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 *AMICI CURIAE* HENNEPIN COUNTY, MINNESOTA AND THE MINNESOTA COUNTY ATTORNEYS ASSOCIATION (MCAA) IN SUPPORT OF RESPONDENT

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INTERESTS OF THE AMICI[1]

Hennepin County was created by a March 6, 1852 act of the Legislative Assembly of the Territory of Minnesota. It is Minnesota's most populous county, in which a fifth of the state's citizens reside. Hennepin County contains 45 cities within its boundaries, including the city of Minneapolis.

Hennepin County's interest is implicated in this proceeding because Minnesota state law designates county auditors to collect property taxes on behalf of all taxing districts, and to enforce the collection of those taxes. Hennepin County desires a property tax system that is fair, consistent, and administrable. Hennepin County works diligently to *prevent* property tax forfeiture by employing an award-winning Navigator program which embeds social workers within the property tax department. *See* Nat'l Ass'n of Counties, *Resident and Real Estate Services/Human Services Navigator, 2018 NACo Achievement Award Winner*, https://www.naco.org/resources/award-programs/resident-and-real-estate-serviceshuman-services-navigator (last visited Jan. 16, 2026).

The Minnesota County Attorneys Association (MCAA) is an independent, professional, not-for-profit organization of elected County Attorneys representing all 87 of Minnesota's county attorneys. As an organization,

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

MCAA is dedicated to improving the quality and consistency of the administration of justice throughout the State of Minnesota by developing consensus on legal and public policy issues of statewide significance.

The MCAA's public interest is implicated in this proceeding because under state law, the county attorney serves as general counsel to the county. Minn. Stat. § 388.051. Because state law requires county auditors to collect property taxes on behalf of all taxing districts, and to enforce the collection of those taxes, county attorneys necessarily have an interest in the fair, consistent, and administrable application of those laws.

SUMMARY OF THE ARGUMENT

Following this Court's May 25, 2023 decision in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), Hennepin County paused forfeiting real property while it worked with counties throughout the state of Minnesota to recommend legislation that would bring Minnesota's law into accord with *Tyler*. Minnesota needed a process to provide compensation in the form of payment to property owners whose tax-forfeited properties had value that exceeded the owners' property tax obligation.[2] In *Tyler*, this Court held that Minnesota's law, which provided ample opportunity to avoid forfeiture and repurchase forfeited property, nonetheless violated the Takings Clause. In May of 2024, the Minnesota legislature passed legislation to fix this problem, inserting a mandatory sale process into

2. "Property owners" is used throughout, but others with property interests, such as lienholders, may also have a claim for just compensation. *See, e.g.*, *Armstrong v. United States*, 364 U.S. 40 (1960) (liens for boat materials were compensable).

the existing forfeiture process. Minn. Stat. § 282.005. At the same time, the legislature resolved the still-pending *Tyler* litigation, which had been remanded to the district court after this Court's ruling, along with related class actions through a legislative appropriation to fund claims uniformly statewide. Minn. Laws 2024, ch. 113.

Hennepin County and the Minnesota County Attorneys Association write to describe for the Court Minnesota's actions following *Tyler* and identify for the Court the practical ramifications of the Petitioner's position in this case. We fear that Petitioner's proposed holding—that a forfeited property's tax-assessed value must serve as the baseline for computing just compensation—would shift the property tax burden to other taxpayers. Rather, this Court should hold that compensation measured by the actual sale price at a procedurally sufficient public sale constitutes just compensation in the context of property tax collection.

ARGUMENT

Following *Tyler*, Minnesota created a mandatory sale process that generates compensation for former owners—but no more than the actual sale proceeds less the tax debt owing. Minnesota counties have successfully implemented this new law and surplus funds have been generated for former owners. In the context of a forced sale to collect a property tax, the actual sales price constitutes the correct measure for just compensation. Petitioner's alternative, in which a property's assessed value is used as the property's value for purposes of just compensation, is not constitutionally required and would require local government to pay out funds it has not collected.

I. Minnesota's longstanding tax forfeiture laws changed following *Tyler*

Minnesota's updated forfeiture laws are complex. The process begins as it always has, with a property tax delinquency. The county auditor must annually commence an action in the state district court to obtain a judgment against all parcels of real estate in the county for which there are delinquent taxes. Minn. Stat. § 279.05. This is solely an *in rem* action. *See* Minn. Stat. § 272.31. That judgment is "bid in" or purchased by the state by operation of law, although the state does not yet take possession. Minn. Stat. § 280.001. A three-year redemption period commences, during which owners can enroll in a payment plan to resolve the delinquency. Minn. Stat. §§ 281.17(a), 279.37.

When the end of the redemption period nears, the county auditor must provide notice of the deadline in four different ways: mail, personal service, posting, and publication. Minn. Stat. § 281.23. When the redemption period expires, "absolute title" vests in the state. *Id.*, subd. 9. At that point, the county auditor is tasked with returning the property to productive use.

