

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 NATIONAL TAXPAYERS UNION
FOUNDATION AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Founded in 1973, the National Taxpayers Union Foundation (NTUF) is a non-partisan research and educational organization dedicated to showing Americans how taxes, government spending, and regulations affect everyday life. NTUF advances principles of limited government, simple taxation, and transparency on both the state and federal levels.

NTUF's Taxpayer Defense Center advocates for taxpayers in the courts, producing scholarly analyses and engaging in direct litigation and *amicus curiae* briefs upholding taxpayers' rights, challenging administrative overreach by tax authorities, and guarding against unconstitutional burdens on interstate commerce. *Amicus* also lent its expertise to this Court in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), as well as follow on litigation post-*Tyler*. Accordingly, *Amicus* has an institutional interest in this case.

SUMMARY OF THE ARGUMENT

A fundamental right that all citizens possess is the liberty to be free from excessive, punitive government penalties. *See, e.g.*, U.S. CONST. amend. VIII; *Timbs v. Indiana*, 586 U.S. 146 (2019). This Court's decision in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), rested on resolving the government theft

¹ Pursuant to Supreme Court Rule 37, counsel for *Amicus* represents that no counsel for any party authored this brief in whole or in part and that none of the parties or their counsel, nor any other person or entity other than *Amicus* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. *Amicus* acknowledges the research assistance of Eric Lee.

of Ms. Tyler's home equity on Takings Clause grounds, but an Excessive Fines issue also lurked in the background. Justice Gorsuch, joined by Justice Jackson, highlighted the Excessive Fines issue in *Tyler. Id.* at 648 (Gorsuch, J., concurring). In this case, it is time to address the Excessive Fines issue underlying these tax sales cases.

Isabella County, Michigan foreclosed on the Pung family's home for failing to pay \$2,242 in taxes, penalties and fees. In effect, for less than 1% of the value of the house (\$194,400), the Pungs lost their family home. The Pung family, furthermore, has not seen the full value of the house (less the taxes owed) returned to them. They have been grossly punished for a minor property tax debt.

The Eighth Amendment has a strong pedigree as a fundamental right. Starting with the Magna Carta, through the English Bill of Rights, to the state constitutions in effect at the framing of the U.S. Constitution, the Founders were greatly concerned about excessive fines. Civil penalties, including tax sales, implicate the right to be free from excessive fines. This Court has repeatedly held that the Excessive Fines Clause applies to both criminal and civil penalties. Tax sales are no different.

Under this Court's precedents, an excessive fine cannot be "grossly disproportional" to the offense and the government action must be "purely remedial." *See, e.g., United States v. Bajakajian*, 524 U.S. 321, 334 (1998); *Austin v. United States*, 509 U.S. 602, 610 n.14 (1993). The sale here is disproportionate to the amount of back taxes due, and the Pung family is out

of a major asset for the cost of a minor tax debt. It is quintessentially an excessive fine.

This case also presents this Court with an opportunity to revisit its decision in *Nelson v. City of New York*, where New York City confiscated and sold a property for \$7,000 to satisfy \$65 in unpaid water bills, and kept all the proceeds. *See Nelson v. City of New York*, 352 U.S. 103, 105–06 (1956). *Nelson* was decided prior to the Excessive Fines Clause’s incorporation and is the reason lower courts are reluctant to rule that state and local governments seizing and selling property for unpaid taxes and returning very little value of the property’s worth to the distressed taxpayer violates the Constitution. The Court can now overturn *Nelson* in the Excessive Fines context and clarify to lower courts that these predatory tax sales violate the Constitution.

ARGUMENT

I. THE EXCESSIVE FINES CLAUSE APPLIES TO TAX SALES.

In *Tyler*, Justices Gorsuch and Jackson concurred in the Takings Clause-based majority opinion but flagged that future courts should be aware of Excessive Fines problems in tax sale cases. *See Tyler*, 598 U.S. at 648 (Gorsuch, J., concurring). The case at bar today presents an opportunity to clarify the scope of the Eighth Amendment as a follow-on to the Fifth Amendment decision in *Tyler*.

