

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 OAKLAND COUNTY AS *AMICUS
CURIAE* IN SUPPORT OF RESPONDENT**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
1. The Proceeds from a Fair Auction are Just Compensation.	3
2. Tax Assessments do not Establish Just Compensation.	5
CONCLUSION.....	11

TABLE OF AUTHORITIES

Cases

<i>Akers v. Comm'r</i> , 798 F.2d 894, 896 (6th Cir. 1986).....	10
<i>Atlas MF Mezzanine Borrower LLC v. Macquarie Texas Loan Holder LLC</i> , 199 A.D.3d 439, 439, 158 N.Y.S.3d 19, 21 (2021).....	3
<i>Bowie Lumber Co. v. United States</i> , 155 F.2d 225, 228 (5th Cir. 1946).....	6
<i>City of Muskegon v. Berglund Food Stores, Inc.</i> , 50 Mich. App. 305, 309, 213 N.W.2d 195, 198 (1973).....	7
<i>Detroit v. Detroit Plaza Ltd. P'ship</i> , 273 Mich. App. 260, 265-66, 730 N.W.2d 523, 527 (2006).....	10
<i>Dry Creek Cattle Co. v. Basque Cartel</i> , 95 F.3d 1161 (10th Cir. 1996).....	3
<i>Eaton v. Boles</i> , No. 5:03-CV-165, 2005 WL 8164008, at *4 (W.D. Mich. Nov. 3, 2005).....	7
<i>Fakhoury v. O'Reilly</i> , No. 16-13323, 2022 WL 909347, at *5 (E.D. Mich. Mar. 28, 2022)	8
<i>Hall v. Meisner</i> , 51 F.4th 185 (6th Cir. 2022)	1
<i>Headrick v. Headrick</i> , No. E200802284COAR3CV, 2009 WL	

3518168, at *4-9 (Tenn. Ct. App. Oct. 30, 2009).....	4
<i>Hurlock Food Processors, Inv. Assocs. v. Mercantile-Safe Deposit & Tr. Co.</i> , 98 Md. App. 314, 320, 633 A.2d 438, 440-41 (1993)	3
<i>Jackson v. Southfield Neighborhood Revitalization Initiative</i> , --- N.W.3d ---, No. 166320, 2025 WL 1959046 (Mich. July 16, 2025).....	1
<i>Johnson & Wimsatt v. Reichelderfer</i> , 50 F.2d 336, 337 (D.C. Cir. 1931)	6
<i>Love v. Basque Cartel</i> , 873 F. Supp. 563 (D. Wyo. 1995).....	3
<i>PVI, Inc. v. Ratiopharm GmbH</i> , 253 F.3d 320, 324 (8th Cir. 2001).....	10
<i>Rafaeli, LLC v. Oakland Cnty.</i> , 505 Mich. 429, 952 N.W.2d 434 (2020)	1
<i>Tarrify Props., LLC v. Cuyahoga Cnty., Ohio</i> , 37 F.4th 1101, 1108 (6th Cir. 2022).....	6
<i>Tyler v. Hennepin Cnty., Minnesota</i> , 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023).....	1
<i>United States v. 711.57 Acres of Land in Eden Twp., Alameda Cnty., Cal.</i> , 51 F. Supp. 30, 32 (N.D. Cal. 1943)	6

<i>United States v. Certain Parcels of Land in Arlington Cnty., State of Va.</i> , 261 F.2d 287, 290 (4th Cir. 1958).....	6
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Other Authorities

Dept. of Treasury, Mich. State Tax Comm’n, <i>Bull. No. 11 of 2011, The Equalization of Assessed Values</i> (Oct. 31, 2011).....	9
---	---

Dept. of Treasury, Mich. State Tax Comm’n, <i>Bull. No. 2 of 2014, Property Inspection</i> (Feb. 10, 2014).....	8
---	---

<i>Frequently Asked Questions</i> , Tax-Sale info Michigan County Tax Auctions.....	4
--	---

<i>How bidding works</i> , eBay Customer Service	4
--	---

INTEREST OF *AMICUS CURIAE*

Oakland County is the foreclosing governmental unit (FGU) when property owners in the County fail to pay their property taxes. The County has been on the front line of the multitude of recent cases challenging Michigan’s statutory scheme of collecting delinquent property taxes and the requirements of the Takings Clause. *E.g.*, *Rafaeli, LLC v. Oakland Cnty.*, 505 Mich. 429, 952 N.W.2d 434 (2020); *Hall v. Meisner*, 51 F.4th 185 (6th Cir. 2022); *Jackson v. Southfield Neighborhood Revitalization Initiative*, --- Mich. ---, No. 166320, 2025 WL 1959046 (Mich. July 16, 2025).

