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

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING NEITHER PARTY

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QUESTIONS PRESENTED

When a government sells a taxpayer's property to satisfy an unpaid tax bill, the proceeds from the sale sometimes exceed the amount that the taxpayer owes. In *Tyler* v. *Hennepin County*, 598 U.S. 631 (2023), this Court held that a government may not keep the surplus proceeds without violating the Takings Clause of the Fifth Amendment. The questions presented are:

1. Whether and under what circumstances the Takings Clause entitles a taxpayer to more than the surplus proceeds from the sale of the taxpayer's property.

2. Whether and under what circumstances the Excessive Fines Clause of the Eighth Amendment entitles a taxpayer to more than the surplus proceeds from the sale of the taxpayer's property.

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INTEREST OF THE UNITED STATES

This case concerns whether the Constitution entitles a taxpayer to more than the surplus proceeds from a government's sale of his property to satisfy an unpaid tax bill. The United States has a substantial interest in that question. The principal procedures that the federal government uses for collecting delinquent taxes are administrative levies and civil suits to enforce tax liens. 26 U.S.C. 6331, 6335, 7403. When the federal government seizes and sells a taxpayer's property through an administrative levy, "[a]ny surplus proceeds remaining" after paying expenses and taxes shall be "credited or refunded" to the "entitled" person, which is generally the taxpayer. 26 U.S.C. 6342(b); see 26 C.F.R. 301.6342-1(b). In a civil action to enforce a tax lien, a court "may decree a sale of [the taxpayer's] property" and "a distri-

bution of the proceeds of such sale according to" the "interests of the parties and of the United States." 26 U.S.C. 7403(c).

INTRODUCTION

When taxpayers fail to pay their taxes, governments have long done what private lenders do when a debt goes unpaid: foreclose on the debtor's property and use the proceeds from its sale to satisfy the debt. In *Tyler* v. *Hennepin County*, 598 U.S. 631 (2023), this Court held that when such a sale results in surplus proceeds—proceeds in excess of what the taxpayer owes—the Fifth Amendment's Takings Clause entitles the taxpayer to just compensation.

The question here is what compensation is just. The Nation's history and traditions, this Court's precedents, and considerations of fairness and equity all point in the same direction: Under the Takings Clause, just compensation is the surplus proceeds from the tax sale, as long as the sale is conducted fairly. The taxpayer may therefore challenge the procedural fairness of the sale by arguing, for example, that it was conducted with insufficient notice or opportunity for bidding. But if the sale was conducted fairly, the Takings Clause entitles the taxpayer to no more than the surplus proceeds.

Petitioner contends that just compensation should instead be based on the property's purported "fair market value." But "fair market value" is a term of art, which presumes that the property is *not* subject to the strictures of the foreclosure process. Where, as here, the property *is* subject to that process, the best measure of the property's value is the price obtained at the foreclosure sale itself, as long as the sale is conducted fairly. Like any debtor, a taxpayer who wishes to avoid the foreclosure process can pay the outstanding debt.

Requiring governments to pay the difference between the foreclosure-sale price and the value at a hypothetical unrestricted sale would effectively deprive them of an age-old tool of tax collection.

The Eighth Amendment's Excessive Fines Clause is not implicated here. When a government sells a taxpayer's property and refunds the surplus proceeds, the only money that the government keeps is what the taxpayer owes. That is payment for unpaid taxes, not punishment for some offense. Accordingly, this case does not involve a "fine."

STATEMENT

A. The Michigan General Property Tax Act

The Michigan General Property Tax Act (Act), Mich. Comp. Laws § 211.1 *et seq.*, provides for the taxation of property within the State. On March 1, property taxes levied in the immediately preceding year that remain unpaid become "delinquent." *Id.* § 211.78a(2). If the taxes remain unpaid by March 1 of the following year, the property is "forfeited." *Id.* § 211.78g(1). Forfeiture does not affect title, but it allows the county (or State) to file a petition for foreclosure with the state circuit court. *Id.* § 211.78(8)(b). If the county does so, the Act requires various notices and hearings before the court may enter judgment. *Id.* §§ 211.78i-211.78k.

If the circuit court enters a judgment of foreclosure, "absolute title to the property" vests with the county. Mich. Comp. Laws § 211.78k(6). At any time before that vesting, the taxpayer may redeem the property—*i.e.*, remove it from the foreclosure process—by paying the tax debt (including interest, penalties, and fees). *Id.* §§ 211.78g(3), 211.78k(5) and (6). That is known as a right of "redemption." *Id.* § 211.78b(g).

After a judgment of foreclosure, the county may sell the property at an "auction sale." Mich. Comp. Laws § 211.78m(2). The sale must comply with various requirements under the Act. *Ibid.* Among other things, notice of the sale's time and location must be published not less than 30 days in advance; the sale must be held at a convenient location; and the property must be sold to the highest bidder. *Ibid.*

As originally enacted, the Act allowed the county (or State) to retain all proceeds from a tax sale, including any in excess of what the taxpayer owed. See *Rafaeli, LLC* v. *Oakland County*, 952 N.W.2d 434, 445-446 (Mich. 2020). In July 2020, however, the Michigan Supreme Court held that the "retention of those surplus proceeds is an unconstitutional taking without just compensation" under the Michigan Constitution. *Id.* at 441. After that decision, the Michigan Legislature amended the Act to allow the taxpayer to claim the surplus proceeds from a tax sale. Mich. Comp. Laws § 211.78t(4).

B. The Foreclosure And Sale Of The Pung Property

Timothy Pung lived in a house on property that he owned in Isabella County, Michigan. J.A. 70. A Michigan property owner may claim an exemption from certain property taxes levied by a local school district if he files an affidavit stating that the property is his "principal residence." Mich. Comp. Laws § 211.7cc(1) and (2). Pung filed an affidavit in 1994 and received the benefit of the exemption for many years. Pet. App. 3a.

In 2004, Pung passed away, and his uncle (petitioner here) was named the personal representative of Pung's estate, which included his property in Isabella County. J.A. 70. Petitioner believed that the estate could continue claiming the principal-residence exemption because Pung's successors continued living there. J.A. 78,

80. But no one filed a new affidavit with the local tax assessor, who thought such a filing was required. Pet. App. 4a-5a. The assessor therefore revoked the property's principal-residence exemption for the 2012 tax year, resulting in additional taxes owed by the estate. *Id.* at 5a-7a.