There is some dispute whether the property taxes were ever due at all under Michigan state law. *See, e.g.*, Brief of Petitioner at 3–4 (describing complexities of property tax exemptions). But even assuming *arguendo*, that the taxes are due, the exaction of \$194,400 in equity to pay a \$2,242 tax is a classic excessive fine. If the decision below stands, the government can levy extra fines and continue to punish the Pung family, far beyond the taxes due.

A. The Excessive Fines Clause Has Deep Historical Roots.

The Eighth Amendment prohibits “excessive fines imposed” for violations of the law. U.S. CONST. amend. VIII. Protection from excessive governmental fines is a fundamental right all people have and is one of our oldest rights, dating from the Magna Carta and the English Bill of Rights. *See Timbs v. Indiana*, 586 U.S. 146, 151 (2019) (discussing roots of the clause in the Magna Carta). This history and tradition of protecting Americans from excessive fines started at the very beginning of the United States.

As the *Timbs* Court recognized, the “Magna Carta guaranteed that [a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement” *Id.* (quoting the Magna Carta, § 20, 9 Hen. III, ch. 14, in 1 Eng. Stat. at Large 1, 5 (1225)) (brackets and ellipsis in *Timbs*).² This principle of proportionality in fines was reaffirmed in the First Statute of Westminster and the English Bill of Rights. *See, e.g., Solem v. Helm*, 463 U.S. 277, 284–85, (1983) (discussing 3 Edw. I, ch. 6 (1275) and 1 W. & M., sess. 2, ch. 2 (1689)). Writing at the time of the Founding of the United States, David Hume examined the excesses of the English fines in the lead up to the Glorious Revolution. *See, e.g., David Hume, THE HISTORY OF ENGLAND Vol. VI, Chap. LXIX at 26 (1778)*³ (criticizing a case where a 100,000-pound fine was decreed despite “[b]y the law of England, ratified in the great charter, no fine or damages ought to extend to the total ruin of a criminal”).

The Founders sought to protect citizens from excessive fines as part of the rights inherited from English law. George Mason wrote in 1766 that “[w]e claim Nothing but the Liberty & Privileges of Englishmen, in the same Degree, as if we had still continued among our Brethren in Great Britain.” George Mason, Letter to the Committee of Merchants

² The National Archives provides a translated version of the Magna Carta, available at: <https://www.archives.gov/exhibits/featured-documents/magna-carta/translation.html>.

³ Available at: <https://davidhume.org/texts/h/vol6/full>.

in London (June 6, 1766).⁴ The Fairfax County Resolves asserted that “our Ancestors, when they left their native Land, and settled in America, brought with them (even if the same had not been confirmed by Charters) the Civil-Constitution and Form of Government of the Country they came from” which included “all its Privileges, Immunities and Advantages.” “Fairfax County Resolves, 18 July 1774,” No. 1, *Founders Online*, National Archives.⁵ George Washington would be tasked with presenting this set of Resolves to the Virginia General Assembly in Williamsburg. *Id.* No. 24.

At the time of the ratification of the Eighth Amendment, a majority of the state constitutions protected citizens from excessive fines. *See, e.g.*, DEL. CONST., art. I, § 11 (1792); MD. CONST., Decl. of Rights, Art. XXII (1776); MASS. CONST., pt. 1, art. XXVI (1780); N.H. CONST., pt. 1, art. 1, § XXXIII (1784); N.C. CONST., Decl. of Rights, art. X (1776); PA. CONST., art. IX, § 13 (1790); S.C. CONST., art. IX, § 4 (1790); VA. CONST., Bill of Rights, § 9 (1776). Vermont specified that “all fines shall be proportionate to the offences.” VT. CONST., ch. II, § XXIX (1786).⁶ And just a few months prior to ratification of the new Constitution, the Northwest Ordinance provided that “[a]ll fines

⁴ Available at: <https://www.consource.org/document/george-mason-to-the-committee-of-merchants-in-london-1766-6-6/>.

