent property through a right of first refusal, giving the government the ability to acquire homes before they

ever reach a competitive market. Mich. Comp. Laws § 211.78m(1) (2025). Even when properties are auctioned, the act permits sales at a minimum bid that covers only taxes, interest, penalties, and costs, rather than the property’s fair market value. Mich. Comp. Laws § 211.78m(2) (2025). If there are no bidders, then there can be a second “no-minimum” auction, where the government “may establish a reasonable opening bid at the sale to recover the cost of the sale of the property or properties.” Mich. Comp. Laws § 211.78m(5) (2025). These rules permit forced sales far below market value, enabling the government to extinguish homeowner equity without ever seeking a price that reflects the property’s true worth.

Isabella County, for example, runs its tax-sales through an online auction platform used by many other Michigan counties. *See Foreclosed Properties*, Isabella Cnty., <https://www.isabellacounty.org/departments/treasurer/services/foreclosed-properties/> (last visited Nov. 18, 2025); Tax-Sale.info, <https://www.tax-sale.info/> (last visited Nov. 18, 2025). The platform’s standard rules reinforce structural discounting: bidders must put down a \$1,000 security deposit and must pay their full balance, including buyer’s premium, current taxes, and recording fees, within just five business days of the auction. *See Rules and Regulations*, Tax-sale.info, <https://www.tax-sale.info/forms/Standard-Rules.pdf> (last visited Nov. 18, 2025). The brief payment window and substantial upfront costs discourage broad competition, as prospective buyers must have large sums of readily available cash.

Florida’s tax-sale statute also provides minimal debtor protections in public auctions. Fla. Stat. § 197.502 (2025). Like Michigan, most properties receive no market value sale protection; parcels may be sold for a

minimum bid covering no more than delinquent taxes and costs. Fla. Stat. § 197.502(6)(a) (2025). At auction, a bidder must put down a five-percent non-refundable deposit, with full payment due within 24 hours of the bid. Fla. Stat. § 197.542(2) (2025). If no bidders purchase the property, it may be placed on the “lands available for taxes” list for potential subsequent sale, giving the governmental unit or investors another opportunity to acquire it at minimal cost. Fla. Stat. § 197.502(7) (2025).

Mr. Bourgeois’s property was foreclosed in Pinellas County, Florida, where tax-deed sales and mortgage-foreclosure auctions are conducted by the County Clerk of the Circuit Court & Comptroller. Pinellas County also runs tax-deed auctions online with cash-like, next-day funding requirements that, like Michigan, could be difficult for ordinary retail buyers to satisfy. *See Tax Deed Sale Process*, Pinellas Cnty. Tax Deed, <https://www.pinellas.realtaxdeed.com/index.cfm?ZACTION=HOME&ZMETHOD=TAXDEED> (last visited Nov. 17, 2025).

Florida law directs the Clerk to provide notice and distribute surplus proceeds after a tax-deed sale, with recipients filing a claim to receive the surplus. Fla. Stat. § 197.582(2)(a) (2025). Nonetheless, this process often results in property owners failing to recover equity. In Pinellas County, for example, 110 instances of unclaimed funds in 2023 amounted to over \$482,293.11 of undelivered surplus. *Tax Deed Unclaimed Funds 2023*, Pinellas Cnty. Clerk of the Cir. Ct. & Comptroller, https://mypinellasclerk.gov/Portals/0/Unclaimed%20Monies/2023/508_Tax%20Deeds%20UNCLAIMED%20FUNDS%20LIST%202023.pdf?ver=EkXyfNpQc6WDT6sTdw8ugw%3D%3D (last visited Nov. 17, 2025).

Michigan and Florida’s low minimum bids and restrictive auction procedures are a snapshot of the structural practices that routinely keep forced-sale prices well below market value. Yet these practices do not work alone. Uncompetitive foreclosure practices also keep bids and sale prices low, adding further harm to foreclosed homeowners’ equity claims.

