

No. 25-95

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**In The  
Supreme Court of the United States**

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

v.

ISABELLA COUNTY, MICHIGAN,  
*Respondent.*

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

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**BRIEF OF AMICI CURIAE AARP  
AND AARP FOUNDATION IN  
SUPPORT OF PETITIONER**

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## INTEREST OF AMICI CURIAE<sup>1</sup>

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With a nationwide presence, AARP strengthens communities and advocates for what matters most to the more than 100 million Americans 50-plus: health and financial security, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works for and with vulnerable people over 50 to end senior poverty and reduce financial hardship by building economic opportunity.

AARP and AARP Foundation seek to protect older Americans' economic security, including their access to home equity pursuant to guarantees established by federal and state constitutional law. To this end, amici have repeatedly advocated for the constitutional rights of homeowners to be justly compensated for tax authorities' seizure of their surplus equity.<sup>2</sup> Amici have concerns regarding the

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<sup>1</sup> Pursuant to Supreme Court Rules 37.2 and 27.6, amici certify that no counsel for either party authored the brief in whole or in part. In addition, no person or entity, other than amici, their members, and their counsel, has made any monetary contribution to the preparation and submission of this brief.

<sup>2</sup> AARP and AARP Foundation have filed amicus briefs in state and federal courts on this issue, including in *Tyler v. Hennepin County*, 598 U.S. 631 (2023); *Tyler v. Hennepin County*, 26 F.4th 789 (8th Cir. 2022); *Rafaeli, LLC v. Oakland County*, 952 NW.2d 434 (Mich. 2020); *Knick v. Township of Scott*, 588 U.S. 180 (2019); *Wayside Church v. Van Buren County*, 847 F.3d 812 (6th Cir. 2017), *cert den.*, 583 U.S. 944 (2017); *Coleman v. District of*

potential impact of any decision that erects improper limits to ensuring that just compensation—typically based on a property’s fair market value—is provided to older homeowners, especially those of modest means and vulnerable to losing their homes to tax foreclosure.

### SUMMARY OF ARGUMENT

When a State seizes a person’s home to satisfy a tax debt, can it constitutionally deny that person the full benefit of the earned equity, less the tax debt and associated costs? The Court’s answer—based on Takings Clause precedent—should be “No.” Indeed, over and over again, the Supreme Court has affirmed that just compensation for seized property is measured, where possible, by the fair market value on the date of the taking. Denying homeowners the fair market value of their property upon tax foreclosure violates the Takings Clause and disproportionately harms older Americans.

By the time homeowners reach their 50s (or later ages), they have likely spent decades paying their mortgage and building equity. At the same time, economic, logistical, and ability-related pressures render many of them especially vulnerable to tax foreclosure, which frequently deny homeowners the fair market value of the seized property. The Court should take notice of recent State efforts that ensure tax debts are paid without depriving older

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*Columbia*, 70 F. Supp. 3d 58 (D.D.C. 2014); *Battisti v. Tax Claim Bureau of Beaver County*, 76 A.3d 111 (Pa. Cmmw. Ct. 2013).

homeowners of the full equity they have spent decades building, and it should affirm that tax foreclosures require just compensation as measured by fair market value.

## ARGUMENT

### **I. When a State seizes private property under the Takings Clause of the Fifth Amendment to the U.S. Constitution, it must provide just compensation, typically based on fair market value.**

The Takings Clause of the Fifth Amendment to the U.S. Constitution states: “nor shall private property be taken for public use, without just compensation.” U.S. Const., Amend V. Applicable to the States through the Fourteenth Amendment, *Tyler v. Hennepin County*, 598 U.S. 631, 637 (2023), the Takings Clause embodies an “indemnity principle” that aims “to put the owner of condemned property ‘in as good a position pecuniarily as if his property had not been taken.’” *United States v. 564.54 Acres of Land*, 441 U.S. 506, 510, 510-13 (1979) (quoting *United States v. Toronto, Hamilton & Buffalo Navigation Co.*, 338 U.S. 396, 402 (1949)). How this principle is effectuated in a given case will vary, but “[w]hatever the circumstances under which such constitutional questions arise, the dominant consideration always remains the same: What compensation is ‘just’ both to an owner whose property is taken and to the public that must pay the bill?” *Id.* at 512 (quoting *United States v. Commodities Trading Corp.*, 339 U.S. 121, 123 (1950)). Under this Court’s

precedents, the answer to this question in the tax foreclosure context should be fair market value.

