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 OF MARYLAND LEGAL AID AND MOUNTAIN STATE JUSTICE, INC. AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

LEE H. OGBURN
Counsel of Record
MARYLAND LEGAL AID
500 E. Lexington Street
Baltimore, MD 21202
(410) 951-7777
logburn@mdlab.com

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Counsel for Amici

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INTEREST OF *AMICI CURIAE*[1]

Maryland Legal Aid advocates for Marylanders experiencing poverty to achieve equity and social justice through free civil legal services. Maryland Legal Aid is the largest provider of free civil legal services in the state, serving people in all of Maryland's counties and Baltimore City. It assists its clients in resolving their fundamental legal problems to bring greater stability and possibilities to their lives. This work includes helping clients preserve the equity in their homes, including by representing clients both during the tax-lien sale process and thereafter if the purchaser of the tax lien later acquires the property. Accordingly, Maryland Legal Aid and its clients have an interest in the constitutional issues presented in this case. Maryland Legal Aid currently represents two clients in the United States District Court for the District of Maryland in a case alleging that the clients were denied just compensation when their property was taken after Baltimore City sold its tax liens to third-party investors.

Mountain State Justice, Inc. ("MSJ") is a non-profit legal service organization serving primarily low-income West Virginians. West Virginia has a high incidence of property ownership by low-income individuals. MSJ is committed to protecting the stability of home ownership in the State. As a result, MSJ has represented West Virginians in defense of non-judicial foreclosure for decades, beginning with the founding of the organization in 1995. MSJ also represents individuals who are facing the loss of or have lost their homes through West

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

Virginia's real estate tax lien process. Accordingly, MSJ and its clients have an interest in the constitutional issues presented in this case. MSJ currently represents two clients who allege they were denied just compensation when their property was taken after the State sold its tax liens to third-party investors in United States District Court for the Southern District of West Virginia and the United States Court of Appeals for the Fourth Circuit. MSJ has represented dozens of clients who have lost their homes to tax deeds.

SUMMARY OF THE ARGUMENT

Tax-sale auctions are a common feature of states' property tax collection efforts. In every state, when an owner's property taxes become delinquent, a lien in the amount of the past-due taxes attaches against the property. If the owner then fails to pay the past-due taxes and associated penalties—referred to as "redeeming"—within a set period of time that varies by state, the relevant state or local government collects the delinquent taxes by auctioning either the property or, in 16 states, the tax lien. There is no norm for these auctions. According to a recent estimate, approximately 150 different versions of tax-sale auctions exist across the country.[2]

Auctions that sell tax liens (or that offer tax liens at face value) frequently produce bids that are dramatically lower than the fair market value of the property on which the taxes are owed. Under Maryland's tax-lien auction, for example, Edmondson Community Organization in Baltimore lost its $140,000 building for a $5,115 bid on a $2,543 tax lien. Under West Virginia's tax-lien auction, Anthony Wright lost his $65,000 Mercer County home for a $2,700 bid on a $79.89 tax lien. Kevin Fair lost his $59,000 home in Scotts Bluff County, Nebraska, when a tax-sale investor purchased the tax lien on his home for the lien's face value of $588.21.

Since *Tyler v. Hennepin County,* 598 U.S. 631, 639 (2023), it is clear that when the government takes a taxpayer's property to satisfy a tax debt, it "may not take

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[2] Laura B. Bartell, *Tax Foreclosures as Fraudulent Transfers – Are Auctions Really Necessary?*, 93 Am. Bankr. L.J. 681, 694 (2019) (citing Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 Ind. L.J. 747, 748 (2000)).

more from [the] taxpayer than she owes." The parties here dispute whether Isabella County met its Fifth Amendment obligation not to take more from the Pung estate than it owed when, after auctioning the estate's property, it returned to the estate less than 40% of the County's assessment of the property's value. The Sixth Circuit rejected Pung's taking claim under a categorical rule that a "public auction" necessarily identifies a "property's value" and thus provides just compensation. *Pung v. Kopke*, Case Nos. 22-1919/1939, 2025 WL 318222 at *3–*4 (6th Cir. Jan. 28, 2025).