Petitioner refused to pay the additional amount. Pet. App. 7a. In May 2013, the County mailed the first of several notices of the tax delinquency to petitioner's address. J.A. 86. By March 2014, when petitioner still had not paid, the County deemed the property forfeited because of a $2,241.93 tax debt. D. Ct. Doc. 8-9 (Nov. 25, 2020). The following June, the County filed a petition for foreclosure. J.A. 86. Although the County provided various notices, petitioner did not appear at any hearings. J.A. 87.

In February 2015, the state circuit court entered a judgment of foreclosure. J.A. 87. Petitioner did not redeem the property or appeal. J.A. 92. Instead, petitioner moved to set aside the judgment, asserting that he received his first notice about the foreclosure in April 2015. J.A. 98, 101-106. The circuit court granted the motion, J.A. 106, but the Michigan Court of Appeals reversed, finding that the County had provided "constitutionally sufficient" notice, J.A. 91. After the Michigan Supreme Court denied review, a final foreclosure judgment was entered in June 2018. Pet. App. 48a.

In July 2019, the County sold the property at an auction sale for $76,008.00. D. Ct. Doc. 8-13, at 1 (Nov. 25, 2020). Because the sale occurred under the pre-*Rafaeli* version of the Act, the County retained all the proceeds. Pet. App. 7a.

C. The Present Controversy

1. In 2018, petitioner sued various local officials in the United States District Court for the Western District of Michigan. Pet. App. 24a, 48a-49a. In September 2019, after the tax sale, he amended his complaint, adding the County as a defendant. J.A. 1-24. As relevant here, petitioner alleges that the County violated the Takings and Excessive Fines Clauses of the federal Constitution by retaining all the proceeds from the tax sale. J.A. 17-22. He seeks damages and "just compensation," but does not seek to unwind the sale. J.A. 23.

2. In September 2020, the district court granted partial summary judgment to petitioner on his takings claim. Pet. App. 47a-63a. Citing the recent decision in *Rafaeli*, the court held that the County had "taken property in violation of [petitioner's] constitutionally protected property interest" by keeping "the full amount of the sale proceeds." *Id.* at 61a. The court left open all questions of "damages" and dismissed the excessive-fines claim because petitioner had raised it only as an "alternative theory." *Id.* at 62a & n.5. The court then transferred the case to the Eastern District of Michigan, where the property is located. *Id.* at 8a-9a.

In 2022, the United States District Court for the Eastern District of Michigan entered final judgment. The court rejected petitioner's contention that the Takings Clause entitles him to the property's fair market value (which petitioner argued was $194,400) minus the tax debt. Pet. App. 29a, 37a-44a. Instead, the court held that petitioner is entitled to only the "surplus proceeds"—namely, the "tax-foreclosure sale price less the tax debt owed, which includes delinquent taxes, interest, penalties, and fees reasonably related to the foreclosure and sale of the property." *Id.* at 43a-44a.

3. The court of appeals affirmed. Pet. App. 1a-22a. The court explained that "the best evidence of a foreclosed property's value is the property's sale[] price." *Id.* at 11a (citation omitted). The court therefore held that "when a municipality sells foreclosed property at a properly conducted public auction," the Takings Clause entitles the owner to the surplus proceeds, *ibid.* (citation omitted)—$73,766.07 in this case, *id.* at 12a & n.1. The court then rejected petitioner's Excessive Fines Clause claim. *Id.* at 15a. Noting that the Act's "aim is to encourage the timely payment of property taxes," the court held that its "tax forfeiture scheme does not fall within the ambit of the Eighth Amendment." *Ibid.* (citation omitted).

SUMMARY OF ARGUMENT

I. When a government sells property worth more than a taxpayer's debt, the surplus proceeds from the sale are just compensation under the Takings Clause, as long as the sale is conducted fairly. That rule reflects centuries of English, federal, and state practice, which have all treated the surplus proceeds as just compensation. The rule finds further support in this Court's precedents, which have repeatedly affirmed the rights of taxpayers to claim the surplus proceeds, without suggesting that the Takings Clause entitled them to more. And the rule is fair to both the property owner and the public because it makes up for the owner's loss while respecting the government's interest in ensuring that each taxpayer pays his fair share of taxes.

Petitioner contends that just compensation should be based on a property's purported "fair market value," rather than the proceeds obtained at the tax sale. But "fair market value" refers to the price that would be obtained in a hypothetical sale under "market conditions,"

involving a property that is not subject to "the strictures of the foreclosure process." *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 538 (1994). Where, as here, the property *is* subject to such strictures, the hypothetical conditions that "fair market value" presumes do not reflect reality. Instead, the best measure of the foreclosed property's worth is the foreclosure-sale price itself. Adopting petitioner's contrary view would overturn centuries of federal and state practice and effectively deprive governments of an age-old tool (the sale of a debtor's property) that they and private lenders alike have used to recover the debts they are owed.

The tax sale in this case resulted in surplus proceeds of $73,766.07. But the parties have not joined issue on whether the sale was conducted fairly, and the courts below did not address that question. Accordingly, the judgment should be vacated and the case remanded for consideration of that question in the first instance.

II. The Excessive Fines Clause is not implicated here. By its terms, the Clause applies only to "fines." When it "was adopted, 'the word "fine" was understood to mean a payment to a sovereign as punishment for some offense.'" *United States* v. *Bajakajian*, 524 U.S. 321, 327 (1998) (citation omitted). When a government sells a taxpayer's property and refunds the surplus proceeds, the only money that the government keeps is what the taxpayer owes. That portion is a payment for unpaid taxes, not punishment for some offense. To be sure, in obtaining that payment, a government seizes the taxpayer's property, including the value of that property in excess of what the taxpayer owes. But that seizure does not satisfy any element of a "fine": It is not "payment," nor "punishment," nor "for some offense." And even if it were a "fine," it would not be "excessive."

ARGUMENT

I. THE SURPLUS PROCEEDS FROM A TAX SALE ARE JUST COMPENSATION UNDER THE TAKINGS CLAUSE, AS LONG AS THE SALE IS CONDUCTED FAIRLY

The Takings Clause, applicable to the States through the Fourteenth Amendment, provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V. "States have long imposed taxes on property." *Tyler* v. *Hennepin County*, 598 U.S. 631, 637 (2023). "Such taxes are not themselves a taking, but are a mandated 'contribution from individuals for the support of the government for which they receive compensation in the protection which government affords.'" *Ibid.* (citation and ellipses omitted). "In collecting these taxes, the State may impose interest and late fees." *Id.* at 637-638. "It may also seize and sell property, including land, to recover the amount owed." *Id.* at 638.