Before *Tyler,* Minnesota understood that the state took the property in lieu of the delinquent tax, meaning that there could be no "surplus." The delinquent tax was never paid because the state received the property instead. The property as a whole belonged to the state and could be used for any public purpose. Any properties not conducive to a public purpose were sold at a public sale, with the proceeds placed in a "forfeited tax sale fund." Minn. Stat. § 282.09. The proceeds of that fund were available for the expenses of the forfeiture process and certain public purposes, with the balance going to the school district, city, and school (those taxing districts most impacted by the failure to collect the property tax). Minn. Stat. § 282.08.

Also before *Tyler*, the county auditor had many options after a property forfeited. "[T]he county board ha[d] the discretion to decide that some lands in public ownership should be retained and managed for public benefits while other lands should be returned to private ownership." Minn. Stat. § 282.01, subd. 1. A public meeting was held to solicit input on the future use of a forfeited parcel, especially from local government. *Id.* Most properties were offered for sale at a public sale and sold to the highest bidder. *Id.*, subd. 7. Some properties were sold to cities, including some sold for less than market value when the property would be used to correct blight or lead to the development of affordable housing. *Id.*, subd. 1a. Other properties simply never sold and remained in county inventories for years.

Minnesota's legislature responded to *Tyler* in 2024 by passing a law requiring a mandatory public sale of tax-forfeited property. Minn. Laws 2025, ch. 127, art. 70, sec. 4 (codified at Minn. Stat. § 282.005). Only if a property could not sell was a "credit bid" deemed to occur (meaning there would be no surplus equity), and the property could be disposed of pursuant to the pre-*Tyler* tax forfeiture laws. *Id.*, subd. 4(b). Minnesota's new law is premised on the understanding that the price a property yields at a public sale is a reasonable approximation of the property's value for purposes of computing just compensation. *See BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 545 (1994).

Minnesota's statutes are similar to Michigan's, in terms of property tax assessment and enforcement. Like Michigan, Minnesota assessors set an assessment value that is used for purposes of computing the property tax owed by the property. Minn. Stat. § 273.01; Mich. Comp. Laws § 211.10. Like Michigan, Minnesota's assessors are directed to assess property at its market value, termed "Estimated Market Value" in Minnesota and "True Cash Value" in Michigan. Minn. Stat. § 273.08; Mich. Comp. Laws § 211.27. Like Michigan, Minnesota's debt is *in rem* and is not a personal liability.[3] Minn. Stat. § 272.31; Mich. Comp. Laws § 211.40. But the two states use the term "forfeiture" differently. In Minnesota, a "forfeiture" constitutes transfer of absolute title to the state *after* a redemption period but *before* the public sale that generates the surplus. Minn. Stat. §§ 281.23, subd. 9; 282.005. In Michigan, "forfeiture" results after a 12-month delinquency and has no effect on title. Mich. Comp. Laws § 211.78(8)(b). Title does not transfer until the April 1 after a court enters a foreclosure judgment, when the owner's right to redeem the property expires. Mich. Comp. Laws § 211.78g(1).

II. Key elements of Minnesota property tax forfeiture, as updated in 2024

The vast majority of Minnesota's pre-*Tyler* property tax forfeiture process remains intact, with the legislature changing the law to (1) create a mandatory sale requirement upon the property's final forfeiture and (2)

3. *Tyler* does not make any distinction in its holding as to *in rem*, as opposed to personal, liability.

give former owners the opportunity to claim surplus. Minnesota's process continues to be lengthy, with many opportunities to avoid forfeiture, thus providing ample guarantees of fairness to property owners.

1. A judgment action precedes the "sale" to the state

If not paid in the year they are due, unpaid property taxes become delinquent on January 1 of the following year and interest begins to accrue. Minn. Stat. § 279.03 subd. 1. By February 15 of that same year, the county auditor must file a "Delinquent Tax List" with the district court administrator. Minn. Stat. § 279.05. The Delinquent Tax List identifies the properties owing delinquent taxes, the taxpayers, and the amount of taxes and penalties owing by year. *Id.* By statute, the filing of the Delinquent Tax List constitutes the commencement of a lawsuit for judgment against each property named on the List. *Id.*

After the Delinquent Tax List is filed, the district court administrator generates a notice describing the action, which is published twice along with the Delinquent Tax List. Minn. Stat. §§ 279.06; 279.09. The notice, along with the relevant portion of the Delinquent Tax List, is additionally mailed to taxpayers and persons who have requested notice. Minn. Stat. § 279.091. Any interested person may file an answer in the district court in response to the county's judgment action. If no answer is filed, the district court administrator "shall enter judgment." Minn. Stat. § 279.16.

2. A three-year redemption period runs following an automatic transfer

On the second Monday in May, each parcel with an unsatisfied judgment is sold to the state by operation of law. Minn. Stat. §§ 280.001–280.01. "Title to all parcels of land bid in for the state shall vest in the state subject only to the rights of redemption set forth in chapter 281." Minn. Stat. § 280.41. "Any person claiming an interest in any parcel of land bid in by the state" may redeem it for the amount of delinquent tax, along with any applicable penalty, interest and costs. Minn. Stat. §§ 281.01–281.02. The length of the redemption period is dependent upon the property's location and homestead classification but is three years for most properties. Minn. Stat. § 281.17.