This amicus brief highlights that tax-sale auctions vary dramatically, and many do not produce even arguably just compensation for the taxpayer. If the Court decides that a public auction of a taxpayer's property can adequately measure just compensation, it should make clear that not every auction meets the constitutional standard. A decision concerning the public auction of property would not, for example, logically reach the auction of a tax lien. Tax-lien auctions measure the value of the lien, not the value of the property. They sell the right to collect the tax debt (along with interest) from the homeowner, along with a security interest in the property if the homeowner does not pay. The right to collect a debt is, of course, worth a different amount than the property that secures the debt. And that is particularly true for tax liens, as homeowners almost always redeem. Reflecting this, one recent study found that "[t]ax liens sell at a much larger haircut than the 20-25% discount for mortgage foreclosed properties documented in the literature."[3]

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[3] Cameron LaPoint, *Property Tax Sales, Private Capital, and Gentrification in the U.S.* at 14 (Sept. 15, 2022), https://dx.doi.org/10.2139/ssrn.4219360.

Indeed, a large-scale study of properties sold in Washington D.C.'s tax-lien auction concluded that "the typical investor who files for tax foreclosure can gain title for roughly 3% of the home's market value."[4] Tax-lien auctions do not, in sum, measure the value of the property to which the lien has attached.

If just compensation is to be measured by the price achieved at a tax-sale auction,[5] the auction must be conducted in a manner that produces bids based on the value of the property, not on the value of collecting a debt.

ARGUMENT

I. Governments must pay the taxpayer "full" compensation after taking property to satisfy a tax debt.

Tyler v. Hennepin County makes clear that the Fifth Amendment's command that "private property [shall not] be taken for public use, without just compensation"[6] prohibits the government from "us[ing] the toehold of the tax debt to confiscate more property than [is] due." 598 U.S. 631, 639 (2023). When the government seizes property to satisfy a tax debt, it must return to the taxpayer the value of the property "in excess of the debt owed." *Id.* at 639, 642.

The government's "just compensation" obligation requires it to pay "full" compensation. *United States v. Miller*, 317 U.S. 369, 373 (1943). The government violates that obligation when it returns to the taxpayer only a portion of the value of the property it has seized. *See, e.g.*,

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[4] *Id.*

[5] Amici do not concede that it should be.

[6] U.S. Const. amend. V.

United States v. Klamath & Moadoc Tribes, 304 U.S. 119, 124–25 (1938) (where amount the government originally paid for land taken was inadequate, just compensation held to include the value of the land, the value of the timber, and interest); *Sioux Nation of Indians v. United States*, 601 F.2d 1157, 1170 (Ct. Cl. 1979) (explaining that the Takings Clause is violated not only when "no compensation was originally paid" but also "where the initial compensation was grossly inadequate"), *aff'd*, 448 U.S. 371 (1980); *Sharritt v. Henry*, Case No. 23 C 15838, 2024 WL 4524501, at *13 (N.D. Ill. Oct. 18, 2024) (tax-sale statute that provides property owners with at most $99,000 of surplus value violates the Takings Clause).

These principles require the government, upon taking property to satisfy a tax debt, to return to the taxpayer the full value of the property that exceeds the debt.