Sometimes the proceeds from the sale of the taxpayer's property exceed what the taxpayer owes. This Court confronted that situation in *Tyler*, where Hennepin County seized and then sold a taxpayer's home to recover unpaid taxes. 598 U.S. at 635. The taxpayer owed $15,000, but her home was worth more, selling for $40,000. *Ibid.* The Court held that the County could not keep the $25,000 surplus without violating the Takings Clause. *Id.* at 639. *Tyler* thus established that when the government sells property worth more than what the taxpayer owes, the taxpayer is entitled to just compensation under that Clause.

The question in this case is what compensation is just. The same authorities on which *Tyler* relied provide the answer: The proper measure of compensation is the price obtained at the tax sale. Of course, the sale must

be conducted fairly; a rigged sale, for example, would not suffice. But if the sale is conducted fairly, the taxpayer's just compensation is the surplus proceeds—that is, the total proceeds from the sale minus the tax debt (including interest, fees, and expenses).

Petitioner offers a different view. According to petitioner (Br. 13-30), the measure of compensation should be the property's "fair market value," as determined by a hypothetical sale of the property under conditions that presume that it is not subject to the foreclosure process. But that assumes away a key characteristic of the property: that it *is* subject to the foreclosure process. And adopting petitioner's view would overturn centuries of federal and state practice—effectively depriving governments of an age-old tool (the sale of a debtor's property) for recovering the debts they are owed. Thus, the proper measure of compensation is not a hypothetical sale, but rather the tax sale itself, as long as that sale is conducted fairly.

A. History And Tradition Support Treating Surplus Proceeds As Just Compensation

When taxes go unpaid, English and American governments have long relied on sales of taxpayers' properties as a means of collecting unpaid taxes. See *Tyler*, 598 U.S. at 639-642. In *Tyler*, English, federal, and state practices showed that when a government sells property worth more than the tax debt, the taxpayer is entitled to compensation. See *ibid.* Here, those same practices show how much: Historically, just compensation has been the property's tax-sale price—not its purported "fair market value"—less the tax debt.

1. As this Court recognized in *Tyler*, English practice predating the Constitution can inform the meaning of the Takings Clause. 598 U.S. at 639-640. In England,

it was well settled that the government could seize and sell a taxpayer's property to satisfy a tax debt. *Id.* at 639. And as *Tyler* observed, it was also well settled that when the value of the property exceeded the debt, the government had to pay compensation. *Ibid.*

What the government had to pay was the surplus proceeds from the tax sale. Thus, in granting "the Crown the power to seize and sell a taxpayer's property to recover a tax debt," Parliament "dictated that any 'Overplus' from the sale 'be immediately restored to the Owner.'" *Tyler*, 598 U.S. at 639 (quoting 4 W. & M., ch. 1, § 12, in 3 Eng. Stat. at Large 488-489 (1692)). And in recognizing the authority of "a tax collector [to] seize[] a taxpayer's property," "the common law demanded" that the tax collector "'render back the overplus'" when the property was sold. *Id.* at 639-640 (quoting 2 William Blackstone, *Commentaries on the Laws of England* 453 (1771) (Blackstone)). English practice therefore reflected the principle that when the government sells property worth more than what the taxpayer owes, the "overplus" justly compensates the taxpayer for the difference.

2. As in *Tyler*, that "principle made its way across the Atlantic." 598 U.S. at 640. Since the 1790s, the federal government has relied on the seizure and sale of taxpayer property to recover unpaid taxes. See, *e.g.*, Act of July 14, 1798, ch. 75, § 13, 1 Stat. 601. And in a long line of statutes, Congress has repeatedly recognized that when the government sells property worth more than what the taxpayer owes, the taxpayer is entitled to compensation in the form of the surplus proceeds from the sale. For example, an 1812 statute that authorized the government to sell tax-delinquent "lots" gave "the original proprietor" the right to claim the "balance of the purchase money" in excess of "the taxes due, and the

expenses of sale." Act of May 4, 1812 (1812 Act), ch. 75, § 8, 2 Stat. 727. Similarly, an 1815 statute that authorized the government to sell tax-delinquent "property" directed "the surplus of the proceeds of the sale, after satisfying the tax, costs, charges and commissions," to "be paid to the owner of the property." Act of Jan. 9, 1815, ch. 21, § 27, 3 Stat. 174.

Subsequent statutes likewise treated surplus proceeds as just compensation. See, *e.g.*, Act of Aug. 5, 1861 (1861 Act), ch. 45, § 36, 12 Stat. 304 (authorizing the sale of tax-delinquent "property" and providing that "the surplus of the proceeds of the sale, after satisfying the tax, costs, charges, and commissions, shall be paid to the owner of the property"); Act of July 13, 1866, ch. 184, § 9, 14 Stat. 108 (providing that "the surplus of the proceeds of the sale, after satisfying the tax, costs, and charges, shall be paid to the person legally entitled to receive the same"); Rev. Stat. § 3195 (1875) (same); Act of June 2, 1924, ch. 234, § 1031(b), 43 Stat. 352 (directing the "surplus proceeds from distraint sales" to be "refund[ed]" to the "persons legally entitled thereto"); Revenue Act of 1926, ch. 27, § 1128(b), 44 Stat. 125 (same); Internal Revenue Code of 1939, ch. 2, § 3971(b)(3), 53 Stat. 485 (same); Internal Revenue Code of 1954, ch. 736, § 6342(b), 68A Stat. 789 (directing "[a]ny surplus proceeds remaining after" paying taxes and expenses to "be credited or refunded" to the "persons legally entitled thereto").

Indeed, the current Internal Revenue Code treats surplus proceeds as just compensation. The proceeds from the "sale of seized property" are first used to pay the expenses of the sale, the specific tax liability on the property, and other tax liabilities of the taxpayer. 26 U.S.C. 6342(a). "Any surplus proceeds remaining after"

paying those expenses and taxes are then "credited or refunded" to the taxpayer, unless another person establishes a superior claim to them. 26 U.S.C. 6342(b); see 26 C.F.R. 301.6342-1(b).