Under prevailing law, FGUs must pay former property owners any surplus generated at an auction which exceeds the amount of taxes, fees, interest and other lawful charges. *E.g.*, *Tyler v. Hennepin Cnty., Minnesota*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023); *Rafaeli*, 505 Mich. 429. The question in this case is whether the auction conducted by Isabella County, Michigan produced just compensation from which to begin the calculation. This is a question central to the auctions conducted by the other 82 counties in Michigan, including Oakland County, and other states which use a similar process.¹

¹ No counsel for a party authored this brief in whole or in part, and no person other than *amicus* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

A well marketed, open auction with appropriate advertising and notice to potential bidders generally produces just compensation. Former property owners are free to challenge an auction of a specific property if there are irregularities in the process. It does not appear that Petitioner challenged the auction process in this case.

This is the time-tested process to upset an auction. Courts regularly review auctions of mortgage-foreclosed properties, real estate in bankruptcy proceedings, sales under the Uniform Commercial Code, and other sales to satisfy debts to determine whether they were conducted fairly.

In addition, Petitioner incorrectly argues the starting point for an analysis of just compensation in this context is the assessed value for tax purposes. But tax assessments are based on groupings of properties and do not address differences in individual properties. This is especially true for tax foreclosed properties which are often neglected and in need of significant repairs.

ARGUMENT

1. The Proceeds from a Fair Auction are Just Compensation.

The Brief of the United States accurately traces the history and long-standing legal precedent that a fairly conducted auction produces just compensation. The County agrees with the analysis presented by the United States.

The Constitution's demand for just compensation is satisfied by a fair auction process, not an abstract and irrelevant notion of what price a property might or could bring.

Instead, the attributes of a fair auction process are where the property is widely advertised and marketed, presents information about the property and allows interested parties to acquire more information, has an open bidding process, and the bidding is open for a reasonable length of time. *E.g.*, *Hurlock Food Processors, Inv. Assocs. v. Mercantile-Safe Deposit & Tr. Co.*, 98 Md. App. 314, 320, 633 A.2d 438, 440-41 (1993) (affirming a “well advertised” auction sale where “over 200 people from at least 12 states had assembled” and where “98 persons [] registered at the sale,”); *Atlas MF Mezzanine Borrower LLC v. Macquarie Texas Loan Holder LLC*, 199 A.D.3d 439, 439, 158 N.Y.S.3d 19, 21 (2021) (affirming a sale where marketing included “an email blast to 8,400 potential investors, creation of an online data room, and advertisements in Real Estate Alert and the Wall Street Journal, ... attracting 63 potential bidders to the online data room ... and two third-party bidders to the auction itself – although only one of these ultimately bid”); *Love v. Basque Cartel*, 873 F. Supp. 563 (D. Wyo. 1995), *aff'd sub nom. Dry Creek Cattle Co. v. Basque Cartel*, 95 F.3d 1161 (10th Cir. 1996) (affirming an auction which was conducted according to the memorandum of procedures and advertisements published before the sale); *Headrick v. Headrick*, No.

E200802284COAR3CV, 2009 WL 3518168, at *4-9 (Tenn. Ct. App. Oct. 30, 2009) (affirming an auction which was “properly advertised, marketed, and all good faith buyers had a reasonable opportunity to bid competitively on the date of the sale.”).

Oakland County’s auction process exemplifies how most counties in Michigan currently conduct foreclosure auctions. They are open, robust and produce vigorous bidding. Oakland contracts with Title Check LLC, as do many other Michigan counties. The auction is entirely online. People anywhere can register for the auction. Bidding is open for 30 days before the stated end date and the current winning bid can be viewed. A bidder can establish automatic bid increases. A bidder can increase the bid at any time. *Frequently Asked Questions*, Tax-Sale info Michigan County Tax Auctions, <https://www.tax-sale.info/faq> (last visited Jan. 6, 2026). The auction process is very similar to the process used by eBay and other online businesses which sell items through auctions. *How bidding works*, eBay Customer Service, <https://www.ebay.com/help/buying/bidding/bidding?id=4003> (last visited Jan. 6, 2026).

The robust nature and breadth of the County’s process is illustrated by the number of bidders, their locations and the number of bids. In 2022, there were 524 registered bidders. While most were located throughout Michigan, the auction also drew bidders from 15 other states and three Canadian provinces.² Of those 524 registered bidders, 6,424 bids were placed.