II. Tax-sale auctions of liens necessarily fail to meet the government's obligation to pay just compensation.

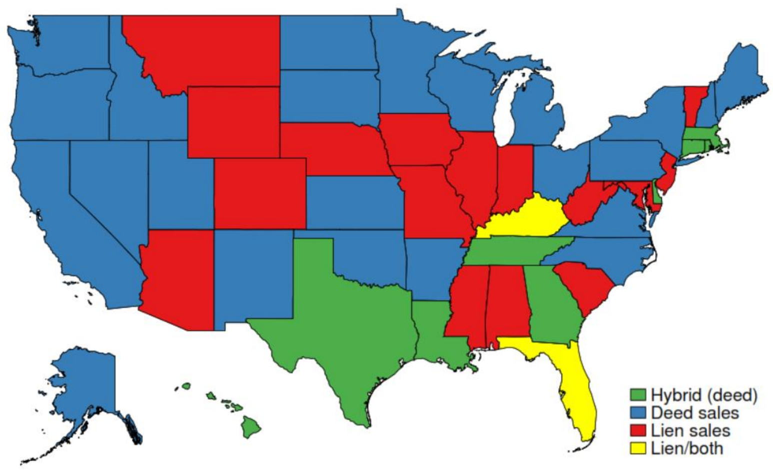
This case, of course, concerns which measure of that "value" provides "just" compensation and must be returned in "full" to the tax debtor. Whatever the answer may be, it cannot be correct that any "public auction"—no matter its structure—suffices. That is particularly true for states that sell tax liens, instead of the property itself. In those states, the auctions cannot possibly provide a "just" measure.

A. There is no norm for tax-sale auctions.

Tax sales are conducted according to state statutes, as sometimes modified by city and county-level ordinances or practices.[7] As a result, "there are over 150 different

[7] Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 Ind. L.J. 747, 748 (2000).

systems in the United States for collecting the property tax."[8] Some states sell tax liens, some property deeds, and some conduct a process that includes both.[9] The map below shows, at a general level, the various approaches across the country.[10]



Inside each category, practices vary widely. Maryland and West Virginia sell tax liens to the highest bidder,[11] while Ohio, Arizona, and Alabama sell tax liens to the bidder willing to accept the lowest interest rate to

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[8] *Id.*

[9] Kim Graziani, Center for Community Progress, *Reimagine Delinquent Property Tax Enforcement*, at 19–23 (2022), https://communityprogress.org/wp-content/uploads/2022/10/2022-10-Reimagine-Delinquent-Property-Tax-Enforcement.pdf.

[10] Map from La Point, *supra* n.3, at 9.

[11] Md. Code Ann. Tax–Prop. § 14-817(a)(2); W. Va. Code § 11A-3-45(a).

redeem.[12] Nebraska transfers the tax lien at face value to the tax sale investor and then transfers the property at no additional cost if the owner is unable to redeem.[13]

And even within a single state, practices may vary widely. In Maryland, for example, Baltimore City lists liens (approximately 20,000 each year) for sale the month after taxes become past due.[14] Alleghany County, by contrast, auctions liens (approximately 500 each year) three years after the taxes become delinquent.[15]

As a result of state and local-level variations, there is no standard tax-sale auction. Unlike mortgage foreclosure auctions, "state tax foreclosure statutes are anything but uniform."[16]

That substantial variation counsels that, even if compliance with state and local auction laws can sometimes measure just compensation for an owner's loss of property, it does not always do so. If compliance were necessarily the measure of just compensation, the Fifth Amendment's guarantee of "just compensation" would be ceded to a state's or local government's determination of whatever type of auction best suits its needs, without regard to the property owner's equity interest and whether the auction measures it in "just" fashion. This Court has made clear that such a one-sided approach

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[12] Ala. Code § 40-10-184; Ariz. Rev. Stat. § 42-18114; Ohio Rev. Code Ann. § 5721.33.

[13] Neb. Rev. Stat. § 77-1807.

[14] Md. State Dep't of Assessments and Tax'n, *Annual State Tax Sale Ombudsman Report*, at 5-6, 15 (Nov. 1, 2025), https://dat.maryland.gov/Documents/2025-Annual-Maryland-TaxSale-Report.pdf.

[15] *Id.* at 5, 15.

[16] Bartell, *supra* n.2, at 694.

cannot satisfy the Fifth Amendment: just compensation must be "'just' both to an owner whose property is taken and to the public that must pay the bill," not simply what is most convenient to the government alone. *United States v. Commodities Trading Corp.*, 339 U.S. 121, 123 (1950).