State tax foreclosure auctions are conducted in uncompetitive ways that practically guarantee a homeowner will not receive the true value of their property. Auctions typically involve a small pool of buyers, who are often repeat players, which reduces competition and, therefore, prices. Moreover, the foreclosure sale process “is complicated and rarely understood except by investors.” John Rao, Nat’l Consumer L. Ctr, *The Other Foreclosure Crisis: Property Tax Lien Sales* 24 (2012). For instance, a study of Wayne County, Michigan (which includes Detroit) found that “75% of all buyers were large investors (purchasers who bought 5+ properties at auction)” and “[t]he top 10 buyers in the 2017 auction accounted for more than 25% of all properties sold.” Detroit Action Commonwealth et al., *Looking Back at the 2017 Tax Foreclosure Auction* 11 (2020), https://wdwot.s3.amazonaws.com/reports/34/file_140/2017_Tax_FC_Report_FinalDraft.pdf.

Because the buyer pool is limited to a small number of repeat players, there is a heightened opportunity for corrupt and collusive bidding practices. See *United States v. Romer*, 148 F.3d 359, 363 (4th Cir. 1998) (convicting two real estate speculators of bid-rigging at public foreclosure auctions in Virginia). Buyers can make “‘give or take’ arrangements, where one bidder pays another for the right to bid free from the other’s competing bid.” Thomas R. Miller, *Foreclosure Sale*

Bid-Rigging Illegal, N.C. Real Est. Comm’n Bull. 2012-V43-1, <https://www.ncrec.gov/Pdfs/Bulletins/May2012-Vol43-1.pdf> (last visited Nov. 18, 2025). Buyers may also agree to bid on successive sales, reducing competition. *Id.*

Some municipalities, such as Ingham County, Michigan, even “bundle” properties together, further limiting the buyer pool and driving down prices. *Land Sale Auction Rules and Regulations*, Ingham Cnty. Treasurer 2 (2019), <https://docs.ingham.org/Department/Treasurer/AUCTION%20RULES%20AND%20REGULATIONS.pdf>. These bulk sales help municipalities to efficiently sell properties and to offload undesirable properties by tying them to higher value ones. *See* Memo on S.B. 1079, Senator Hannah-Beth Jackson, California Senate Judiciary Committee (2020) https://sjud.senate.ca.gov/sites/sjud.senate.ca.gov/files/sb_1079_skinner_senate_judiciary_committee_analysis.pdf. The bundling process will frequently result in lower prices per property because selling in bulk reduces the per-unit price. *See* Christopher Berry & Max Schmidt, *Selling Distress: How the Tax Foreclosure System Exacerbates Disinvestment in Cook County Communities*, U. Chi. Ctr. for Mun. Fin. 8 (2022). The combined higher price of a bundle prices out individual buyers, reducing overall competition at auction. Memo on S.B. 1079, *supra*, at 6; *see also* Joshua Simons, SUNY New Paltz The Benjamin Ctr. for Pub. Pol’y Initiatives, *Going...Going...Gone* 7 (2018). The prevalence of bundling demonstrates the perverse incentives at work. Rather than achieving just compensation for property owners, the government’s priority is to sell properties as quickly as possible.

Because of these concerns, California banned bundling in 2020. Cal. Civ. Code § 2924(g)(4) (West 2025).²

A. Alternative Tax Foreclosure Systems Do Not Protect Homeowner Equity.

Even tax foreclosure systems meant to provide greater debtor protections do not preserve property owner equity. Many states have adopted a tax lien system where the deed to the tax delinquent property is not sold outright at auction; instead, a lien on the property is sold.³ The homeowner retains ownership while repaying the debt, plus interest and fees, to the investor. However, homeowner equity loss is still possible because if the debt is not repaid, the investor either receives the deed to the property outright or a percentage of property ownership. For example, Rhode Island is a tax lien state where investors bid down on the lowest percentage of ownership in the property that they will accept in exchange for a tax lien on the property. 44 R.I. Gen. Laws § 44-9-8 (2025). Although the homeowner has an opportunity to redeem the

² Hawaii has banned bundling of mortgaged properties. Haw. Rev. Stat. § 667-36.5 (2025).