Of course, Congress has long required that sales of seized property satisfy certain procedural requirements. The 1812 Act, for example, required that a sale be "public"; that "public notice be given of the time and place of the sale"; and that the notice contain a description of the property and information about the "taxes due thereon." § 8, 2 Stat. 727. Current law also contains provisions governing public notice, the time and place of the sale, and the manner of conducting it. 26 U.S.C. 6335. Failure to comply with such requirements could lower the sale price by suppressing bids and inhibiting competition. See, *e.g.*, *Ronkendorff* v. *Taylor's Lessee*, 29 U.S. 349, 362 (1830) (explaining that the failure of a public notice to describe the property accurately could prevent potential purchasers from properly "estimat[ing] its value"). But as long as a sale complies with the requisite procedures, the surplus proceeds have been understood to be just compensation when the property is worth more than what the taxpayer owes.

3. State practice has long reflected the same understanding. Founding-era state statutes specified the procedures for conducting tax sales. See *Tyler*, 598 U.S. at 640 & n.1. And many of those statutes, in addressing the sale of property worth more than the taxpayer owed, directed that the surplus proceeds be paid to the taxpayer. See, *e.g.*, 1797 Md. Laws ch. 90, § 5 (providing that if a sale of land produced "more money than may be sufficient to satisfy the taxes and other legal charges thereon due," "such overplus of money" shall be paid to the owner); 1786 Mass. Acts 359 (directing "the overplus

arising by" sale of a delinquent taxpayer's goods "to be immediately restored to the former owner"); 1792 N.H. Laws 192 (similar); 1801 N.Y. Laws 496 (similar); 1787 Vt. Acts & Resolves 127 (similar). Thus, as long as a sale complied with the requisite procedures, the surplus proceeds were understood to be just compensation.

That understanding continued through the passage of the Fourteenth Amendment. An 1876 treatise noted "[v]arious methods" that had been "adopted in different states to save something to the owner, if that shall be possible, when his land is sold." Thomas M. Cooley, *A Treatise on the Law of Taxation, Including the Law of Local Assessments* 343 (1876) (Cooley). One method was "to have the land put up for sale for what it will bring, and if the bid exceed the tax, with interest and expenses, require the surplus to be deposited in the state or county treasury for the benefit of the party who shall show his right." *Ibid.* Another method was to "require a bond to be given by the purchaser to account for the excess over the taxes and charges, which bond shall be a lien on the land." *Ibid.* Either way, the surplus was regarded as just compensation: While the taxpayer could challenge the sale of his property for failing to comply with the requisite procedures, see Cooley 334-340 (describing various procedural requirements), he could not "defeat such a sale" for "inadequacy of price," Cooley 345.

Today, States continue to regard the surplus proceeds as just compensation—giving taxpayers the right to claim those proceeds when their property is sold for more than what they owe.[1] Thus, just as history and tra-

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[1] See, *e.g.*, Ala. Code § 40-10-28(b)(3); Alaska Stat. §§ 29.45.480(b), 43.20.270(h); Ariz. Stat. § 42-18236(A); Ark. Code § 26-37-205(b)(2)(A); Cal. Rev. & Tax. Code § 4675(e)(1); Conn. Gen. Stat. § 12-157(i); Del. Code. Ann. tit. 9, § 8779; Fla. Stat. § 197.582(2)(a); Ga. Code Ann.

dition show that withholding the surplus proceeds from the taxpayer would violate the Takings Clause, history and tradition show that those proceeds are the appropriate measure for just compensation.

B. This Court's Precedents Support Treating Surplus Proceeds As Just Compensation

This Court's precedents point in the same direction. See *Tyler*, 598 U.S. at 642-645. The Court has affirmed the statutory rights of taxpayers to claim "the surplus in excess of the debt owed," *id.* at 642, while giving no indication that the Takings Clause entitles taxpayers to claim more.

1. *Slater* v. *Maxwell*, 73 U.S. 268 (1867), involved the sale of "a large tract of land" to satisfy a state tax debt of Slater, the owner of the land. *Id.* at 269 (statement of the case). At the auction sale, Maxwell purchased the property for $30.03, the amount of the debt. *Ibid.* Slater sued to set aside the sale, making two arguments relevant here. *Ibid.* First, Slater contended that "the sale

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§§ 48-4-5, 48-4-81(f); Haw. Rev. Stat. § 231-25(b)(7)(D); Idaho Code § 31-808(2)(b); Ind. Code § 6-1.1-24-7(a) and (c); Kan. Stat. Ann § 79-2803; Ky. Rev. Stat. Ann. § 91.504(5); Me. Stat. tit. 36, § 943-C(3)(C); Md. Code Ann., Tax-Prop. § 14-818(a)(4); Mich. Comp. Laws § 211.78t(4); Minn. Stat. § 282.005, subd. 6; Miss. Code Ann. § 27-41-77; Mo. Rev. Stat. § 140.230(2); Mont. Code Ann. § 15-18-221(3); Neb. Rev. Stat. § 77-1838(2)(a); Nev. Rev. Stat. § 361.610(6); N.H. Rev. Stat. Ann. § 80:88(II); N.J. Stat. Ann. § 54:5-87(b); N.M. Stat. Ann. § 7-38-71(A); N.Y. Real Prop. Law § 1197; N.C. Gen. Stat. § 105-374(q); N.D. Cent. Code § 57-28-20(3); Ohio Rev. Code. Ann. § 5721.20; Okla. Stat. tit. 68, § 3131(D); 2025 Or. Laws ch. 475, § 9; 72 Pa. Cons. Stat. § 5860.205(d); S.C. Code Ann. §§ 12-51-60, 12-51-130; S.D. Codified Laws § 10-25-39; Tenn. Code Ann. § 67-5-2702(c); Tex. Tax Code Ann. § 34.021; Utah Code Ann. § 59-2-1351.1(7); Va. Code Ann. § 58.1-3967; Wash. Rev. Code § 84.64.080(10); W. Va. Code § 11-A-3-65; Wis. Stat. § 75.36(3); Wyo. Stat. § 39-13-108; see also D.C. Code § 47-1307(a).