For a century, the Court has affirmed that just compensation for seized property is measured, where ascertainable, by the fair market value on the date of the taking, defined as what a willing buyer would pay a willing seller under usual market conditions. See *Olson v. United States*, 292 U.S. 246, 255 (1934) (explaining that the “full and exact equivalent” the owner of a seized property must receive is “the market value of the property at the time of the taking”) (citing *Reagan v. Farmers’ Loan & Trust Co.*, 154 U.S. 362, 399 (1894), and *Seaboard Air Line Ry. v. United States*, 261 U.S. 299, 306 (1923)); see also *United States v. Miller*, 317 U.S. 369, 373 (1943); *564.54 Acres of Land*, 441 U.S. at 510; *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 10 (1984).

The rule pegging just compensation to fair market value is well settled, and the limited deviations from it only reinforce the primacy of fair market value as the correct measure of just compensation. Where the property is of a type “seldom, if ever, sold in the open market,” the Court has acknowledged that a straightforward fair market value may not exist or be ascertainable. *United States v. 50 Acres of Land*, 469 U.S. 24, 30 (1984). In that situation, “resort must be had to other data which will yield a *fair* compensation.” *Miller*, 317 U.S. at 374 (emphasis added).

Even in circumstances in which government action affects the market value of property, either

through the creation of additional demand (as in wartime) or through price controls, the Court has not abandoned the concept of fair market value but has instead adjusted it to avoid over- or under-compensating. See *United States v. Cors*, 337 U.S. 325, 333-36 (1949) (holding that tugboat owner was entitled to fair market value during World War II as measured before the government’s demand for vessels inflated market prices); *United States v. John J. Felin & Co.*, 334 U.S. 624, 640-41 (1948) (holding that just compensation for owners of commodities subject to federal price ceilings was limited to the ceiling price, not the higher value outside the regulated market); *Commodities Trading Corp.*, 339 U.S. at 128 (same). As the Court has stated repeatedly, in most cases, “the balance between the public’s need and the claimant’s loss” is the fair market value of the property taken.<sup>3</sup> *Toronto, Hamilton & Buffalo Navigation Co.*, 338 U.S. at 402.

Here, Isabella County’s own annual property valuation determined that Petitioner Michael Pung’s home was worth \$194,400 at the time of the taking (*i.e.*, tax foreclosure). Pet. Cert. 5. And while Pung’s home sold at a fire-sale tax auction for only \$76,008, the buyer sold the property for \$195,000 (Pet. Cert. 5)—the equivalent of its fair market value. The grievous consequence for Pung is that the artificially

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<sup>3</sup> In *BFP v. Resolution Trust Corporation*, the Court stated the price of a home sold at a *mortgage* foreclosure reflects the market value at that time. 511 U.S. 531, 539 (1994) (emphasis added). The Court explicitly emphasized that its opinion covered only mortgage foreclosures and that different considerations may apply to tax foreclosures. See *id.* at 537 n.3.

depressed sale caused him to lose 60 percent of his home's equity.

In *Tyler*, the Supreme Court held that State laws violate the Takings Clause when they permit the government to retain surplus equity from the sale of property seized to collect delinquent taxes. *Tyler*, 598 U.S. at 639. But to give real meaning to the term “just compensation” under the Takings Clause, courts must recognize that the ordinary meaning of “*just* means ‘fair’ and ‘righteous.’” *Starbucks Corp. v. McKinney*, 602 U.S. 339, 347 (2024) (citing Funk & Wagnalls New Standard Dictionary and Webster’s New International Dictionary in the context of determining “just and proper” relief for a preliminary injunction). Here, the Court should make clear that, as its many precedents strongly suggest, the Takings Clause is also violated when the government seizes property and denies the homeowner the residual—not just the surplus—equity, as measured by just (or *fair*) compensation based on the home’s market value.

