

No. 25-95

In the Supreme Court of the United States

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MICHAEL PUNG, PERSONAL REPRESENTATIVE OF THE
ESTATE OF TIMOTHY SCOTT PUNG, PETITIONER

v.

ISABELLA COUNTY, MICHIGAN

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

**AMICUS BRIEF OF MICHIGAN, TEN OTHER
STATES, AND THE DISTRICT OF COLUMBIA
IN SUPPORT OF RESPONDENT**

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QUESTIONS PRESENTED

1. Do States violate the Takings Clause when they return the surplus proceeds, but no more, to former owners of foreclosed property?
2. Do States violate the Eighth Amendment when the surplus proceeds from a tax foreclosure sale are returned to the former property owner?

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INTEREST OF AMICI CURIAE

Amici States, Michigan, Colorado, Hawai'i, Illinois, Minnesota, Mississippi, New Mexico, South Dakota, Utah, Vermont, Washington, and District of Columbia file this brief because this case raises fundamental concerns regarding the collection of state and local taxes—a function historically left to the States under principles of federalism. Granting Pung's requested relief will disrupt the collection of property taxes in all 50 States by depriving States of an important mechanism to collect delinquent taxes. This will result in increased tax delinquency, leaving States and their local governments without the necessary revenue to maintain essential public services.

INTRODUCTION AND SUMMARY OF ARGUMENT

Every State in the nation relies on some form of property taxation to fund essential public services, and each State has enacted laws to ensure the timely collection of those taxes. The degree to which each of the States—and specifically municipal governments within each State—depend on property tax revenue varies, but some level of reliance exists uniformly.

Each State's choice about what that mix of revenue sources should be is a delicate policy decision; some States have significant royalty income while others rely on more revenue from tourism-based taxes, sales taxes, income taxes, or corporate taxes. But whatever a given jurisdiction's structure and administration, property taxation remains a key component of each State's fiscal system. When those

taxes remain unpaid, every State provides a process to enforce those obligations.

Almost uniformly, that process includes tax foreclosure as a last resort. To maintain local government stability and ensure uninterrupted delivery of essential public services, each State must have a mechanism to collect delinquent amounts without depleting existing public revenue. Tax foreclosure serves this function—not as the government's first recourse, but as its final option within a broader statutory framework intended to promote voluntary, timely payment. And tax foreclosure typically occurs only after years of delinquency.

Here, Pung had notice of his tax obligation and an opportunity to either pay it or to timely challenge it. He did neither. Nor did he participate in the state tax foreclosure process, which provides time, notice, and review by a state trial court. Yet despite foregoing these protections, he argues he is now owed more than the amount his property realized at a well-noticed, advertised, competitive public sale.

This argument contradicts longstanding collection-law principles. For centuries, the market has set the value for lawfully seized property sold to satisfy a debt, and foreclosure sales occur under inherently distressed conditions. Requiring governments to pay former owners "just compensation" calculated based on the hypothetical pre-foreclosure value—rather than the actual sale proceeds—would effectively eliminate tax foreclosure

as a viable collection tool and threaten States' ability to collect property taxes from unwilling taxpayers.

Having allowed his property to reach foreclosure—with full notice of the consequences—Pung cannot reasonably expect it to be valued as though it sold under normal market conditions. The Constitution does not entitle delinquent taxpayers to hypothetical pre-foreclosure valuations rather than actual sale proceeds. The Fifth Amendment is not violated because foreclosed property operates in a distressed market, and the best evidence of its value is the public sale price—not the hypothetical valuation under normal market conditions. Neither is the Eighth Amendment Excessive Fines Clause implicated, because state laws that allow foreclosure to collect delinquent taxes and return only surplus proceeds to the former property owner are neither criminal nor punitive.

ARGUMENT

I. A State comports with the Takings Clause by returning only surplus proceeds actually received to the former owner of property foreclosed for tax delinquency.

Michigan and States across the country rely on property taxes to fund myriad state and local services and projects, including local school budgets and basic infrastructure. In Michigan and many other States, these revenues also secure bond obligations for local infrastructure projects, making reliable collection critical to fiscal stability. Of course, property owners must be given ample notice and have fair

opportunities to challenge tax assessments. But when such notice and fair opportunities to challenge tax assessments are provided, and assessments become final and property owners still fail to pay, local governments may use foreclosure and public auctions as tools of last resort to collect these delinquent taxes while returning any surplus proceeds obtained through the auction to the former property owner. Such systems are fair to both the former property owner and other taxpayers who have timely paid their share of taxes to fund public services and projects.