The results were similar for subsequent years. In 2023, there were 341 registered bidders from 13 different states, one from Puerto Rico and one from South Australia, who placed 3,506 bids. In 2024, there

² States: Georgia, Utah, Florida, Wisconsin, Ohio, California, Texas, Colorado, Illinois, New Jersey, Missouri, Nevada, Kentucky, and Oregon. Provinces: British Columbia, Ontario, and Saskatchewan.

were 403 registered bidders from 21 different states and the province of Ontario, who placed 6,181 bids. In 2025, there were 417 registered bidders from 22 different states, who placed 3,776 bids.

A robust auction process satisfies the Constitution. The process used by Oakland County and many other Michigan counties is robust.

2. Tax Assessments do not Establish Just Compensation.

Petitioner's argument begins on a false premise. Petitioner incorrectly asserts the assessed value of his property for tax purposes at the time of foreclosure was the fair market value. *E.g.*, the property's "known assessed fair market value was \$194,400." Pet'r's Br. at 8. Petitioner repeatedly claims the fair market value of the foreclosed property was that amount, *i.e.*, "the property thereafter resold for \$195,000, confirming the home's true market value," *id.*, "Isabella County took title to the Pungs' \$194,400 home to collect a disputed \$2,242 debt." *Id.* at 10. Isabella County "chose to confiscate title to the home and place the entire \$194,400 property on the auction block..." *Id.* at 20. Isabella County "conceded [the property] was worth \$194,400...." *Id.* at 31. The "Pung family's \$194,400 home...." *Id.* at 33. "[P]roperty fairly valued at \$194,400...." *Id.* at 36. "[W]hy would Isabella County foreclose upon and sell a \$194,400 property...." *Id.* at 39. "The 'fine' was the forfeiture of a \$194,400 home...." *Id.* at 42. The "property's uncontested fair market value at the time of foreclosure...." *Id.* at 44.

Petitioner asserts that a sale for anything less does not produce just compensation. But tax assessments do not constitute a determination of fair market value or just compensation.

The majority rule in both federal and state courts is that tax assessments are not admissible in condemnation or takings/§1983 proceedings because they are not indicative of just compensation. *E.g.*, *Tarrify Props., LLC v. Cuyahoga Cnty., Ohio*, 37 F.4th 1101, 1108 (6th Cir. 2022) (“assessed valuation of property is not evidence of value for non-tax purposes”; “it is overwhelmingly established that assessed valuation does not create cognizable proof of valuation for purposes other than taxation.”); *Bowie Lumber Co. v. United States*, 155 F.2d 225, 228 (5th Cir. 1946) (explaining “[t]he great weight of authority holds that, except as declarations against interest, assessments are not admissible as evidence of value in condemnation proceedings.”); *United States v. Certain Parcels of Land in Arlington Cnty., State of Va.*, 261 F.2d 287, 290 (4th Cir. 1958) (noting that, “[i]t is the overwhelming weight of authority that assessed value is not competent direct evidence of value for purposes other than taxation.”); *United States v. 711.57 Acres of Land in Eden Twp., Alameda Cnty., Cal.*, 51 F. Supp. 30, 32 (N.D. Cal. 1943) (“One other matter requires comment. In the cross-examination of defendants' appraisers, the assessed valuation of various parcels, for state and county tax purposes, was disclosed in the evidence. I have not taken such evidence into account but have excluded it from consideration in determining fair market value.”); *Johnson & Wimsatt v. Reichelderfer*, 50 F.2d 336, 337 (D.C. Cir. 1931) (concluding “[i]t is widely recognized that appraisements of property by tax assessors for purposes of taxation are not reliable guides of market value, and consequently not admissible in condemnation proceedings.”); *Eaton v.*

Boles, No. 5:03-CV-165, 2005 WL 8164008, at *4 (W.D. Mich. Nov. 3, 2005) (“ ‘It is widely recognized that appraisements of property by tax assessors for purposes of taxation are not reliable guides of market value, and consequently not admissible in condemnation proceedings.’ ... Thus, Defendants may not offer the tax assessment as evidence against Plaintiffs.”); *City of Muskegon v. Berglund Food Stores, Inc.*, 50 Mich. App. 305, 309, 213 N.W.2d 195, 198 (1973) (“A majority of our state courts reject the admission of tax assessments as evidence of value of property taken” unless the government was the assessing authority).

Among other reasons, tax assessments are not relevant because they are performed only occasionally and do not consider the interior condition of the property. For example, Ohio only performs such assessments every six years. In *Tarrify Properties*, the Sixth Circuit noted: “A lot can happen to property values over time....” 37 F.4th at 1107. As a result, assessments substantially trail actual value.