**II. Preserving as much home equity as possible is crucially important to older homeowners, who face increased economic and ability-related pressures and disproportionate risks of tax foreclosure as they age.**

Homeownership is the lynchpin of financial well-being for older Americans. *See generally* Joint Ctr. for Hous. Stud. of Harv. Univ., *Housing America’s Older Adults 2019* (Oct. 16, 2019), <https://bit.ly/4oDRDIW>. Nearly 30 million (or 79

percent) of the 38 million householders over age 65 own their homes. U.S. Census Bureau, *Population 65 Years and Over in the United States*, American Community Survey, ACS 1-Year Estimates Subject Tables (2024), Table S0103 (2024), <https://bit.ly/44E4eo6>. “Older Americans often use[] their home equity in retirement to finance health care, home maintenance, and other large expenses and as a safety net that could be used to meet unexpected needs.” Lori A. Trawinski, AARP Pub. Pol’y Inst., *Nightmare on Main Street: Older Americans and the Mortgage Market Crisis* 3 (July 2016), <https://bit.ly/3lU9mwJ>. “For most older people, the home is ... their most valuable asset.” *Id.* In the tragic circumstance in which older adults lose their homes due to tax foreclosure, they should at least get the full benefit—most justly ascertained from the fair market value—of the equity they have built up over decades.

**A. Older adults are more vulnerable to tax delinquency due to their limited financial means and higher incidence of disability and associated incapacity.**

Everyone understands the devastation that can come with losing one’s home, no matter the homeowner’s age. But for older homeowners—who no longer have decades ahead of them to build financial stability and who face far more difficult job prospects to earn income—the impact is particularly acute. As a result, the importance of preserving as much home equity as possible is even more pressing since, for financial and ability-related reasons, older



homeowners are disproportionately vulnerable to tax foreclosure.

Caught between ever-rising costs and fixed (and often low) incomes, many older homeowners face extraordinary economic pressures that increase the likelihood of foreclosure for them. See U.S. Dep't of Hous. & Urban Dev., *Aging in Place: Facilitating Choice and Independence* (Fall 2013), <https://bit.ly/48EGBNr>. Taxes, utilities, insurance, repairs, and maintenance are often difficult to afford for older adults who no longer work and have limited retirement income. *Housing America's Older Adults*, *supra* at 6-7. More than one in four homeowners 65 and older are cost-burdened (paying more than 30 percent of income for housing). *Id.* at 8. That percentage is even greater among homeowners still paying off mortgage debt, with 43 percent of homeowners 65 and older having cost burdens. *Id.* Add in the fact that many Americans now enter their retirement years incurring costs for basic needs that exceed their modest or limited incomes,<sup>4</sup> and that, in a change from decades past, a growing share of older households are carrying housing and other debt into their retirement years,<sup>5</sup> and the financial pressure on older homeowners becomes clear.

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<sup>4</sup> Jack VanDerhei, Emp. Benefit Rsch. Inst., *Retirement Savings Shortfalls: Evidence from EBRI's 2019 Retirement Security Projection Model* (Mar. 7, 2019), <https://bit.ly/4a3uFHy>.

<sup>5</sup> Joint Ctr. for Hous. Studies of Harv. Univ., *Housing America's Older Adults*, *supra*, at 7. In 2016, nearly half of

“Homeowners most at risk [of losing their homes to tax foreclosure] are those who have fallen into default because they are incapable of handling their financial affairs, such as individuals suffering from Alzheimer’s, dementia, or other cognitive disorders.” John Rao, Nat’l Consumer Law Ctr., *The Other Foreclosure Crisis: Property Tax Lien Sales* 5 (July 2012), <http://bit.ly/1MLTZMc>. The risk of having such disorders increases exponentially with advancing age. See Daniel C. Marson & Charles P. Sabatino, *Financial Capacity in an Aging Society*, 36 *Generations: J. Am. Soc’y Aging* 6-11 (Summer 2012); see also Stacey Wood & Peter A. Lichtenberg, *Financial Capacity and Financial Exploitation of Older Adults: Research Findings, Policy Recommendations and Clinical Implications*, 40 *Clinical Gerontologist* 3-13 (2017); Peter Boersma, Lindsey I. Black, & Brian W. Ward, *Prevalence of Multiple Chronic Conditions Among U.S. Adults, 2018*, 17 *Preventing Chronic Disease* 1-4 (2020).