had been made at a grossly inadequate price." *Ibid.* According to Slater, "the land ha[d] been worth $6000," *ibid.*, and selling it for "1/200th" of that "value" "shocked the conscience," *id.* at 272 (argument for appellant). Second, Slater contended that Maxwell had falsely declared at the sale that Slater would exercise his right to redeem the land from any purchaser. *Id.* at 274 (opinion of the Court). The effect of that "fraudulent declaration," Slater argued, was to discourage others from bidding on the property and to "enable [Maxwell] to buy without competition, for a trifling amount, all the land." *Ibid.*

The Court rejected the first argument, holding that "[t]he inadequacy of the price given at the sale of land for unpaid taxes thereon, does not constitute a valid objection to the sale." *Slater*, 73 U.S. at 273. But the Court accepted the second argument, finding the evidence sufficient to show that Maxwell had made the fraudulent declaration. *Id.* at 275. Emphasizing the need for tax sales to be free from "influences likely to prevent competition," the Court held that any tax sale "characterized by fraud or unfairness should be set aside." *Id.* at 276.

Although *Slater* did not involve the Takings Clause, the Court's decision supports the principle that while a taxpayer may challenge the fairness of the sale process, he may not invoke some external concept of "value" to challenge the adequacy of the sale price. *Slater*, 73 U.S. at 272 (argument for appellant). The implication is that as long as the process is just, the resulting sale price (including any surplus for the taxpayer) should also be considered just.

2. In two subsequent cases, the Court affirmed "a taxpayer's right to surplus." *Tyler*, 598 U.S. at 643; see *id.* at 642-643. The first case—*United States* v. *Taylor*, 104 U.S. 216 (1881)—involved a taxpayer whose tax-

delinquent property had been sold to a private buyer at a tax sale. *Id.* at 217. The Court held that the taxpayer had a right to the surplus proceeds under an 1861 statute, see 1861 Act § 36, 12 Stat. 304, and declined to read a later statute as repealing that right, *Taylor*, 104 U.S. at 218-221.

The second case—*United States* v. *Lawton*, 110 U.S. 146 (1884)—involved a taxpayer whose tax-delinquent property had been sold to the United States, rather than to a private buyer. *Id.* at 149. The "1861 statute did not explicitly provide a right to the surplus under such circumstances." *Tyler*, 598 U.S. at 643. But the Court recognized that "[t]o withhold the surplus from the owner would be to violate the Fifth Amendment to the Constitution and to deprive him of his property without due process of law, or to take his property for public use without just compensation." *Lawton*, 110 U.S. at 150. Accordingly, the Court construed the 1861 statute to give the taxpayer a right to the surplus. *Id.* at 149-150. The Court gave no indication that the Takings Clause might entitle the taxpayer to *more* than the surplus. Rather, the Court's decision suggests that recognizing his right to the surplus would be sufficient to avoid any due process or takings concern.

3. Finally, *Nelson* v. *City of New York*, 352 U.S. 103 (1956), involved property owners who had failed to pay local water charges. *Id.* at 105. The City sought judgments foreclosing on their properties. *Id.* at 105-106. "Under the governing ordinance, a property owner had almost two months after the city filed for foreclosure to pay off the tax debt, and an additional 20 days to ask for the surplus from any tax sale." *Tyler*, 598 U.S. at 644. "The owners did not take advantage of this procedure," *ibid.*, so the City retained one property and sold the other

"to a private party for $7,000, the City retaining all the proceeds," *Nelson*, 352 U.S. at 106.

The owners argued that "the City's retention of property, in one instance, and proceeds of sale in the other, far exceeding in value the amounts due," constituted a "taking without just compensation." *Nelson*, 352 U.S. at 109. This Court disagreed. "Because the New York City ordinance did not 'absolutely preclude an owner from obtaining the surplus proceeds of a judicial sale,' but instead simply defined the process through which the owner could claim the surplus, [the Court] found no Takings Clause violation." *Tyler*, 598 U.S. at 644 (quoting *Nelson*, 352 U.S. at 110) (brackets omitted). The owners in *Nelson* had "forfeited their right to the surplus" by failing to invoke the City's process for claiming such compensation. *Ibid.*; see *Nelson*, 352 U.S. at 110. And the Court gave no indication that the process was deficient because it afforded a right to *only* the surplus proceeds. Rather, the Court's decision suggests that if the owners had simply invoked the City's process, they could have obtained just compensation.

C. Fairness And Equity Support Treating Surplus Proceeds As Just Compensation

In considering what is "just" under the Takings Clause, this Court has also looked to "ideas of 'fairness' and 'equity.'" *United States* v. *Commodities Trading Corp.*, 339 U.S. 121, 124 (1950); see *United States* v. *Fuller*, 409 U.S. 488, 490 (1973) (looking to "basic equitable principles of fairness"). In doing so, the Court has asked: "What compensation 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. Here, treating the surplus proceeds as just compensation is fair to the delinquent taxpayer because the tax-sale price

is the best measure of what a distressed property is worth. And it is fair to the public because it respects a government's interest in ensuring that each taxpayer pays his fair share of taxes.

1. Treating surplus proceeds as just compensation is fair to the delinquent taxpayer

What compensation is fair to the delinquent taxpayer depends on the "value" of the property at issue. *Danforth* v. *United States*, 308 U.S. 271, 283 (1939). It is distressed property—property that is subject to the "strictures of the foreclosure process," including a "forced sale" to satisfy the outstanding tax debt. *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 538 (1994). Those strictures prescribe, among other things, when the sale must occur, how it must be conducted, and under what circumstances the delinquent taxpayer may redeem the property and thereby remove it from the foreclosure process. See *id.* at 539; p. 3, *supra*.

The fact that the property is subject to the strictures of the foreclosure process, "like any other fact bearing upon the property's use or alienability, necessarily affects its worth." *BFP*, 511 U.S. at 548. As this Court has recognized, "property that *must* be sold within those strictures is simply *worth less*." *Id.* at 539. After all, "[n]o one would pay as much to own such property as he would pay to own real estate that could be sold at leisure and pursuant to normal marketing techniques." *Ibid.* "And it is no more realistic to ignore that characteristic of the property"—*i.e.*, the fact that the property is subject to foreclosure—"than it is to ignore other price-affecting characteristics (such as the fact that state zoning law permits the owner of the neighboring lot to open a gas station)." *Ibid.*

The value of the tax-delinquent property is thus the value of the property subject to the strictures of the foreclosure process. And the best measure of that value is the price obtained at the actual tax sale, which will reflect those strictures. See *BFP*, 511 U.S. at 549 (explaining that "the only legitimate evidence of the property's value at the time it is sold is the foreclosure-sale price itself"). As long as the sale is conducted fairly—*e.g.*, with public notice, with open competition, and with sale to the highest bidder—the answer to the question "*What is a foreclosed property worth?*" is "the foreclosure-sale price itself." *Id.* at 547; see *id.* at 545 (similar).