Plainly, "tax-sale auction" as a category is too broad to be meaningful. Even if some tax-sale auctions adequately measure just compensation, not all do.

B. Tax-lien auctions do not sell the property, and do not provide the taxpayer just compensation for the loss of the property.

Even if this Court adopts the Sixth Circuit's categorical rule that any "public auction" of a tax debtor's *property* automatically produces just compensation, it should make clear that the same is not true for auctions of *tax liens*. If nothing else, the Fifth Amendment's protection of "property" requires that an auction, in fact, measure the value of the "property"—and states and local governments that engage in tax-lien auctions simply do not do so.

Some additional background on tax-lien auctions shows why. The basic contours of a tax-lien auction are similar across the jurisdictions that use them. When a person falls behind on property taxes, the government takes an automatic lien (created by statute) on the property. The government then auctions its lien to investors, ordinarily setting the minimum bid at the amount of taxes owed, plus interest and penalties. That process allows the government to collect the back-due taxes immediately, albeit from the investor rather than the taxpayer.

In exchange for its payment, the investor steps into the government's shoes as the lien holder. The taxpayer is then afforded a period of time (which varies by state) to pay off the delinquency, known as "redeeming the lien," to keep the property. To redeem, the taxpayer must pay not only the past-due taxes, but also penalties, the investor's expenses, and accrued interest. The investor keeps the (typically high) interest if the taxpayer redeems. And if the taxpayer fails to redeem within the prescribed time, the investor can at that point take the property.

Even when tax-lien auctions are structured to sell the lien to the highest bidder, these auctions do not produce bids reflecting the property's value. Tax-lien auctions do not measure the value of the property because they sell, and thus value, an entirely different product: liens. Tax lien investors are buying something quite different from property, which is reflected in the factors that a rational bidder in a tax-lien auction must weigh. Those factors include, among other things, the chances that the owner will redeem the property (with high odds of redemption encouraging bidding as if the product is a loan); the timing of a potential redemption (with a quicker redemption yielding less interest); the timing of potentially taking the deed (with less certainty making the tax lien less attractive); the value of the property; and the opportunity cost of having capital tied up for returns that are highly variable in both their nature (interest payments versus property ownership) and their amount. The high, guaranteed statutory interest rates and redemption penalties offered in many states make these liens an attractive investment, even if the investor does not intend to foreclose on the property.[17] Simply put, because auction participants are not bidding for property, the auction bids in no way measure the value of property.

The logic that liens—as assets distinct from property—sell for considerably less than property value is borne out in qualitative research. In a study of more than 18,000 tax-lien sales in Washington D.C. from 2005 to 2019, the average tax lien sold for $17,400 while the average tax-assessed value of the properties was $578,100, meaning that the average tax-lien sale resulted in a sale price of just three percent of the average tax-assessed property value.[18] For 80 percent of properties, the corresponding tax lien sells for less than ten percent of the *ex ante* assessed value.[19] Even after accounting for the fact that most property owners ultimately redeem the property (approximately 89 percent in this study), the expected value of a property that a lien buyer ultimately obtains is more than three times the value of the average auction bid.[20]

Myriad examples illustrate the sizable deficit between bids in lien auctions and the corresponding property's value. In Baltimore, Maryland, the non-profit organization Edmondson Community Organization

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[17] *See* LaPoint, *supra* n.3, at 6 ("investors can earn returns on tax liens comparable to those for equities, even without moving to foreclose"); *see also* Joshua J. Miller & Silda Nikaj, *The Responsiveness of Tax Lien Investors in English Auctions to Matching Rules: Evidence from Illinois*, 43 Rev. Reg'l Stud. 81, 83 (2013) (explaining that "[l]iens are purchased by investors for the interest earned when property owners pay the delinquent tax bill" and "rarely" with intent to occupy).

[18] La Point, *supra* n.3, at 14.

[19] *Id.* at 1, 39.