A. Pung’s proposed rule would effectively eliminate foreclosure sales as a tool for collecting extremely delinquent taxes.

The universal experience of the States of foreclosing-on tax-delinquent properties to satisfy outstanding unpaid property taxes is longstanding in origin and well supported in law. Pung’s proposal to require the return of fair market value—rather than the yield of the actual public sale—would have a devastating effect on the ability of the States to continue this historical, traditional practice.

1. Requiring States to return the hypothetical non-distressed “fair market value” as supposed just compensation would make foreclosure sales useless as a tool for collecting delinquent taxes.

Pung’s claim to the “fair market value” or “equity” following tax foreclosure would jeopardize state taxation and the delinquent tax collection process. If a

tax-collecting government must compensate former owners based on hypothetical pre-foreclosure property valuations, regardless of actual public sale proceeds, tax collection via foreclosure will become a nonviable, money-losing proposition.

Each State, including Michigan, provides considerable time and procedural protections so that taxpayers can meet their tax obligations without foreclosure. But when this extensive process fails to secure payment, foreclosure becomes the only means by which States and their municipalities can collect the unpaid tax debts. Although each State has its own processes, one principle is universal: if voluntary payments are not secured and foreclosure is not a viable tool, the result will be increased property tax delinquency.

Adopting Pung's positions would thus wreak havoc on every State's tax administration system. For centuries, governments have used these practices, lawfully, as a tool of last resort. Rendering that tool economically and practically unviable, without historical or legal precedent, would pull a key thread woven into the tapestry of each State's tax collection system.

Indeed, Pung's proposed rule would make delinquent tax collection impractical, if not impossible. Under his proposed theory, a delinquent property owner could refuse to pay taxes, allow foreclosure, and then obtain a windfall by recovering substantially more than the public sale proceeds. Theoretically, Pung (or any property owner) could directly or through

a strawman purchase his own property at public auction (at an auction-based price) and still sue the government for the property's hypothetical normal market value—which almost uniformly exceeds foreclosure sale prices. Pung would retain the real property (perhaps eliminating other property liens in the process) while collecting damages, effectively paying no property taxes. Importantly, that windfall would need to be paid from other tax revenues—i.e., from timely taxpayers, whose funds were paid in order to support public services rather than to reward delinquent taxpayers for inaction.

2. For that reason, States return surplus proceeds actually received, but no more.

Across the country, States have implemented statutory frameworks addressing surplus proceeds arising from tax-sale or tax-foreclosure proceedings. Some frameworks have existed for decades; others are more recent.

Michigan's framework has developed through both statutory and judicial developments. In 2020, the Michigan Supreme Court returned to common-law principles: the government's absolute right to collect that which is owed but a taxpayer's right to claim that which remained. The Legislature immediately responded by amending the statute to provide a context-specific remedy addressing both the prior statute's deficiencies and those it wronged. This was just prior to, but consistent with, this Court's holding in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), as

well as *Nelson v. City of New York*, 352 U.S. 103 (1956).

After the Michigan Supreme Court’s decision in *Rafaeli v. Oakland County*, 952 N.W.2d 434 (Mich. 2020), the Michigan Legislature amended the General Property Tax Act to allow former property owners to claim any remainder from the public sale *for all prior interest holders*. Mich. Comp. Laws § 211.78t. As a result, Michigan law now provides a remedy for individuals like Pung and does so in the same trial court that handled the underlying foreclosure action.

But neither Michigan nor any other State provides what Pung seeks here—“fair market value” as if foreclosure had never occurred.

Minnesota, for example, requires a county auditor to sell foreclosed property at the initial public auction to the highest bidder in a manner reasonably calculated to facilitate public participation. Minn. Stat. § 282.005(4)(a). Any sale proceeds exceeding the minimum bid, taxes, and costs are then available for distribution to “interested parties,” with the county auditor providing notice and allowing claims within a statutory window. Minn. Stat. §§ 282.005(5)–(6).¹ Alabama, California, and Florida likewise maintain structured claim processes with state-law specific notice requirements and time-limited recovery windows for surplus proceeds. See Ala. Code 1975,

¹ See also Minnesota Department of Revenue, Delinquent Tax and Tax Forfeiture Manual, <https://www.revenue.state.mn.us/sites/default/files/2025-12/delinquent-tax-and-tax-forfeiture-manual-december-2025.pdf> (last accessed January 20, 2026).