To be sure, "the normal tool for determining what property is worth" is the concept of "fair market value." *BFP*, 511 U.S. at 549. But "[f]air market value" is a term of art, which refers to the price that would be obtained in a hypothetical sale under "market conditions," involving a "'willing'" seller who has "'ample time'" to find a willing buyer. *Id.* at 538 (citation omitted); see *Olson* v. *United States*, 292 U.S. 246, 257 (1934). Property that is *not* distressed would typically be sold under such market conditions. See *Kimball Laundry Co.* v. *United States*, 338 U.S. 1, 5-6 (1949). So when a government takes property that is not distressed—as when, for instance, a government exercises its power of eminent domain to take property to build a road—"fair market value" is often an appropriate tool for determining its worth. *Sheetz* v. *County of El Dorado*, 601 U.S. 267, 273 (2024); see *Kimball Laundry*, 338 U.S. at 6 n.3 (noting the "necessity of postulating a hypothetical sale" when property is taken by eminent domain).

But where, as here, the property is subject to the strictures of the foreclosure process, the hypothetical "market conditions" that "fair market value" presumes

do not reflect reality. *BFP*, 511 U.S. at 538; see *id.* at 537 (recognizing that "market value, as it is commonly understood, has no applicability in the forced-sale context"). That is because "foreclosure has the effect of completely redefining the market in which the property is offered for sale; normal free-market rules of exchange are replaced by the far more restrictive rules governing forced sales." *Id.* at 548. Given the "reality" of the foreclosure process, "the only legitimate evidence of the property's value at the time it is sold is the foreclosure-sale price itself." *Id.* at 548-549.

This Court's precedents confirm that "fair market value" does not apply in all contexts. The Court "has refused to designate market value as the sole measure of just compensation" because "there are situations where this standard is inappropriate." *United States* v. *564.54 Acres of Land*, 441 U.S. 506, 512 (1979); see *Fuller*, 409 U.S. at 490 (observing that "fair market value" is "'not an absolute standard nor an exclusive method of valuation'") (citation omitted). Those situations include cases in which the hypothetical market conditions that the standard presumes do not reflect reality. See *United States* v. *Cors*, 337 U.S. 325, 332 (1949) (explaining that this Court "has refused to make a fetish even of market value, since it may not be the best measure of value in some cases").

Commodities Trading, for example, involved "760,000 pounds of whole black pepper requisitioned by the War Department." 339 U.S. at 122. The Office of Price Administration (OPA) had fixed a ceiling price of 6.63 cents per pound, at or below which "[a]ll legitimate purchases and sales" of the commodity had to be made. *Id.* at 124; see *id.* at 122. The question was whether the OPA ceiling price was the proper measure of "just compensation"

under the Takings Clause. *Id.* at 122. The Court held that it was. *Id.* at 125. The Court acknowledged that the concept of "[f]air market value" would "normally" apply and that "the market value standard was developed in the context of a market largely free from government controls." *Id.* at 123. But the Court recognized that the OPA ceiling price had effectively redefined the market in which the commodity could be sold, making the ceiling price "the only value that could be realized by most owners." *Id.* at 124. Given that reality, the Court held that the government-controlled price could not "properly be ignored in deciding what is just compensation." *Ibid.* Here, too, the "state-prescribed" strictures of the foreclosure process cannot properly be ignored in the valuation. *BFP*, 511 U.S. at 539. Like a government-controlled price, those strictures have the effect of redefining the market in which the property can be sold, rendering the usual assumptions of "fair market value" inapplicable. See *id.* at 548.

This case, however, does differ from *Commodities Trading* in the following respect. Whereas the property owner in *Commodities Trading* had no way of evading the ceiling price, taxpayers do have a way of avoiding foreclosure: They can simply pay their taxes. In Michigan, taxpayers may redeem their property at any time before title vests with the county or State. See p. 3, *supra*. Under the Internal Revenue Code, taxpayers may redeem property seized and sold through an administrative levy "at any time within 180 days after the sale thereof." 26 U.S.C. 6337(b)(1); see 26 U.S.C. 6337(a) (similar right to "restore" the property before sale). Taxpayers may thus control whether their property is a distressed property or not. And if they would prefer their property to be sold under normal "market conditions"

rather than under the strictures of the foreclosure process, they can redeem the property and sell it on the market themselves.[2] The fact that taxpayers can control how their property is sold reinforces the fairness of treating the surplus proceeds from a foreclosure sale as just compensation.

Notably, the possibility that a taxpayer might even exercise his right of redemption *after* a tax sale (where such a post-sale right exists, see, *e.g.*, 26 U.S.C. 6337(b)(1)) tends to lower the tax-sale price because potential buyers are less likely to bid as much on a property that could later be redeemed. See *Slater*, 73 U.S. at 273. "Fair market value," however, would not account for that fact—further demonstrating that its assumptions do not reflect reality in this context.

2. Treating surplus proceeds as just compensation is fair to the public

Treating surplus proceeds as just compensation is also fair to the public because it respects a government's interest in collecting taxes from delinquent taxpayers. A government seizes a taxpayer's property because the taxpayer has not paid his taxes. And when the government later sells the property to satisfy that debt, it is simply invoking the same tool (the sale of a debtor's property) that a bank or other private lender could use if a borrower failed to pay. Indeed, it is a tool on which governments and private lenders alike have long relied to recover what they are owed. See *Hall* v. *Meisner*, 51

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[2] A delinquent federal taxpayer may also ask the government to discharge a specific property from the federal tax lien, thereby allowing the taxpayer to sell the property unencumbered by the lien and then use the proceeds from that sale to pay his tax debt. See, *e.g.*, 26 U.S.C. 6325(b)(3).

F.4th 185, 190-194 (6th Cir. 2022), cert. denied, 143 S. Ct. 2638, and 143 S. Ct. 2639 (2023).