⁵ Available at: <https://founders.archives.gov/documents/Washington/02-10-02-0080>.

⁶ Only one state chose to remove an explicit constitutional protection against excessive fines prior to the ratification of the Eighth Amendment. Georgia’s 1777 Constitution had an excessive fines clause, GA. CONST., art. LIX (1777), but its 1789 Constitution did not.

shall be moderate; and no cruel or unusual punishments inflicted.” Ordinance of 1787, § 14, art. 2 (1787).

This case is well within the ambit of what the protections of the Excessive Fines Clause was designed to protect. Taking more than what is owed in taxes and penalties constitutes an extra fine levied, simply because the home has equity. It’s punishment beyond what the tax law would otherwise allow.

B. Civil Penalties, Like Tax Sales, Implicate the Excessive Fines Clause.

This Court has repeatedly clarified that the Excessive Fines Clause applies to both civil and criminal law: “[t]he notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law.” *Austin*, 509 U.S. at 610 (quoting *United States v. Halper*, 490 U.S. 435, 447–48 (1989); see also *Hudson v. United States*, 522 U.S. 93, 103 (1997) (determining that “the Eighth Amendment protects against excessive civil fines, including forfeitures”). There should therefore be no doubt that a civil action like a tax sale can be a “fine” for the purposes of the Excessive Fines Clause. That is because “Economic penalties imposed to deter willful noncompliance with the law are fines by any other name.” *Tyler*, 598 U.S. at 649–50 (Gorsuch, J., concurring). And since a tax sales are such fines, “the Constitution has something to say about them: They cannot be excessive.” *Id.* at 650.

Indeed, the word “fine” by its original meaning can include a civil penalty. In 1989 this Court found that the Excessive Fines Clause would not apply to private lawsuits with large damages awards issued by

juries. See *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 280 (1989). But in doing so, *Browning-Ferris* recognized that “at the time of the drafting and ratification of the [Eighth] Amendment, the word ‘fine’ was understood to mean a payment to a sovereign as punishment for some offense.” *Id.* at 265; *id.* at 265 n.6 (citing, *inter alia*, the second edition of Cunningham’s Law–Dictionary (published in 1771) which defined “fines for offences” as “amends, pecuniary punishment, or *recompence* for an offence committed against the King and his laws, or against the Lord of a manor.”) (emphasis added).

Later this Court clarified that asset forfeiture, which requires property to be awarded to the government as punishment for some offense, is subject to the Eighth Amendment. See *Austin*, 509 U.S. at 622; *Hudson*, 522 U.S. at 103. Indeed, the case that incorporated the Eighth Amendment to apply to the states was in the context of a civil action to satisfy a fine. See *Timbs*, 586 U.S. at 148 (“The State engaged a private law firm to bring a civil suit for forfeiture of Timbs’s Land Rover... [seeking] more than four times the maximum \$10,000 monetary fine assessable against him for his drug conviction.”).

Tax sales are civil penalties that implicate the Excessive Fines Clause. Isabella County’s tax sale and reluctance to pay the fair market value violates the Eighth Amendment. The sale is disproportionate to the amount of back taxes due, and the Pung family is out of a major asset for the cost of a minor tax debt. It is quintessentially an excessive fine.

**C. Isabella County Issued a Punishment
that is Grossly Unfair and Unjust.**

To resolve this case, this Court only needs a simple, two-part test for deciding when the Excessive Fines Clause is violated. A penalty is an excessive fine when the fine is “grossly disproportional” to the offense and the government action cannot be understood as “purely remedial.” *See Bajakajian*, 524 U.S. at 334; *Austin*, 509 U.S. at 610. Isabella County’s tax sale fails this test.