Older people also are at risk of foreclosure because government notices often use small, difficult-to-read font sizes and legalistic or archaic language that is hard to understand. Vision impairments generally, and especially severe conditions such as cataracts and macular degeneration, are disproportionately prevalent in older people. Ctrs. for Disease Control, *Common Eye Disorders* (Apr. 23, 2013), <https://bit.ly/4iAXUDz>. In sum, the factors that make older homeowners particularly vulnerable to

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homeowners aged 65-79 had mortgage debt; for homeowners over 80, the figure was 26 percent. *Id.*

becoming delinquent on their taxes also make them least able to save their homes and avoid the devastating loss of their equity.

**B. Having built substantial home equity over years, many older homeowners inadvertently miss property tax payments when they cease setting aside funds in escrow accounts.**

Even older homeowners who can keep up with mortgage and property tax payments can nevertheless be ensnared in tax foreclosures. For many people with a mortgage, a portion of their property taxes are collected with their monthly payment and held in an escrow account until the taxes are due. At that time, the mortgage servicer pays the taxes directly to the taxing authority. Ironically, paying off one's mortgage—a potential sign of greater economic security—often plays a significant role in greater vulnerability to tax delinquency and tax foreclosure. See Odette Williamson & Jillian McLaughlin, *Tax Lien Sales Put Low-Income, Seniors, and the Disabled at Risk of Foreclosure*, 34 Bifocal 1 (Oct. 2012), <https://bit.ly/2VgQhtJ>. Upon paying off a mortgage, homeowners assume responsibility for setting aside sufficient funds to pay taxes when they come due and for making such payment themselves. This adjustment can create significant problems for older homeowners, particularly those who have difficulty with financial decision-making or have diminished capacity or disabilities. They may not understand the process, inadvertently miss payment dates, or be

unable to set aside sufficient funds to pay tax bills when required. *Id.*

Similarly, homeowners with reverse mortgages face challenges paying their property taxes. Reverse mortgages, a product largely serving older homeowners, generally do not feature escrow accounts for taxes. Hence, as with older homeowners who no longer make mortgage payments, those with reverse mortgages must manage tax (and insurance) payments on their own.<sup>6</sup> “[A] lack of understanding that they were required to pay these charges” was “the most significant factor” for a surge in (mostly older) reverse mortgage borrowers “losing their homes to foreclosure.” Sarah B. Mancini & Odette Williamson, *Reversing Course: Stemming the Tide of Reverse Mortgage Foreclosures Through Effective Servicing and Loss Mitigation*, 26 Elder L.J. 85, 102 (2018)

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<sup>6</sup> Reverse mortgages insured through the Home Equity Conversion Mortgage Program permit borrowers 62 years or older to obtain a lump sum or line of credit based on the value of their home. They are not required to make payments on the reverse mortgage while they continue to live in the home, but they must carry hazard insurance and make tax payments. Reverse mortgage servicers are required to protect the security for the mortgage by paying property tax on the borrower’s behalf if taxes become delinquent. This shifts to the borrower the risk of foreclosure, as the U.S. Department of Housing and Urban Development requires the servicer to declare the mortgage due and payable if the borrower does not repay property taxes advanced. See U.S. Dep’t of Hous. & Urban Dev., *Home Equity Conversion Mortgage (HECM) Financial Assessment and Property Charge Requirements*, Mortgagee Letter 2014-22 (Nov. 10, 2014), <https://bit.ly/4pQJ0f1>.