³ Tax lien states include Alabama, Arizona, Colorado, Iowa, Kentucky, Maryland, Mississippi, Montana, Nebraska, New Jersey and Wyoming. Ala. Code § 40-10-182 (2025); Ariz. Rev. Stat. Ann. § 42-18101 (2025); Colo. Rev. Stat. § 39-11-108 (2025); Iowa Code § 446.7 (2025); Ky. Rev. Stat. Ann. § 134.128 (West 2025); Md. Code Ann., Tax-Prop. §§ 14-805, -817 (West 2025); Miss. Code Ann. § 27-41-59 (2025); Mo. Rev. Stat. § 141.260 (2025); Mont. Code Ann. § 15-17-323 (2025); Neb. Rev. Stat. § 77-1807 (2025); N.J. Stat. Ann. § 54:5-86.1 (West 2025); Wyo. Stat. Ann. § 39-13-108 (2025). Louisiana will become a tax lien state effective January 1, 2026. La. Stat. Ann. § 47:2154 (2025); S.B. 55, 2025 Reg. Sess. (La. 2025). The District of Columbia also uses tax lien auctions. D.C. Code § 47-1303.04 (2025).

property by paying the amount of the tax debt, plus interest and fees, after a specified period of time, the investor can foreclose the right of redemption and acquire title to the ownership percentage. 44 R.I. Gen. Laws §§ 44-9-19, -21, -25 (2025). The investor can then force a sale via partition action. 34 R.I. Gen. Laws § 34-15-1 (2025). If the investor bids for the property at a depressed sale price, the investor can then resell for a profit, and the homeowner loses equity in the home. In tax lien states, homes generally sell for far less than fair market value. John Rao, Nat'l Consumer L. Ctr., *The Other Foreclosure Crisis: Property Tax Lien Sales* 38 (2012).

Like tax foreclosure sales, the tax lien process is vulnerable to abuse. Evidence of a Baltimore, Maryland bid-rigging scheme emerged in 2011, where a group of attorneys colluded to fix bids on large numbers of tax liens, which had the effect of artificially holding down bid prices. Fred Schulte & Scott Calvert, *Witness says he rigged bids in property tax lien auctions in Maryland*, The Ctr. for Pub. Integrity (Mar. 4, 2011), <https://publicintegrity.org/inequality-poverty-opportunity/witness-says-he-rigged-bids-in-property-tax-lien-auctions-in-maryland/>. A group of plaintiffs alleged a similar bid-rigging scheme, where investors colluded to manipulate bids at public tax lien auctions, in New Jersey. *In re New Jersey Tax Sales Certificates Antitrust Litig.*, Civ. No. 12-1893 (MAS) (TJB), 2016 WL 5844319, at *1 (D.N.J. Oct. 3, 2016) (approving a class settlement of the claims). Further, in a recent lawsuit, foreclosed-upon Baltimore homeowners allege that Maryland tax lien auctions, where investors are not required to turn over the full amount of the bid upon winning the auction, incentivize low bids. *Edmondson Cmty. Org., Inc. v. Mayor & City Council*

of Baltimore, No. CV 24-1921-BAH, 2025 WL 2430345, at *1–2 (D. Md. Aug. 22, 2025).

Many states circumvent sale of the property altogether and seize the property for state benefit. For example, Alaska allows municipalities to retain foreclosed property if a determination is made that it would serve a public purpose. Alaska Stat. § 29.45.460 (2025). Similarly, in Nevada, tax delinquent property can be transferred directly to local governments or the Nevada System of Higher Education if a determination is made that the acquisition would serve a public purpose. Nev. Rev. Stat. § 361.603 (2025). No further definition of a “public purpose” is provided in either instance. Rhode Island allows a taxing municipality to take property for itself “upon a determination that the property is necessary for redevelopment, revitalization, or municipal purposes.” 44 R.I. Gen. Laws § 44-9-8.1 (2025). These statutes provide no possibility of the homeowner recovering her equity in the property.