[20] *Id.* at 14, n.16.

(ECO) lost its most important asset, its community center, when it fell behind on its property taxes by just $2,543. *Edmondson Community Organization v. Mayor and City Council of Baltimore*, Case No. 24-1921-BAH, 2025 WL 2430345 at*2 (D. Md. Aug. 22, 2025). At the lien auction in 2018, where the "base value" of ECO's property was listed as $101,200, an investor bought ECO's tax lien for $5,115. *Id.* at *2–*3. After obtaining from Baltimore City the deed to the property, and without making any improvements, the investor subsequently auctioned the property in 2022 for $139,500. *Id.* It bears noting that the investor advertised the auction online and allowed competitive bidding for several days.[21] Self-evidently, what is auctioned and the manner in which the auction is conducted—here, a multi-day competitive bid method—dramatically affect the price the auction produces. The investor who purchased the lien turned a 2600% profit while ECO was left with just $2,572 (the difference between the lien price and its tax debt) for its community center.

In Mercer County, West Virginia, Anthony Wright lived in his home worth at least $65,000 for over a decade.[22] When he acquired a tax debt of just $79.89 due to an administrative error at the local tax office, the county auctioned the lien on his home. *Wright v. Rollyson*, Case No. 2:24-cv-00474, 2025 WL 835040 at *1 (S.D.W. Va. Mar. 17, 2025). An out-of-state investor purchased the lien for $2,700. *Id.* By the time Mr. Wright learned what was happening, it was too late for him to

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[21] Ashland Auction Group, *2114-16 Edmondson Ave. Baltimore, MD 21223*, https://www.ashlandauction.com/auctions/16100/lot/7063 (last visited December 5, 2025).

[22] Complaint at ¶ 49, Anthony D. Wright v. G. Russell Rollyson, Civ. No. 2:24-cv-00474 (S.D.W. Va. Sept. 3, 2024).

save his house. Mr. Wright received nothing for the loss of his home,[23] while the investor who purchased the lien gained the property valued at more than 24 times the lien purchase price.

Kevin Fair and his wife owned their Scotts Bluff County home in Nebraska free and clear of any encumbrances. *Continental Resources v. Fair*, 317 Neb. 391, 394 (2024). The Fairs did not pay their 2014 property taxes. *Id.* In March 2015, Scotts Bluff County, Nebraska sold a tax lien for the Fairs' home for the face amount of the lien, the Fair's $588.21 tax debt. *Id.* By 2018, the sum needed to redeem the property had ballooned to $5,268. *Id.* Unable to pay this amount within the prescribed period, the Fairs lost their longtime home, which was assessed in 2017 at $59,759, and all its equity. *Id.* at 396.

III. Even when property is auctioned, to provide just compensation to the taxpayer, the auction must be conducted to bring a just price.

Ordinarily, the measure of just compensation is fair market value. *United States v. 50 Acres of Land*, 469 U.S. 24, 29 (1984); *Commodities Trading*, 339 U.S. at 123 ("Fair market value has normally been accepted as a just standard."). Departing from that measure is only warranted "when market value has been too difficult to find, or when its application would result in manifest injustice to owner or public." *Commodities Trading*, 339 U.S. at 123. And even then, just compensation can never be less than the amount that "is 'just' both to an owner

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[23] The district court noted that West Virginia provided two years for property owners to recover the "surplus value of the property above the debt owed" and determined that there was no taking due to Mr. Wright's failure to timely seek the surplus. *Wright*, 2025 WL 835040, at *4.

whose property is taken and to the public that must pay the bill." *Id.* Any sale of a taxpayer's property—whether by auction or any other means—must therefore be conducted in a fashion that is "'just' [] to an owner whose property is taken" if it is to serve as the basis of the taxpayer's compensation. *Id.*

The decision below departed from these principles. It simply assumed, without any showing, either that fair market value could not be found or would be manifestly unjust and then assumed that Michigan's sale procedures, simply by virtue of involving a "public auction," necessarily produced an amount just to both the owner and the public.