§ 40-10-28; Cal. Rev. & Tax Code § 4675; Fla. Stat. § 197.582. Georgia law mandates surplus notice to record owners. Ga. Code § 48-4-5. These mechanisms operate regardless of the underlying collection systems—whether the State uses tax deeds (California), a hybrid system (Florida), or tax liens (Alabama).

State laws also address the public sale, with some utilizing public auctions or tax lien sales, and more recently, limited listings with private realtors. Maine, for example, requires engaging a private realtor for listing and sale within 12 months, aiming for the highest reasonably anticipated price. 36 Me. Rev. Stat. tit. 36, § 943-C. Massachusetts has a similar provision. Mass. Gen. Laws ch. 60, § 64A(c)(1). Public auctions, by contrast, are historically grounded, transparent, and operate with ministerial constraints, limiting discretion while providing market-validated pricing. But no matter the approach, the variations allow policymakers to observe the relative efficiency, fairness, and constitutional resilience of different approaches. Allowing these policy determinations preserves constitutional safeguards while allowing each State to meet its desired policy outcomes.

Collectively, these examples demonstrate that surplus-recovery mechanisms are widespread, operational, and embedded within each State's taxation system, providing constitutionally adequate remedies within state law. They also underscore the diversity and flexibility of state tax and property systems. But no matter the method of sale, all mechanisms to obtain the surplus start with the public

sale price; i.e., what was actually collected by offering the property on the market. A federal mandate imposing a uniform, full “fair-market-value” compensation rule would disrupt longstanding state prerogatives in property taxation and debt collection.

3. The States’ practice of tax foreclosure has deep historical roots.

Pung’s proposed rule would effectively eliminate foreclosure and sale as a viable tax collection tool, one that is widely used and has deep historical roots; tax foreclosure is not a modern innovation but a practical, historically rooted response to nonpayment. This collection tool dates “at least as far back as Runnymede in 1215.” *Tyler*, 598 U.S. at 639. As this Court observed, it is well-worn, blackletter law “that a government may not take more from a taxpayer than she owes,” *but* “they could remove property ‘until the debt . . . shall be fully paid . . . and the residue shall be left’” to the rightful owner. *Id.* (quoting W. McKechnie, *Magna Carta, A Commentary on the Great Charter of King John*, ch. 26, p. 322 (rev. 2d ed. 1914)).

States have long employed varied statutory foreclosure systems, but public sales are uniformly considered lawful, routine mechanisms. Judicial review has focused on procedural compliance, not on questioning the propriety of the public sale or auction method itself. Indeed, this Court upheld a Texas statute authorizing judicial foreclosure and sale for unpaid taxes, confirming that a State may adopt and apply foreclosure remedies to existing tax delinquencies without violating the Constitution.

League v. Texas, 184 U.S. 156, 158 (1902). In doing so, this Court described tax foreclosure as an ordinary judicial proceeding, expressly recognizing that the State may require a delinquent taxpayer to bear the routine costs of enforcement, including compensation to officials for preparing delinquency lists, conducting the suit, and selling the land. *Id.* at 160–61.

State courts have long embraced this understanding of tax foreclosure. The Michigan Supreme Court recognized in 1893 that every property owner “knows that his land is subject to taxation; that he must pay his fair share of the public revenue; and that, if he fails to do so, proceedings will be taken under the law against his land.” *Cole v. Shelp*, 56 N.W. 1052, 1052 (Mich. 1893). That court also recognized that “[i]t is perfectly clear that the individual who has the legal title to the land at the time of the tax sale, is the owner, entitled, under the statute, to the surplus money, if any there be.” *People ex rel. Seaman v. Hammond*, 1 Doug. 276, 280 (Mich. 1844). Nebraska has authorized public tax certificate sales for tax-delinquent properties since at least 1879. *Continental Res. v. Fair*, 971 N.W.2d 313, 316 (Neb. 2022), *cert. granted, judgment vacated*, 143 S. Ct. 2580 (2023). Pennsylvania courts have long treated public tax sales as lawful enforcement mechanisms, reviewing statutory compliance (notice, property description, and sale procedures) rather than market conditions. *Powell v. Lantzy*, 34 A. 450 (Pa. 1896). In *Powell*, the court presumed the sale’s validity while scrutinizing the purchaser’s conduct because he held an interest in the delinquent property before sale, noting that “one cannot, by a purchase at a tax sale caused by his

failure to pay taxes which he owed the state . . . acquire a better title, or a title adverse to that of other parties in interest . . . founded upon his own neglect of duty.” *Id.* at 451.