(citing 2012 Report to Congress by the Consumer Financial Protection Bureau).<sup>7</sup>

**III. Tax foreclosure auctions frequently deny homeowners the fair market value of the seized property.**

“There is no reason to suppose that the State will ever be less than fully zealous in its efforts to secure the tax revenue it needs.” *Jones v. Flowers*, 547 U.S. 220, 239 (2006). But, as shown by the shockingly low sale price of Petitioner Pung’s home (for only 40 percent of its fair market value) and myriad other tax foreclosures, States are decidedly less interested in ensuring that their residents receive the full benefit of equity they have spent lifetimes building. The ways most States conduct tax foreclosures reflects this lopsided incentive: the emphasis on quick disposition prioritizes the State’s desire to be made whole as fast as possible, with little-to-no thought spared for the homeowner’s financial stake in the home.

As Respondent Isabella County notes, tax foreclosure auctions are designed for speed. Br. Opp’n Cert. 9. Because the prerequisites to bidding may limit the pool of bidders, seized homes are frequently sold for less than the fair market price they would have obtained at a normal sale. Another important factor is the presence of bid-rigging, the anti-competitive (and illegal) practice of bidders working in concert to

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<sup>7</sup> In November 2016, HUD reported nearly 90,000 reverse mortgages in default on property charges, mostly consisting of tax or insurance shortfalls. Mancini & Williamson, *supra*, at 102.

artificially depress the sales price of properties on the metaphorical chopping block.<sup>8</sup>

In addition, properties are sometimes sold in bulk. Michelle Z. Marchiony, *Making Debt Pay: Examining the Use of Property Tax Delinquency as a Revenue Source*, 62 Emory L. J. 217, 224, 231 (2012). Lien sales in most States require no judicial process. Odette Williamson et al., Nat'l Ctr. on Law & Elder Rights, *How to Prevent Tax Liens and Tax Foreclosures from Depleting Wealth from Older Homeowners* 3 (Sept. 2022), <https://bit.ly/3KIDWu7>. And the bidding often begins at the amount of tax due, with the effect that the price obtained is often marginally above that amount. To take one example, a company paid \$4,825 for the home of a widow whose dementia prevented her from paying \$4,242 in taxes, even though she had the money. The home was assessed at \$132,000, and the purchaser subsequently sold it for \$115,000. Joshua Simmons, State Univ. of N.Y. at New Paltz, *Going ... Going ... Gone: Tax Lien Auctions, Hidden Costs, and Missed Opportunities for*

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<sup>8</sup> In recent years, bid-rigging has been documented in New Jersey, Georgia, and Maryland, and most likely has occurred in the District of Columbia. See *In re New Jersey Tax Sales Certificates Antitrust Litigation*, 750 Fed. App'x 73 (3d Cir. 2018); McDermott Will & Schulte LLP, *Department of Justice Nabs Two More in Real Estate Bid Rigging Conspiracy*, Nat'l L. Rev. (Jan 11, 2016), <https://bit.ly/4rV1v3V>; Fred Schulte and Scott Calvert, Ctr. for Pub. Integrity, *Witness Says He Rigged Bids in Property Tax Lien Auctions in Maryland* (Mar. 4, 2011), <https://bit.ly/4rEKoDc>; Debra Cenziper, Michael Sallah & Steven Rich, *Suspicious Bidding*, Wash. Post (Sept. 9, 2013), <https://www.washingtonpost.com/sf/investigative/2013/09/09/suspicious-bidding/>.

*the City of Poughkeepsie* 1-2 (Fall 2018), <https://bit.ly/4plfb6x>.

This widow's matter—just like Petitioner Pung's case—is not an aberration. In the decade spanning 2007-2017, in the town of Poughkeepsie alone, properties whose tax liens were sold for a total of \$581,000 were later resold for approximately \$7.8 million. *Id.* at 14.

**IV. States, in the wake of *Tyler*, are developing promising methods to collect tax debts while preserving homeowners' full equity.**

Since 2023, three States have passed laws requiring that, at least as an initial step, homes slated for tax foreclosure be marketed at fair market value. These laws and other governmental practices on the disposition of property show that there are alternatives to the fire-sale auction of homes that both allow the States to collect tax revenue and the homeowner to preserve the full equity.