A. Because how an auction is structured is critical to the price that it fetches, the mere fact of an "auction" cannot establish that there is "just" compensation.

A large body of academic research has proven that the way one designs an auction affects the winning bids it will yield.[24] For example, and not surprisingly, increasing the number of bidders tends to raise the final price.[25] And the

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[24] *See generally* Paul Klemperer, *What Really Matters in Auction Design*, 16 J. Econ. Persps., 169–189 (2002) (examining "practical auction design" and various "pitfalls" that affect outcomes, such as collusion risk, failure to attract bidders, failure to set a proper minimum bid, loopholes, and buyer market power); *see also* John G. Riley & William F. Samuelson, *Optimal Auctions*, 71 Am. Econ. Rev. 381, 381 (1981) ("As one might expect, any change in the rules of the auction results in different bidding strategies on the part of the buyers.").

[25] *See* Paul Klemperer, *Auction Theory: A Guide to the Literature*, 13 J. of Econ. Survs., 227, 239 (1999) ("[A] simple ascending auction with no reserve price and N + 1 symmetric bidders

more bidders know about the object being auctioned, the less risk averse they become and the more they bid.[26] This Court recognized as much when it acknowledged in *BFP v. Resolution Trust Corp.* 511 U.S. 531, 540 (1994), that "[h]ow closely the price received in a forced sale is likely to approximate fair market value depends upon the terms of the forced sale—how quickly it may be made, what sort of public notice must be given, etc."

These common-sense notions about how the auction process affects the ultimate sale price mean the mere fact that property is sold at a "public auction" does not say enough, without more, about whether the taxpayer whose property was taken received just compensation.

B. The standard for just compensation under the Fifth Amendment is not the same as for "constructive fraud" under the Bankruptcy Code.

The Sixth Circuit, however, reached that exact categorical conclusion: that the mere fact of an auction was sufficient. *Pung v. Kopke*, 2025 WL 318222 at *3–*4. To do so, the court relied on the *BFP* proposition, as expressed in *Freed v. Thomas*, 81 F.4th 655, 659 (6th Cir.

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is more profitable than any auction that can be realistically run with N of these bidders."); Jeremy Bulow & Paul Klemperer, *Auctions Versus Negotiations*, 86 Am. Econ. Rev., 180, 180 (1996) ("No amount of bargaining power is as valuable to the seller as attracting one extra bona fide bidder.").

[26] Kellogg Sch. of Mgmt., *How Auctions Help Solve Some of the World's Most Complicated Problems*, Kellogg Insight, https://insight.kellogg.northwestern.edu/article/auction-theory-uses (Nov. 11, 2020) (examining the "Linkage Principle," which "determined that if an auction provides more information to bidders, then the winner's curse is mitigated since bidders are not as worried that they made a bad decision. . . . [Bidders] will bid more aggressively and the auction's revenue is higher on average.").

2023), that "the best evidence of a foreclosed property's value is the property's sales price, not what it was worth before the foreclosure." But as the *BFP* Court suggested in footnote 3, "[t]he considerations bearing upon [non-mortgage] foreclosures and forced sales (to satisfy tax liens, for example) may be different." 511 U.S. at 537, n.3.

The considerations bearing on the measure of just compensation under the Fifth Amendment *are* different from those bearing on the issue in *BFP*: whether a foreclosure auction produced a price so low that an inference of "constructive fraud" could be drawn.[27] In that context, this Court endorsed compliance with state mortgage foreclosure law as the standard for "reasonably equivalent value," the minimum necessary to avoid constructive fraud, because application of a separate federal standard would "extend federal bankruptcy law well beyond the traditional field of fraudulent transfers, into realms of policy where it has not ventured before." *Id.* at 540. To avoid "impinging upon important state interests," *BFP* "decline[d] to read the phrase 'reasonably equivalent value' in § 548(a)(2) to mean, in its application to mortgage foreclosure sales, either 'fair market value' or 'fair foreclosure price' (whether calculated as a percentage of fair market value or otherwise)." *Id.* at 544, 545.