In this case, the fine is grossly disproportional. The offense was \$2,242 in unpaid property taxes, fines, and interest. Yet Isabella County responded by selling the property. Br. for Pet. 8–9; Pet. App. 10a, 29a. Under *Tyler*, the County is then obligated to return windfall to the property owner. But the government refused to do so. *See Tyler*, 598 U.S. at 647 (“The taxpayer must render unto Caesar what is Caesar’s, but no more.”). The court below provided partial relief based on *Tyler*, ordering \$73,766 to be refunded, but the real value of the house left another \$118,392 unpaid to the Pung family. Pet. App. 11a–12a; Br. for Pet. at 9.

Nor is this tax sale purely remedial because it “bears no articulable correlation to any injury suffered by the Government.” *Bajakajian* 524 U.S. at 340. The only harm the government suffered was unpaid tax revenue. In failing to remit whatever value was left over from the real value of the home, in effect, Isabella County imposed a fine 52.8 times greater than the unpaid taxes and fees. Even at auction Isabella County received many multiples of the taxes due. *See* Br. for Pet. at 9. If the government is suffering a

\$2,200 injury, inflicting many multiples of that injury as a fine is not remotely correlated with the loss of tax revenue.

In effect, Isabella County foreclosed on the Pung family's home for failing to pay taxes that amounted to less than 1% of the value of the house. Put another way, the Pung family lost an entire house for the tax debt equivalent to a Peloton exercise bike. *See, e.g.*, Peloton, "Cross Training Bike+" (listing exercise bike for between \$1,995 and \$2,695).⁷ Isabella County's punishment is grossly unfair and unjust.

II. *NELSON V. CITY OF NEW YORK* SHOULD BE OVERTURNED.

Tyler, 598 U.S. 631, ought to stand as a watershed moment for those who lose their homes in tax sales. The government gets what it is due—taxes, fees, and penalties—while the former homeowner receives any surplus from the sale. *See id.* at 647 ("The taxpayer must render unto Caesar what is Caesar's, but no more."). The *Tyler* decision, exercising prudential discretion to not decide more than was before the Court, left in place *Nelson v. City of New York*, 352 U.S. 103 (1956). *Tyler*, 598 U.S. at 644 ("Unlike in *Nelson*, Minnesota's scheme provides no opportunity for the taxpayer to recover the excess value..."). This unfortunately has proven to undue much of the hope the *Tyler* decision promised.

The major roadblock for applying, in practical effect, the Excessive Fines Clause or the Takings Clause to tax sales is that this Court in the 1950s approved foreclosure schemes where the government

⁷ Available at: <https://www.onepeloton.com/shop/bike-plus>.

kept the windfall. See *Nelson*, 352 U.S. at 110. In *Nelson*, the City foreclosed on properties to satisfy unpaid water bills; one bill was as low as \$65, or the equivalent of about \$765 today.⁸ See *Nelson*, 352 U.S. at 106. The City sold the property for what today would be about \$82,000. See *id.*⁹ That windfall was 107 times the value of the unpaid water bills—what in many other contexts looks to be an excessive fine. Nevertheless, this Court ruled that New York’s actions did not violate the Fifth Amendment’s Takings Clause because the homeowner-taxpayer did not take advantage of a chance to get the surplus back. See *id.* at 109–110.

Nelson is a source of government shenanigans as revenue offices across the country are relying on it to justify allowing state and local governments to keep the windfall, despite *Tyler*’s ruling. See, e.g., *Lynch v. Multnomah Cnty.*, No. 1:23-CV-01434-IM, 2024 WL 5238284, at *7 (D. Or. Dec. 27, 2024) (“Defendants argue that, as alleged, no Fifth Amendment takings occurred because Oregon’s foreclosure scheme is more akin to that in *Nelson*..., than in *Tyler*.”) (citation omitted); *Sharritt v. Henry*, No. 23 C 15838, 2024 WL

⁸ Exactly \$764.93, as calculated by comparing dollars in December 1956, the date of decision for *Nelson*, to dollars to September 2025, the latest calculation date available. See Bureau of Labor Statistics, CPI Inflation Calculator *available at*: <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=65.00&year1=195612&year2=202509>.