Oregon, Massachusetts, and Maine now require municipalities, as a first step, to have a real-estate broker market seized homes at fair market value, allowing a State to collect its tax debt without depriving homeowners of the fair market value of their property. In Oregon and Massachusetts, counties must generally obtain an appraisal and attempt to enlist a real estate agent to list the property for market price. 2025 Oregon House Bill 2089 § 6(2) (July 17, 2025); Mass. Gen. Laws ch. 60, § 64A(c)(2) (2025).

If the property does not sell within a prescribed time (or if the county cannot enlist a broker), the municipality may initiate an auction that begins at two-thirds of the market price. 2025 Oregon House Bill 2089 § 6(3) (July 17, 2025); Mass. Gen. Laws ch. 60, § 64A(c)(2) (2025). Only if *that* attempt fails may the municipality then try to auction the property for the amount of taxes and fees due. 2025 Oregon House Bill 2089 § 6(4) (July 17, 2025); Mass. Gen. Laws ch. 60, § 43 (2025).

Maine’s new process is similar, requiring municipalities selling tax-acquired property to use a licensed real estate broker, attempt to sell the property for “the highest price at which the property is able to sell,” and return excess sale proceeds to the former owner. Me. Rev. Stat., tit. 36, § 943-C(3) (2025).<sup>9</sup> Only if a municipality is unable to sell the property after three attempts (or is unable to contract with a broker to sell the property) may it revert to the traditional tax-foreclosure process. *Id.* § 943-C(4-A).

Notably, the new laws in both Oregon and Maine were enacted after input from interest groups across the spectrum, including municipalities. *See* State of Or. Dep’t of Revenue, Legislative Report: House Bill 4056, at 17-19 (Sept. 2024), <https://bit.ly/3MkEqXR> (noting the various groups making recommendations for Oregon’s law); Me.

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<sup>9</sup> Prior to August 9, 2024, Maine required municipalities to inform homeowners facing tax foreclosure that they had the option to elect a fair-market sale by the municipality, but the State did not require tax-foreclosure sales to follow that process. *See* 2024 Me. Legis. Serv. Ch. 640 (West).



Revenue Services, Report of the Working Group to Study Equity in the Property Tax Foreclosure Process, at 1, 15 (Jan. 2024), <https://bit.ly/3XByigs> (same for Maine).

Although municipalities may decry any proposed changes as impeding their ability to collect property taxes (as Respondent Isabella County does, *see* Br. Opp’n Cert. 9), Oregon, Massachusetts, and Maine presumably have as little interest as any other State in hindering their municipalities’ ability to collect revenue. Moreover, in the traditional eminent domain context, States that condemn property provide fair market value compensation all the time. The idea that they could not approach tax liens similarly is implausible. It is true enough, as municipalities may note, that a fire-sale auction will likely be quicker than selling for fair market value. But that quickness, and the finality of disposition it implies, are in many cases misleading. Many States allow “redemption” periods of up to two years for the homeowner to reclaim the property. As a result, the “quick” sales may be unwound anyway. Seen from this perspective, the benefit to municipalities of fire-sale auctions is far less certain—but the cost to homeowners far more severe.

Moreover, marketing properties for their fair market value matches a practice the Federal Housing Administration (FHA) has been encouraging for years. The FHA recently reiterated its preference that lenders of FHA-insured loans attempt to sell delinquent properties for fair market value, less expected expenses and risks related to resale, such as repair costs, marketing time, and local market

conditions. See Fed. Hous. Admin., *FHA INFO 2025-36 - Reminder Guidance for FHA-Approved Mortgages Regarding Claims Without Conveyance of Title Bidding Policy* (July 23, 2025), <https://bit.ly/48yzTsi>. This approach is designed to reduce losses to the FHA “while expediting the return of foreclosed properties to the market and decreasing neighborhood blight,” and, like the examples of Maine, Massachusetts, and Oregon, it demonstrates a better way to proceed.

## CONCLUSION

When a State seizes the home of an older American (or any American) to satisfy a tax debt, it often robs the homeowner of wealth accrued over decades of hard work. Protecting home equity for older Americans is not only constitutionally required but also essential for their financial security and dignity. The Court should therefore affirm that the Takings Clause requires States to compensate homeowners for the fair market value of their homes.

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Respectfully submitted,

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