In another instance, Texas law explicitly allows municipalities to resell tax foreclosed properties for less than market value if the property is to be used for a purpose consistent with the municipality’s urban redevelopment plans or affordable housing policies. Tex. Tax Code Ann. § 34.051 (West 2025). This leaves property owners vulnerable to the same severe equity loss suffered by Petitioner and Mr. Bourgeois.

B. By Incorporating Fair Market Value into Tax Foreclosure Processes, States Can Prevent Homeowner Equity Loss.

A few states have taken steps to protect the full equity of property owners in tax foreclosures. For example, Ohio requires a fair market value appraisal

prior to tax foreclosure auctions, and a minimum bid is then set based on the appraisal. Ohio Rev. Code Ann. § 5721.19 (West 2025). California passed a law in October 2025 that requires tax delinquent property to sell at a price greater than or equal to the “tax sale value” of the property, defined as “the amount that typically could be realized” from a properly advertised public auction. A.B. 418, 2025–2026 Reg. Sess. (Cal. 2025). Rhode Island has proposed replacing tax lien auctions with a system where a real estate broker is appointed to list the property for sale for its fair market value. H. 7659, 2025 Gen. Assemb., Jan. Sess. (R.I. 2025).

Additionally, Florida provides heightened safeguards for homestead property, property serving as an owner’s primary residence, in recognition of the special constitutional and statutory protections afforded to the family home. *See Bigelow v. Dunphe*, 197 So. 328, 330 (Fla. 1940) (“The [homestead] laws are not based upon the principles of equity; nor do they in any way yield thereto; their purpose is to secure the home to the family even at the sacrifice of just demands, the preservation of the home being deemed of paramount importance.”). For such property, the opening bid must include all back taxes and costs plus one-half of the property’s most recent assessed value. Fla. Stat. § 197.502(6)(c) (2025). Florida thus demonstrates that incorporating assessed value into a tax-sale scheme is both feasible and administrable. But this protection applies only to primary residences; non-homestead owners like Mr. Bourgeois receive none of these equity-preserving safeguards.

By fully incorporating fair market value, as Ohio and California have done, states can prevent the

penalty of grossly disproportionate equity loss, as is required by the Eighth Amendment.

II. Severe Equity Loss Rises to an Excessive Fine in Violation of the Eighth Amendment.

The Eighth Amendment requires that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. The Excessive Fines Clause’s promise to guard “against excessive punitive economic sanctions” is “both ‘fundamental to our scheme of ordered liberty’ and ‘deeply rooted in [U.S.] history and tradition.’” *Timbs v. Indiana*, 586 U.S. 146, 154 (2019) (quoting *McDonald v. Chicago*, 561 U. S. 742, 767 (2010)). This critical protection exists to counter government retaliation or revenue generation through the imposition of excessive fines. *See id.*

To determine whether an activity amounts to an excessive fine, the Court first analyzes whether it “constitutes punishment and is thus a ‘fine’”; then “whether it is ‘excessive.’” *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). The tax foreclosure systems used by Michigan, Florida, and other states can lead to excessive fines under this test. The equity lost at auction is punitive because it goes well beyond the State’s legitimate remedial purposes in recovering debts. And the massive gap between debts and lost equity is grossly disproportionate.