These State examples illustrate a longstanding, nationwide judicial consensus: public tax sales are lawful, historically rooted, and presumed valid. States have modernized their tax systems since these early cases—adding tax exemptions, procedural protections, foreclosure-avoidance programs, and equitable extensions—but these reforms do not question the fundamental validity of tax foreclosure and public sale, which remain reliable, market-exposed, statutorily sanctioned methods of tax collection.

The IRS has also used some form of this process—recording liens, seizing, and selling property—for more than a century to collect *nonproperty taxes*. *Bull v. United States*, 295 U.S. 247 (1935). Indeed, that was the entire premise of *United States v. Lawton*, 110 U.S. 146 (1884) in which the “property owner had an unpaid tax bill” to the United States and as a result “[t]he Federal Government seized the taxpayer’s property.” *Tyler*, 598 U.S. at 643 (citing *Lawton*, 110 U.S. at 148). There was no question that the government had the right to use tax foreclosure as a collection method. Rather, the dispute was whether the former property owner could claim “any surplus from [the] tax sale[]” when the government retained the property rather than selling it. *Id.* Of course, “the taxpayer was still entitled to the surplus under the statute, just as if the Government had sold the property.” *Id.* (citing *Lawton*, 110 U.S. at 149–50). The

same was true in *United States v. Taylor*, 104 U.S. 216 (1881), where this Court “held that the taxpayer was entitled to the surplus because nothing in the 1862 Act took ‘from the owner the right accorded him by the act of 1861, of applying for and receiving from the treasury the surplus proceeds of the sale of his lands.’” *Tyler*, 598 U.S. at 643 (quoting *Taylor*, 104 U.S. at 218–19).

In the same way, States and their municipalities likewise do not violate the Fifth Amendment when they utilize tax foreclosure to collect delinquent taxes, follow the law for public auctions, and provide access to any surplus proceeds, less the tax debt and associated fees, to the former property owner. This is not new. “[T]his principle,” that governments could “seize and sell” land “‘to satisfy the taxes due thereon’” preceded the founding of this nation—it derived from long existing practices “rooted in English law” that allowed the sovereign to “seize and sell a taxpayer’s property to recover a tax debt” reserving to the delinquent taxpayer any “Overplus” from that sale. *Id.* at 639 (quoting 4 W. & M., ch. 1, § 12, in 3 Eng. Stat. at Large 488–489 (1692)). That historically rooted “principle” of seizure and sale to secure tax debts “made its way across the Atlantic.” *Id.* at 640 (quoting Act of July 14, 1798, § 13, 1 Stat. 601). “Ten states adopted [such] statutes shortly after the founding” which allowed for seizure and sale of land to satisfy tax debts “and provided that if the sale produced more than needed for the taxes, ‘such overplus of money’ shall be paid to the owner.” *Id.* (quoting 1797 Md. Laws ch. 90, §§ 4–5).

Pung's argument cuts against centuries of sovereign debt collection laws.

B. The price realized in a public tax foreclosure sale is the best evidence of the property's value.

A property's value under normal circumstances or market conditions differs from its value under duress—such as when foreclosed upon to collect delinquent property taxes. This is not novel; it is a function of economics and market forces, a reality this Court has previously discussed.

1. For distressed property subject to foreclosure, the foreclosure sale price is the proper evidence of the property's value.

When state law provides for foreclosure and public sale to collect a debt through market-based disposition, the public sale result is the best evidence of the property's value. Normal market conditions are not the relevant benchmark in deciding the value of a distressed, foreclosed property. The “‘public sale [is] the truest test of the value’ of the landowner’s equitable interest in the land; and thus, a sale was ‘the best mode of disposing of the property, for the interest of both.’” *Hall v. Meisner*, 51 F.4th 185, 193 (6th Cir. 2022) (Kethledge, J.) (quoting *Lansing v. Goelet*, 9 Cow. 346 (1827)). Indeed, “the best evidence of a foreclosed property’s value is the property’s sales price, not what it was worth before the foreclosure.” *Freed v. Thomas*, 81 F.4th 655, 659 (6th Cir. 2023).