While in deference to the states' historical interest in debtor–creditor relations the Court rejected "fair foreclosure price" as an implied Bankruptcy Code

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[27] Under § 548(a)(2) of Chapter 11 of the Bankruptcy Code, a trustee may set aside a transfer, including "foreclosure of the debtor's equity of redemption," 11 U.S.C. § 101(54), as fraudulent if certain factors are met, including that the debtor failed to receive "reasonably equivalent value" for the property transferred. 11 U.S.C. § 548(a)(2)(A).

requirement, the adoption of "fair foreclosure price" as the minimum measure of the exclusively federal requirement of just compensation under the Takings Clause is entirely appropriate. Indeed, nothing less would suffice. Federal law establishes fair market value as the default standard for just compensation, *50 Acres of Land*, 469 U.S. at 29, and sets the minimum bar as the sum that is "'just' both to an owner whose property is taken and to the public that must pay the bill." *Commodities Trading*, 339 U.S. at 123. Nothing inherent in tax sales renders it just to an owner whose property is taken to receive less than a "fair foreclosure price."

It bears noting that *BFP* did not reject the notion of a "fair foreclosure price." "One might judge there to be such a thing as a 'reasonable' or 'fair' forced-sale price." *BFP*, 511 U.S. at 540. The Court did reject applying "such a thing" under § 548 because "such judgments represent policy determinations that the Bankruptcy Code gives us no apparent authority to make." *Id.* But this Court is the final authority on the meaning of the Constitution and can, and should, decide here that just compensation in a tax sale taking can be nothing less than the "fair foreclosure price" of the property taken. And while this Court is not free to craft state or local tax collection procedures under the guise of constitutional interpretation, the Takings Clause sets the standard for "just compensation," and it is the province of this Court to decide what the Takings Clause means.

C. The tax sale practices of states and local jurisdictions cannot be the last word on the meaning of "just compensation" in the Fifth Amendment.

Given the impact of a tax-sale auction's design on bid amounts and the variation in auction designs across states and local jurisdictions, a decision that the price reached through *any* state or local jurisdiction-compliant tax-sale auction constitutes "just compensation" under the Fifth Amendment would improperly delegate to states and local jurisdictions the power to define the boundaries of a federal constitutional right.

While states and localities have the power to impose and collect property taxes, that power cannot be exercised unchecked by constitutional limitations. *See Tyler,* 598 U.S. at 645 ("Minnesota may not extinguish a property interest that it recognizes everywhere else to avoid paying just compensation when it is the one doing the taking."). Property taxes are of course a matter of state and local concern, but even in that area of state and local interest, states may not "'sidestep the Takings Clause by disavowing traditional property interests.'" *Id.* at 638 (quoting *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 167 (1998)). "Just compensation" cannot be whatever a state or local jurisdiction's tax sale process decides it to be.[28]

BFP's deference to state law is not appropriate here, where the question of "just compensation" is rooted in the Fifth Amendment. The Court should, therefore, reject the Sixth Circuit's conclusion that "just compensation" is conclusively determined by the fact that a state or municipality conducts a "public auction." *Pung v. Kopke*, 2025 WL 318222 at *4.

[28] Even a determination by a state's highest court that a state's activity is permissible is not conclusive when the state law involves the "vindication of federal rights." *Moore v. Harper*, 600 U.S. 1, 34 (2023) ("we have an obligation to ensure that state court interpretations of [state] law do not evade federal law," including in the area of "defining property rights") (citing *Tyler*, 598 U.S. ___ (2023)).

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below.

Respectfully submitted,

LEE H. OGBURN
Counsel of Record
MARYLAND LEGAL AID
500 E. Lexington Street
Baltimore, MD 21202
(410) 951-7777
logburn@mdlab.com

December 8, 2025

Counsel for Amici