The interior condition of a property is critical to determining fair market value. But the interior conditions of properties for tax assessment purposes are not considered: “the mass appraisal methodology used by counties, most notably, does not consider the interior conditions of each property.” *Id.* As the Court can appreciate, the interior condition of many foreclosed properties is less than ideal.

Instead, tax assessments consider similarly situated areas which are valued as a group with variations based on square footage, number of rooms and other common attributes. There is only

occasionally an actual exterior inspection of the property and rarely – if ever – an inspection of the interior.

For that reason, appraisers do not consider tax assessments in determining fair market value or just compensation. For example, in *Fakhoury v. O'Reilly*, No. 16-13323, 2022 WL 909347, at *5 (E.D. Mich. Mar. 28, 2022), a §1983/takings case, the District Judge quoted the testimony of the highly qualified appraisers regarding reliance on state equalized value (tax assessment):

Q. And relying upon state equalized value as a means of valuing property is not a generally accepted practice in the appraisal community, is it?

A. Absolutely correct.

Stated more bluntly, one of the appraisers in that case said: “If an appraiser relied solely on state equalized value to determine the value of property, I respectfully submit that appraiser would stand in risk of losing his license.” *Id.*

The process for making tax assessments in Michigan is laid out in bulletins from the Michigan State Tax Commission. The Commission “recommends” that 20% of the properties in a city or township should be inspected each year. Dept. of Treasury, Mich. State Tax Comm’n, *Bull. No. 2 of 2014, Property Inspection* (Feb. 10, 2014), <https://www.michigan.gov/treasury/local/stc/state-tax-commission-bulletins> (click “2014-02 Property Inspection”). Theoretically, that means a property is inspected every five years. But the Bulletin does not

require that different properties are reviewed each year. And it happens – some properties are not inspected for more than five years. “A lot can happen to property values” over five years. *Tarrify*, 37 F.4th at 1107.

In addition, an inspection consists of “physical measuring and listing of all a property’s elements, including but not limited to class of construction, square footage, listing of improvements (garages, decks, porches, etc).” Mich. State Tax Comm’n, *supra*. An interior inspection “is not mandated by the Commission.” *Id.* “There are no circumstances under which it is proper for an assessing officer or field staff member to look in the windows of a home or property.” Inspectors are to leave the property if asked by the owner and “they should do so immediately and without question.” *Id.*

Three different bodies then review the assessments with the goal to “maintain uniformity” across cities and townships, across each county and the state as a whole. Dept. of Treasury, Mich. State Tax Comm’n, *Bull. No. 11 of 2011, The Equalization of Assessed Values* (Oct. 31, 2011), <https://www.michigan.gov/treasury/local/stc/state-tax-commission-bulletins> (click “2011-11 Equalization Process”). First, the local assessor is to “establish and maintain uniformity between individual parcels of property in the township or city.” *Id.* Second, the County Equalization Department is “to establish and maintain uniformity between classifications and between townships and cities in the county by estimating the total value of each classification in each Township and City.” *Id.* Third, the State Tax Commission is “to establish and

maintain uniformity between classifications for counties by establishing the value of the total of each classification in each county.” *Id.* Fundamentally, tax assessments are to raise revenue, not to determine fair market value or just compensation of a specific property.

Further illustrating the point is the fact that property-specific appraisals are notoriously divergent from both the market and what second, third, fourth, and fifth appraisers opine. For example, in *Akers v. Comm’r*, 798 F.2d 894, 896 (6th Cir. 1986), the donated property was variously appraised for a) \$243,155, b) \$210,000, c) \$184,861, d) \$130,290 and e) \$20,500. In *Detroit v. Detroit Plaza Ltd. P’ship*, 273 Mich. App. 260, 265-66, 730 N.W.2d 523, 527 (2006), the City’s appraiser put the value of the property at \$13,712,500 while the property owner’s appraiser valued the property at \$31,500,000. In *PVI, Inc. v. Ratiopharm GmbH*, 253 F.3d 320, 324 (8th Cir. 2001), appraisers of stock put its value at either \$36,750,000 or \$545,860.

Both assessments and appraisals are fundamentally flawed for the determination of just compensation in this context. Rather, a fair auction process satisfies the Constitution.

CONCLUSION

The judgment of the Sixth Circuit should be affirmed. A robust auction process, like that employed by Oakland County, satisfies the Just Compensation Clause. To the extent the record in this case is not well developed regarding Respondent's auction process, the Court should remand the case to determine whether the auction held by Respondent was fairly conducted. If so, the auction produced just compensation to which Petitioner was entitled. In any case, state tax assessments are irrelevant in determining just compensation.

Respectfully submitted,

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