Pung's property, like other tax-foreclosed properties, operates in a distressed market. This Court recognized this reality in *BFP v. Resolution Trust Corp.*, reasoning that a property's "market value, as it is commonly understood, has no applicability in the forced-sale context; indeed, it is the very *antithesis* of forced-sale value." 511 U.S. 531, 537 (1994) (emphasis in original). "In short, 'fair market value' presumes market conditions that, by definition, simply do not obtain in the context of a forced sale." *Id.* at 538. Thus, "[m]arket value cannot be the criterion of equivalence in the foreclosure-sale context," and courts should not supplant their understandings of normal market value for market data derived from the actual post-foreclosure, forced sale market. *Id.* at 538–39. The standard Pung cites, "fair market value," is definitionally "not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner." *Id.* at 538 (quoting *Black's Law Dictionary* (6th ed. 1990)). Even Pung's use of "fair market value" presumes that a property has but one value; in appraisal theory (and consistent with this Court's analysis in *BFP*) a property's market value depends on the market and conditions in which it transacts.

It is true that in *BFP*, this Court addressed only the issue before it, i.e., a State's mortgage foreclosure laws and the conclusive effect of an actual sale price in light of a challenge under the Bankruptcy Code. That is, "[t]he considerations bearing upon other foreclosures and forced sales (to satisfy tax liens, for example) may be different." *Id.* at 537, n.3. But that caveat contemplates a foreclosure without a public

sale or, even where there was a public sale, the mere satisfaction of the liability. This Court’s reasoning regarding actual foreclosure sale results is an economic and appraisal reality that applies equally in this context.

The decisive question is whether state law procedures expose the property to the market applicable to distressed properties and whether those procedures were followed, such that the result should be trusted even if the result reflects the distressed nature of the transaction. *Id.* at 545.

2. Tax foreclosure is a last resort, following ample time, notice, and opportunity for delinquent taxpayers to satisfy a tax debt.

Property tax imposition and collection vary by State, but all state laws provide property owners substantial time, notice, and process to rectify delinquent taxes before foreclosure proceedings occur. Indeed, States, including Michigan, offer remedies short of foreclosure and short of full payment, including payment plans, abatement/exemption, and additional equitable extensions of the time to pay.²

² See Mich. Comp. Laws § 211.78q (providing for “delinquent property tax installment payment plan[s]”); Mich. Comp. Laws § 211.7cc (providing for retroactive granting of a principal residence exemption); Mich. Comp. Laws § 211.7u (providing for up to 100% property tax exemption for those in “poverty” including retroactively); Mich. Comp. Laws § 211.78k(4) (providing the trial court judge presiding over the tax foreclosure proceeding authority to consider a claim of “substantial financial

Foreclosures and public auctions of property happen only after years of delinquency. In Michigan, property owners generally have three years from the date the taxes were first due to redeem their property. Mich. Comp. Laws § 211.78g(3); *Rafaeli*, 952 N.W.2d at 444. Similarly, Illinois (a tax lien State) provides for a “tax sale” allowing counties to apply for a judgment and order of sale against the property. *In re LaMont*, 740 F.3d 397, 400 (7th Cir. 2014). But even after that sale, the taxpayer has at least two years to redeem the property by paying all amounts due. *Id.* If the taxpayer fails to redeem, the purchaser at the tax sale can obtain a deed to the property. See 35 Ill. Comp. Stat. 200/22–40.

In other words, taxpayers have years to pay taxes before foreclosure is permitted. And while redemption periods vary, all States allow taxpayers to redeem property by paying outstanding debts. Frank S.

hardship” under which it may “withhold[] property from foreclosure for 1 year or may enter an order extending the redemption period as the court determines to be equitable,” extending the default three year delinquency period).

Other States also provide installment payment options. See, e.g., Cal. Rev. & Tax Code § 4217; Kansas Stat. Ann. § 79-2024; N.Y. Real Prop. Tax Law § 1184; Ohio Rev. Code §§ 323.29–323.31. Washington waives certain interest and penalties on delinquent property taxes subject to possible tax foreclosure, if the taxpayer falls under a certain income level. Wash. Rev. Code § 84.56.020(19). And like Michigan, many States have income-based exemptions that, if applied for, can reduce or eliminate property tax liability before they turn into a delinquency, entirely avoiding the risk of foreclosure. See Mass. Gen. Laws ch. 59, § 5, cl. 18; R.I. Gen. Laws, § 44-3-3(a)(16); Wash. Rev. Code § 84.36.381(4)–(6).

Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 Ind. L.J. 747, 774–75 (2000). It is only after a property owner fails to timely and voluntarily pay property taxes, and fails to redeem, that States permit the public auction of the real property.

And that process is fair. Public auctions under Michigan law require an opening minimum bid, set by the Legislature. Mich. Comp. Laws §§ 211.78m(2), 211.78m(16)(c). The minimum generally coincides with the tax debt and collections costs, such that only a bid above that amount would result in potential surplus. Mich. Comp. Laws § 211.78m(16)(c). The foreclosing entity must provide “[n]otice of the time and location of a sale” by publication made “not less than 30 days before a sale” and “in a notice publication circulated in the county in which the property is located, if there is one.” Mich. Comp. Laws § 211.78m(2). The properties “must be sold” to the highest bidder. *Id.* And if the property does not satisfy the opening or minimum bid at the first sale, the property is pulled off the auction block, readvertised, and the law provides for a second public sale offering. *Id.*

Michigan’s foreclosure process satisfies constitutional requirements. The state law provides taxpayers like Pung three years from the date the taxes are first due to pay and offers multiple mechanisms to avoid foreclosure. When those protections went unused, the County pursued a judicial order to foreclose and sell the property, and conducted a public auction designed to maximize

proceeds through competitive bidding, published notice, and minimum bid requirements.

The amount received at the public auction is the “fair and proper price” under the circumstances. *BFP*, 511 U.S. at 545. Having declined to utilize Michigan’s extensive protections, Pung cannot now demand that his property be valued as though the foreclosure never occurred. The Constitution requires fair process and return of surplus—both of which Michigan provided.

C. Pung’s proposed rule would deprive States of the public purposes that foreclosure serves.

All state laws incentivize timely, voluntary property tax payment; typically, a taxpayer avoids fines and interest by paying on time. Alexander, *Tax Liens*, 75 Ind. L.J. at 776–77. But when taxpayers fail to take advantage of that incentive by refusing to voluntarily pay their taxes, governments must have a mechanism to enforce and collect taxes. Foreclosure and public sale serve as this final mechanism. States have long used tax foreclosure and public sale, with the result of that sale being a conclusive measure of value, to promote both property law and tax collection objectives.

Again, a primary objective of foreclosure is to collect revenue for public services that have already been provided, allowing state and local governments to operate under balanced annual budgets. These services include public safety, education, and infrastructure, all of which a delinquent taxpayer benefits from despite his failure to contribute to the

costs. Foreclosure and public sale allow the local government to recover the costs for public services that were a benefit to but not paid for by the delinquent taxpayer, and thereby avoid placing further tax burdens on those who comply with their tax obligations. But foreclosure and public sale serve other important public purposes too. Certain tax-delinquent properties, particularly those that become vacant and blighted in conjunction with that delinquency, can negatively impact neighboring home values and further strain public budgets. James Alm, et al, *Property Tax Delinquency and Its Spillover Effects on Nearby Properties*, 58 Reg'l Sci. & Urban Econ. 71, 72 (2016).³

The rule Pung seeks would derail these important public purposes. It would incentivize tax delinquency and render economically unviable the crucial backstop of tax collection via foreclosure and public sale. Having already deprived timely taxpayers of funds due and owing, Pung would further deplete public coffers by

³ State statutes reflect these purposes. In Michigan, foreclosure is intended to “strengthen and revitalize the economy of [Michigan] and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes.” Mich. Comp. Laws § 211.78m(1). The Georgia General Assembly recognizes foreclosure as “an effective means of eliminating health and safety hazards by putting certain tax delinquent properties back on the tax rolls and into productive use.” Ga. Code Ann. § 48-4-75. West Virginia’s law recognizes that delinquent land is a both a public liability and “represents a failure on the part of delinquent private owners to bear a fair share of the costs of government” W. Va. Code Ann. § 11A-3-1.

claiming damages in excess of what his property realized at public sale.