A. The Tax Foreclosure Process is Punitive.

Whenever forfeitures “constitute punishment for an offense,” they are considered fines under the Excessive Fines Clause. *Bajakajian*, 524 U.S. at 328. As the Court explained in *Austin v. United States*, the Clause can extend to civil as well as criminal

forfeiture. 509 U.S. 602, 607–08 (1993); *see also* Beth A. Colgan, *Of Guilty Property and Civil/Remedial Punishment: The Implications and Perils of “History” for the Excessive Fines Clause and Beyond*, 3 J. Am. Const. Hist. 697, 788 (2025) (reexamining *in rem* forfeitures and noting that “punishment and remediation were not historically understood to be mutually exclusive”). The key inquiry is not whether a proceeding is categorically civil or criminal but rather whether a proceeding is considered a punishment. *Austin v. United States*, 509 U.S. 602, 606–09 (1993).

Importantly, punishment need not be the central purpose of a statutory scheme for a fine to exist under the first prong of analysis. *See Austin*, 509 U.S. at 610. As long as a scheme “serves *in part* to punish,” it is punitive. *Id.* at 618 n.12. By going beyond purely criminal contexts, the Clause thus offers robust protection “against abuses of government’s punitive or criminal-law-enforcement authority.” *Timbs v. Indiana*, 586 U.S. 146, 149 (2019) (emphasis added).

In contrast to fines, a purely remedial forfeiture does not violate the Eighth Amendment. *See Bajakajian*, 524 U.S. 321, 329 (1998). A forfeiture is remedial when it redresses a harm to the State by “compensating the Government for a loss,” *id.*, or “remov[ing] dangerous or illegal items from society.” *Austin*, 509 U.S. at 621. As put by Justice Scalia, a property forfeiture is remedial when it is used “to make someone whole for injury caused by unlawful use of the property.” *Austin*, 509 U.S. at 625 (Scalia, J., concurring).

Thus, a property forfeiture is not remedial when it “has absolutely no correlation to any damages sustained by society or to the cost of enforcing the law.” *Id.* at 621 (quoting *United States v. Ward*, 448 U.S. 242,

254 (1980)) (cleaned up). In other words, a State cannot extend its legitimate remedial purposes to unrelated forfeitures. *See id.* at 621–22 (forfeiture of defendant’s mobile home and auto body shop in a prosecution for drug sales was punitive); *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 699–701 (1965) (in the Fourth Amendment context, finding that the forfeiture of a car valued \$1,000 for a liquor law violation with a maximum criminal fine of \$500 was “clearly a penalty”).

Under this rubric, Michigan and Florida’s tax foreclosure systems go well beyond remedial debt recovery and, therefore, impose a punishment on tax debtors. As Michigan acknowledges, the State’s interest is limited to “timely recovery of delinquent tax revenue.” Resp’t’s Br. in Opp’n. at 9. But after recovering its interest and thus making itself whole, the State then subjects debtors to an uncorrelated and punishingly steep penalty in the form of equity lost at auction. *See infra* Part I. Here, after recovering a tax debt of \$2,241, Michigan imposed an equity penalty of nearly \$120,000. In Mr. Bourgeois’s case, Florida imposed an equity penalty of about \$400,000—which was on top of its already exorbitant fees.

Without a legitimate remedial interest, the equity penalty serves to deter or punish “noncompliance with the law.” *Tyler v. Hennepin County*, 598 U.S. 631, 649–50 (2023) (Gorsuch, J., concurring). This was Mr. Bourgeois’s experience; he faced arbitrary enforcement, false promises, and a steep daily fine that ultimately resulted in the loss of his property. And, as described previously in this brief, his is an experience of many debtors across the country whose home equity is erased over relatively small obligations.

B. The Tax Foreclosure Process is Often Grossly Disproportionate.

Whether a punitive fine is excessive is determined by the standard of gross disproportionality borrowed from Cruel and Unusual Punishment cases, which compares the “amount of the forfeiture” to the “gravity of the defendant’s offense.” *Bajakajian*, 524 U.S. at 336–37; *see also Rummel v. Estelle*, 445 U.S. 263, 271 (1980).