Governments would effectively lose their ability to rely on that tool, however, if they had to use a property's purported "fair market value" as the basis for just compensation. An example illustrates the point. Suppose, as in *Tyler*, a county sold a delinquent taxpayer's property for $40,000 at a tax sale to satisfy a $15,000 tax bill. If the surplus proceeds were just compensation, the county could apply $15,000 of the $40,000 toward the tax bill and simply refund the $25,000 surplus to the taxpayer. But if the property's "fair market value" were $50,000, and if that were the basis for just compensation, the surplus would still be only $25,000, but the county would now have to pay $35,000 to the taxpayer (*i.e.*, $50,000 minus $15,000)—meaning that it would effectively need to refund $10,000 of the $15,000 that went to paying the tax bill.

The upshot is that the taxpayer could be deemed to have paid a $15,000 tax, even though the county obtained only $5,000. If a government is essentially forced to write off a portion of the tax debt any time a property's "fair market value" exceeds the tax-sale price—which is virtually always going to be the case, see *BFP*, 511 U.S. at 539—then tax sales will cease to be an effective method of collecting taxes. As Professor Cooley's treatise recognized, if "inadequacy of price" could "defeat" a tax sale, "the power to collect revenue by this method would be futile." Cooley 345. Treating fair market value as the basis for just compensation in this context would effectively deprive governments of an age-old tool of tax collection, thereby "result[ing] in manifest injustice" to the "public." *United States* v. *50 Acres of Land*, 469 U.S. 24, 29 (1984) (citation omitted). For that reason as well,

"[d]eviation from" the concept of fair market value is "required." *Ibid.*

3. Petitioner's counterarguments lack merit

Contrary to petitioner's contention (Br. 13), treating the surplus proceeds from the foreclosure sale as just compensation is consistent with the principle that the owner should be "put in the same position monetarily as he would have occupied if his property had not been taken." *United States* v. *Reynolds*, 397 U.S. 14, 16 (1970). Where, as here, the property is subject to the foreclosure process, what the owner loses is the difference between the value of the distressed property and the amount he owes. Because the surplus proceeds are the monetary equivalent of that difference, they make up for "the owner's loss." *United States* v. *Causby*, 328 U.S. 256, 261 (1946).[3]

Petitioner also contends (Br. 19) that just compensation cannot be based on the outcome of a sale that the government "[c]ontrols." But foreclosure sales are used by governments and private lenders alike to recover debts they are owed; indeed, the passage from Blackstone's *Commentaries* on which petitioner relies (Br. 22-23) mentions both tax officials and "landlord[s]" when describing their shared obligation "to render back the

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[3] Petitioner notes (Br. 27) that *BFP* reserved judgment on whether the "considerations" bearing on "mortgage foreclosures" also bear on "other foreclosures and forced sales," such as tax sales. 511 U.S. at 537 n.3. But the "considerations" to which *BFP* referred were "considerations" bearing on the *legal* issue of what constitutes "reasonably equivalent value" under the Bankruptcy Code. *Id.* at 537 & n.3. With respect to the underlying *economic* principles, there is no reason to doubt the applicability to tax sales of *BFP*'s discussion of what a foreclosed property is worth. Indeed, petitioner acknowledges (Br. 20) that "lower prices" are "inherent in a forced sale."

overplus" from any forced sale. 2 Blackstone 453. Such sales thus reflect use of a standard commercial tool—not any attempt at self-dealing. And ignoring the effect of foreclosure laws on a property's value would defy reality as much as ignoring the effect of zoning or price-ceiling laws would. See *BFP*, 511 U.S. at 539 & n.5. In any event, the taxpayers "[c]ontrol" (Br. 19) whether they pay their taxes and thus whether their property is subject to foreclosure at all.

D. A Remand Is Warranted To Consider Whether The Tax Sale In This Case Was Conducted Fairly

In this case, the tax-sale price was $76,008.00 and the amount that petitioner owed was $2,241.93, resulting in surplus proceeds of $73,766.07. Pet. App. 12a n.1. The Takings Clause treats those surplus proceeds as just compensation, as long as the tax sale was conducted fairly. What constitutes a fairly conducted tax sale for purposes of the Takings Clause should be understood in light of the Nation's history and tradition of tax sales. See pp. 10-15, *supra*.

Petitioner asserted below that the County employs "unfair procedures" in conducting tax sales. Pet. C.A. Third Br. 4 n.5; see *ibid.* ("Evidence that should be allowed to be collected will establish the unfair procedures employed by Isabella County in these fire-sale auctions."); Pet. Br. 37-38 (still questioning Michigan's procedures). But petitioner did not develop the point; the parties did not join issue on whether the sale in this case was procedurally fair; and the courts below did not address that question. Because this Court is "a court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005), the judgment should be vacated and the case remanded for consideration of whether the sale was conducted fairly for purposes of the Takings Clause.

See, *e.g.*, *Golan* v. *Saada*, 596 U.S. 666, 683 (2022) (remanding for the lower courts "to apply the proper legal standard in the first instance"). As part of that consideration, the courts below could consider whether and to what extent petitioner has preserved the issue. If he has, he will bear the burden of showing that the sale was not conducted fairly. See *Commodities Trading*, 339 U.S. at 128; *United States ex rel. TVA* v. *Powelson*, 319 U.S. 266, 273 (1943).

II. THE EXCESSIVE FINES CLAUSE IS NOT IMPLICATED HERE

If this Court concludes that petitioner is entitled to just compensation under the Takings Clause equal to the property's purported "fair market value" minus what he owes, there will be no need to reach the Excessive Fines Clause issue; the Takings Clause will have given petitioner all the relief that he seeks. This Court will need to reach the Excessive Fines Clause issue only if it concludes that petitioner's just compensation is limited to the surplus proceeds from a fairly conducted tax sale. Then the question will be whether the Excessive Fines Clause entitles petitioner to more.

The answer is no. The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend. VIII. "Taken together, these Clauses place 'parallel limitations' on 'the power of those entrusted with the criminal-law function of government.'" *Timbs* v. *Indiana*, 586 U.S. 146, 151 (2019) (citation omitted). By its terms, the Excessive Fines Clause applies only to "fines." U.S. Const. Amend. VIII. When the Clause "was adopted, 'the word "fine" was understood to mean a payment to a sovereign as punishment for some offense.'" *United States* v. *Bajakajian*, 524 U.S.