What Pung really challenges here is economics. The reality of collection via foreclosure and sale—whether private debts or public tax obligations—is the value of a property in duress is lower than that same property’s value without duress. Pung effectively would require that the government pay for tax delinquent property at a price determined as if the tax delinquency never occurred. But that would not reflect the economic reality that delinquent taxes were owed and that a foreclosure sale was needed to collect them. The government never wanted the property—it merely wanted Pung to pay his share of taxes.

II. The Eighth Amendment’s Excessive Fines Clause is likewise not violated when a State provides for the return of surplus proceeds actually received, but no more, to the former owner of foreclosed property.

State laws permitting foreclosure to collect delinquent property taxes are neither criminal nor punitive. As a result, they do not implicate the Eighth Amendment’s Excessive Fines Clause, which applies to fines “‘directly imposed by, and payable to, the government.’” *Austin v. United States*, 509 U.S. 602, 607 (1993) (quoting *Browning-Ferris Indus. v. Kelco Disposal*, 492 U.S. 257, 268 (1989)). The Excessive Fines Clause “limits the government’s power to extract payments, whether in cash or in kind, as punishment for some offense.” *Timbs v. Indiana*, 586 U.S. 146, 151 (2019) (quoting *United States v. Bajakajian*, 524 U.S. 321, 327–28 (1998)). But its

primary purpose “has always been considered, and properly so, to be directed at the method or kind of punishment imposed for the violation of criminal statutes.” *Powell v. Texas*, 392 U.S. 514, 531–32 (1968).

In *Austin*, this Court addressed civil *in rem* forfeiture of property used in connection with illegal drug transactions. To determine whether the forfeiture implicated the Excessive Fines Clause, the question was not whether forfeiture was “civil or criminal, but rather whether it is punishment.” *Austin*, 509 U.S. at 610. That requirement was satisfied in *Austin* because the statute “tie[d] forfeiture directly to the commission of drug offense” and relied “on the culpability of the owner.” *Id.* at 620–22.

In contrast, Michigan’s General Property Tax Act is neither a penalty for a criminal offense nor is it punitive. Instead, the purpose of the statute “is to encourage the timely payment of property taxes and to return tax-delinquent properties to their tax-generating status, not necessarily to punish property owners for failing to pay their property taxes.” *Rafaeli*, 952 N.W.2d at 449. As such, it “is not punitive in nature.” *Id.*

Property taxes, interest, and collection fees are debts owed by the property regardless of whether the former property owner has any criminal culpability. Taxes, themselves, are not a taking or any type of criminal penalty; they are “a mandated ‘contribution from individuals . . . for the support of the

government . . . for which they receive compensation in the protection which government affords.’” *Tyler*, 598 U.S. at 637 (quoting *Cnty. of Mobile v. Kimball*, 102 U.S. 691, 703 (1881)). States and their localities may lawfully recover those amounts through foreclosure and later sell those properties. *Id.* at 638.

Pung does not challenge any statutory fee or charge as an excessive fine. Instead, he asks this Court to recast the mere exercise of this tool of delinquent tax collection as if foreclosure and sale is itself a separate, punitive fine—despite the historical roots. Of course, this turns first on Pung’s theory of value; there is nothing taken or levied as an excessive fine if Pung’s former property is properly, and accurately, valued as foreclosed.

Not every economic loss caused by government action constitutes a fine or punitive measure. The economic realities of forced sales in the collection context reflect market forces, not punishment. The county did not want Pung’s property; it wanted payment of the delinquent taxes, which were due roughly three years before the judicial foreclosure. True, the possibility of losing property and a forced public sale might encourage timely tax payments. But that is true whether a foreclosed property later sells for \$500 or \$500,000; the government derives no benefit from selling a property for *less* than the market will bear. And the alleged “fine” here is fictitious; there is no fine extracted from Pung that *inured to the benefit of the government* by way of punitive monetary excise. “The Excessive Fines Clause limits the government’s power to extract payments, whether in

cash or in kind, ‘as *punishment* for some offense.’” *Austin*, 509 U.S. at 609–10 (internal citation omitted). Pung’s labeling of the market result as punishment implies punitive intent where none exists. It also implies benefit to the government collector where none was realized—neither “in cash or in kind.”

The General Property Tax Act is not criminal and imposes no punitive sanctions. Further, the government neither realizes nor collects any of the alleged “equity.” The Eighth Amendment therefore does not apply.

CONCLUSION

This Court should affirm the decision of the Sixth Circuit.

Respectfully submitted,

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