Gross disproportionality is a fact-intensive inquiry. *See Wesley Hottot, What is an Excessive Fine? Seven Questions to Ask After Timbs*, 72 Ala. L. Rev. 581 (2021). Considerations include the character, scope, and duration of the offense. *See Alexander v. United States*, 509 U.S. 544, 559 (1993). The Court may also consider the degree of harm caused and the defendants’ “level of culpability.” *Bajakajian*, at 337–39 (noting that the crime was “solely a reporting offense”). Finally, the Court can compare the severity of the fine to a typical penalty for a similar offense. *See id.* (comparing a \$357,144 civil forfeiture with the maximum penalty of \$5,000 under the Sentencing Guidelines); *see also Solem v. Helm*, 463 U.S. 277, 291 (1983) (comparing criminal sentences between jurisdictions).

In Petitioner’s case, for a \$2,241 debt, the State assessed a grossly disproportionate penalty of nearly \$120,000. *See Pet. For a Writ of Cert. at 5, Pung v. Isabella Cnty.*, U.S., 2025 (No. 25-95). This penalty is 53 times the size of the harm to the State. Additional facts only underscore this gross disproportionality. First, Petitioners’ level of culpability is vanishingly low. The tax debt at issue was wrongfully assessed, and Petitioner made good faith attempts to challenge it through successive State proceedings. *See id.* at 4–5. Moreover, the typical penalty here—and one that the State was willing to accept until foreclosure—was

simply a return of the original \$2,241 debt. By any of these metrics, Michigan’s massive equity penalty is grossly disproportionate.

As explained in Part I, *supra*, the typical tax foreclosure auction is structured in a way that allows—and even encourages—disproportionate fines. Mr. Bourgeois’s similar disproportionate fine of nearly \$400,000 is not an isolated incident. Low minimum bids, small buyer pools, bundling, and Government self-dealing all serve to drive down prices and deprive property owners of their equity. Without the protection of the Eighth Amendment, states will continue to employ these abusive practices at the expense of their citizens.

III. Fair Market Value Is a Reasonable and Achievable Constitutional Requirement.

Michigan argues that it cannot reasonably seek fair market value at auction. Resp’ts Br. in Opp’n. at 8–9 (“Delaying sale in hope of improved future market conditions or undertaking a marketing campaign both work against prompt collection of tax revenue and generate additional expense.”). Of course, practical concerns cannot justify a constitutional violation. But Michigan’s argument fails even by its own terms.

Michigan ignores the measures that other states have begun to take to better protect debtor equity. As discussed *supra*, states are experimenting with different models to protect equity and ensure fair market value. *Compare* Ohio Rev. Code Ann. § 5721.19 (West 2025) (pre-auction appraisal and a minimum bid at fair market value), *with* H. 7659, 2025 Gen. Assemb., Jan. Sess. (R.I. 2025) (appointing a real estate agent to list the foreclosed property for sale at its fair market value). Further measures may also be appropriate, like banning the bundling of properties together at auction or increasing advertising and

public notice to ensure a wide buyer pool. *See supra* Section 1.B.

It is true that these procedures may result in additional costs and a longer auction process, however, states are typically entitled to “fees incurred . . . in connection with the forfeiture, foreclosure, [or] sale.” Mich. Comp. Laws § 211.78m(8)(b) (2025); *see also* Fla. Stat. § 197.502(6)(a) (2025). Therefore, states would be able to recover their reasonable expenses from a sale at fair market value. This process would be no worse for the states, and far better for the citizen otherwise facing devastating loss of equity.

This Court has intervened before where forced sales implicated fundamental rights. *See Tyler v. Hennepin County*, 598 U.S. 631, 639 (2023); *Jones v. Flowers*, 547 U.S. 220, 234 (2006) (due process requires the government to take “reasonable steps” to notify a property owner of an impending sale before taking their property “if practicable to do so”). It should do so here, as the Eighth Amendment requires, to prevent the punishing total loss of a homeowner’s equity.

CONCLUSION

This Court should reverse the decision below in favor of Petitioner.

Respectfully submitted,

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