⁹ The *Nelson* sale price was \$7,000.00. Using the same criteria as the water bill, the sale price is \$82,376.81 today. Bureau of Labor Statistics, CPI Inflation Calculator *available at*: <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=7000&year1=195612&year2=202509>.

4524501, at *12 (N.D. Ill. Oct. 18, 2024) (“Defendants argue that the Indemnity Fund is like the procedures in *Nelson*”); *Baker v. Baker Cnty.*, No. 2:24-CV-1503-IM, 2025 WL 1474601, at *2 (D. Or. May 21, 2025) (“Defendant argues Plaintiff fails to state viable takings claims because *Nelson*... not *Tyler*... controls this case...”) (citations omitted).

Nelson is manifestly unjust and wrongly decided under the Constitution, but only this Court can overturn it. *See, e.g., Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (per curiam) (“It is this Court’s prerogative alone to overrule one of its precedents.”) (cleaned up). But *Nelson* did provide a safety release: “relief from the hardship imposed by a state statute is the responsibility of the state legislature and not of the courts, *unless some constitutional guarantee is infringed.*” *Nelson*, 352 U.S. at 110 (emphasis added).

That is the situation here. *Nelson* was decided prior to incorporation of the Excessive Fines Clause to the states in *Timbs*. Therefore, New York’s scheme in *Nelson* of seizing and selling a property worth over 100 times the value of the debt and keeping all the proceeds would likely be decided differently today if the Excessive Fines Clause would have been available to the parties for a constitutional challenge.¹⁰

¹⁰ Curtailing *Nelson* would also aid in resolving other cases currently pending this Court’s review via orders to grant, vacate, and remand. *See, e.g., In re Alger Cnty. Treas’r for Foreclosure*, No. 363803, 2024 WL 4174925, at *6 (Mich. Ct. App. Sept. 12, 2024) (relying on *Nelson*), *cert. petition filed as McGee v. Alger Cnty Treas’r*, U.S. No. 25-203 (Aug. 15, 2025); *In re Muskegon Cnty. Treas’r for Foreclosure*, 20 N.W.3d 337, 348 (Mich. Ct. App. 2023) (relying on *Nelson*), *cert. petition filed as Beeman v. Muskegon Cnty. Treas’r*, U.S. No. 24-858 (Feb. 7, 2025); *In re*

Furthermore, allowing parties to bring an Excessive Fines challenge can simplify future cases. For the Excessive Fines Clause, courts would only need to answer whether the government's action was grossly disproportionate to the unpaid tax and whether the action was purely remedial in purpose. These are questions the lower courts can readily apply in a variety of fact patterns, without worrying about whether an auction of a home could get close to the real fair market value of the house.

The limits and bounds of the Excessive Fines Clause, and whether punitive government actions like Isabella County's are grossly disproportionate to the offense of unpaid property taxes, are critical to answer for taxpayers across the country. The Pung family's case highlights the manifest unjust results of letting local governments exact massive penalties in the form of tax sales. Indeed, the end effect is another fine—this time for almost all the home's equity—for failing to pay property taxes.

Manistee Cnty. Treas'r, No. 363723, 2024 WL 2981520, at 4–5 (Mich. Ct. App. June 13, 2024) (relying on *Muskegon*, which relied on *Nelson*), *cert. petition filed as Koetter v. Manistee Cnty. Treas'r*, U.S. No. 24-1095 (Apr. 17, 2025).

CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests that this Court reverse the decision below and apply the Excessive Fines clause to tax sales.

Respectfully submitted,

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