321, 327 (1998) (citation omitted). "The Excessive Fines Clause thus 'limits the government's power to extract payments, whether in cash or in kind, "as punishment for some offense."'" *Id.* at 328 (citation omitted).

When a government sells a taxpayer's property and refunds the surplus proceeds, the only portion of the sales proceeds that the government keeps is payment for what the taxpayer owes. That is not "punishment for some offense." *Bajakajian*, 524 U.S. at 327 (citation omitted). Rather, it is reimbursement for the government's losses—*i.e.*, the unpaid taxes and the costs associated with their late payment and collection. See *id.* at 342 (distinguishing "punishment for an offense" from "reimbursing the Government" for "losses"). There is thus no dispute that the portion of money kept as payment for what the taxpayer owes is not a "fine" under the Excessive Fines Clause.

To be sure, to obtain that payment, the government seizes the taxpayer's property, which it then sells to satisfy the unpaid taxes. Thus, when the value of the property exceeds what the taxpayer owes, the government seizes that excess value. But, for three reasons, that seizure is also not a "fine" under the Excessive Fines Clause.

First, the seizure is not a "payment" at all. *Bajakajian*, 524 U.S. at 327 (citation omitted). The government does not keep the property's excess value; rather, it returns the excess value by refunding the surplus proceeds, as the Takings Clause requires. See pp. 9-27, *supra*. Those proceeds make the taxpayer "whole," *Olson*, 292 U.S. at 255, meaning that the seizure of the property's excess value results in no payment to the government at all. The only payment that it receives is for the tax debt—which, as explained above, is also not a "fine."

Petitioner nevertheless contends (Br. 31) that, by refunding only the surplus proceeds, the government imposes an "economic sanction" equivalent to the difference between the property's purported "fair market value" and the tax debt. That contention assumes, however, that "fair market value" reflects what the distressed property is worth. And as explained above, that assumption is incorrect. See pp. 19-23, *supra*.

Second, even if the seizure could be characterized as a "payment," it is not "punishment." *Bajakajian*, 524 U.S. at 327 (citation omitted). Whether a payment is "punishment" depends on its "purpose." *Austin* v. *United States*, 509 U.S. 602, 610 (1993). A payment is punishment if "it can only be explained as serving in part to punish." *Ibid.* When the government seizes a taxpayer's property for a tax sale, its purpose is not to punish the taxpayer, but to satisfy the tax debt. "[T]he state is only interested in obtaining the revenue it has called for." Cooley 323. And when a taxpayer's property is indivisible, seizing the whole property (including the excess value) is merely a means of obtaining that revenue. The taxpayer's general ability to repossess the property by paying what he owes reinforces the point: The government's concern is remedying the non-payment. See Cooley 322 ("Payment of the tax by the owner, or by any one entitled to make it, is an absolute defeat and termination of any statutory power to sell.") (emphasis omitted). The seizure therefore serves solely a remedial (or compensatory) purpose.

Indeed, governments have been seizing and selling property for non-payment of taxes for centuries, and their doing so has been considered nonpunitive. See pp. 10-15, *supra*; cf. *Bajakajian*, 524 U.S. at 330-331 (discussing whether "traditional *in rem* civil forfeitures"

were "historically considered nonpunitive"). When governments foreclose on property, they are simply using the same tool used by banks and private lenders when borrowers fail to pay mortgages or other debts. And just as foreclosure has been considered remedial in the commercial context, it has also been considered remedial in the tax context. See *Hall*, 51 F.4th at 190-194 (recounting the history of foreclosure as a remedy for a borrower's or taxpayer's failure to pay); Henry Campbell Black, *A Treatise on the Law of Tax Titles* § 194, at 241 (2d ed. 1893) (observing that "foreclosure" is "merely designed as an orderly and convenient process for the collection of the revenue"). Nothing in Michigan's statute contradicts that historical understanding. See Mich. Comp. Laws § 211.78(1) (expressing the Act's purpose as "encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes"); *Rafaeli, LLC* v. *Oakland County*, 952 N.W.2d 434, 447 (Mich. 2020) (describing the Act as "not punitive").

Of course, the seizure of a taxpayer's property to satisfy an unpaid tax bill may have the incidental effect of deterring non-payment. Cf. *Hudson* v. *United States*, 522 U.S. 93, 102 (1997) (recognizing that "all civil penalties have some deterrent effect"). But whether something qualifies as "punishment" under the Excessive Fines Clause depends on its "purpose," not its effect. *Austin*, 509 U.S. at 610. And because the seizure can "fairly be said solely to serve a remedial purpose," *ibid.*, it cannot be considered punishment.

Third, even if the seizure could be considered a "payment" and "punishment," it does not constitute punishment "for an offense." *Bajakajian*, 524 U.S. at 328. "[O]ffense" means "*criminal* offense." *Id.* at 340 (emphasis added); see *id.* at 341 (considering whether for-

feitures were "considered punishments for criminal offenses"). Indeed, all of this Court's decisions applying the Excessive Fines Clause have involved either sanctions imposed in criminal prosecutions, see *id.* at 325-326, 328, 332-333 (criminal *in personam* forfeiture of currency); *Alexander* v. *United States*, 509 U.S. 544, 547-548, 558 (1993) (criminal *in personam* forfeiture of property), or civil *in rem* forfeiture actions tied directly to the commission of crimes, see *Austin*, 509 U.S. at 620 (civil *in rem* forfeiture of property "tie[d]" "directly to the commission of drug offenses"). Because the seizure of a taxpayer's property to satisfy an unpaid tax bill bears no relation to a crime, it cannot be considered punishment for a criminal offense.

Finally, only an "excessive" fine violates the Clause. U.S. Const. Amend. VIII. A fine is excessive if it is "grossly disproportional to the gravity of [the] offense" —the same standard "articulated in [this Court's] Cruel and Unusual Punishments Clause precedents." *Bajakajian*, 524 U.S. at 334, 336. Here, even if the seizure of a taxpayer's property could be considered a "fine," it is not an "excessive" one. After all, the State returns the surplus proceeds from the eventual sale as just compensation. See pp. 9-27, *supra*. So whatever the property's excess value may be, the taxpayer is justly compensated for it, defeating any suggestion that the seizure is "excessive."

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

Respectfully submitted.

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