3. Property forfeits automatically 60 days after notice of the expiration of the redemption period

The county must provide notice to interested parties before the expiration of the redemption period in four different ways. Minn. Stat. § 281.23. The county prepares a "Notice of Expiration of Redemption," which names any owners of record, taxpayers of record, and parties who have requested notice pursuant to Minn. Stat. § 276.041. *Id.*, subd. 2. This Notice is (1) posted in the auditor's office, (2) published, (3) mailed by certified mail to all known interested parties, and (4) personally served upon any occupant of the property. *Id.*, subds. 2, 3, 5, 6. Final forfeiture occurs either on the second Monday in May or 60 days after service of the notice of expiration of redemption is completed, whichever is later. *Id.*, subds. 2, 7. At that time, the county auditor records a "Certificate of Expiration of Redemption" with the county recorder/registrar of titles, which is *prima facie* evidence that absolute title has transferred. *Id.*, subd. 9.

4. Following *Tyler,* county auditors must act quickly to sell forfeited property

After *Tyler,* to "protect[] [property owners] from uncompensated appropriation by the State," 598 U.S. at 638, Minnesota needed to amend its law to do two things: first, measure surplus value, and second, generate funds to pay claims for surplus value. The logical way Minnesota saw to achieve both requirements was to sell all property following forfeiture.

First, the law needed to define the surplus that results when the value of the property exceeds the amount of the tax debt for which the property was seized. This required defining a property's value at the time of the Taking. Minnesota proceeded with the understanding that any Taking, to the extent one occurred, happened when the redemption period expired. That is the moment in Minnesota's forfeiture process in which the county can take possession of a property. *See, e.g.*, Minn. Stat. § 281.70 (providing limited right of entry for vacant property prior to expiration of redemption period). Accordingly, the law needed to value the property at that moment in time.

In reliance on *BFP*—and of course still based on the common lien foreclosure practice of using the price for which a property sells at a public sale as its value for purposes of determining whether a debt has been satisfied—Minnesota created a mandatory public sale. Minn. Stat. § 282.005, subd. 4. Minnesota required that a public sale take place as close to the moment of the Taking (the expiration of the redemption period) as feasible, to ensure that the sale price reasonably reflected market conditions as of the Taking. Under Minnesota's new law, county auditors must sell a forfeited parcel within "six months of either the filing of the certificate of forfeiture . . . or the date the property is vacated by the occupant, whichever is later." *Id*. While a property can be listed for sale on an online auction platform relatively quickly, counties may need to initiate a judicial action to recover possession of the property before listing it for sale—a process that may take some months.

Second, the law needed to provide an opportunity for persons and entities with property interests in the parcel to receive monetary compensation to the extent of any "surplus." Before *Tyler*, counties could not pay a surplus to former owners. The delinquent taxes were canceled—never paid—and the government received the land instead. Of course, many properties were sold and did generate proceeds, but these proceeds were distributed pursuant to a state statute and did not satisfy the delinquent taxes which had been canceled. After *Tyler*, in order to provide just compensation for any surplus equity, Minnesota counties needed to generate funds. Disposing of the properties by public sale following their transfer to the state was the most efficient way to do so.

Starting in 2024, county auditors were obligated to "sell the property at a public auction to the highest bidder in a manner reasonably calculated to facilitate public participation, including by online auction." Minn. Stat. § 282.005, subd. 4(a). "Notice of the sale under this subdivision must be provided by publication in newspapers, websites, and other forums that serve diverse communities in the county where the property is located at least 30 days before the commencement of the sale." *Id.* Many Minnesota counties have embraced online auctions as a tool to efficiently administer these auctions and maximize public participation.

The mandatory public sale occurs in two phases. "[F]or 30 days after it is initially made available at auction," the property can sell for no less than its "estimated market value, as determined by the most recent assessment." Minn. Stat. § 282.005, subd. 4(b). But if that period passes and "[i]f no buyer is willing to pay the initial price, the price for the property must be reduced to the minimum bid," defined as "the sum of delinquent taxes, special assessments, penalties, interests, and costs assigned to the parcel." *Id.*, subds. 4(b), 2(3). "If no buyer is willing to pay the minimum bid, the state is deemed to have purchased the property through a credit bid and the parcels may be disposed of" under the *pre-Tyler* statutes. *Id.*, subd. 4(b).

As before *Tyler,* the delinquent tax is still canceled and never paid directly to the taxing districts. However, the amount of the minimum bid is paid into the county's forfeited tax sale fund and available for distribution. Importantly, when there are "proceeds in excess of the minimum," interested parties are now notified and provided the opportunity to submit a claim. Minn. Stat. § 282.005, subds. 5, 6.

5. Interested parties can submit a claim for surplus proceeds and disputed claims can be paid into the district court

When there is surplus equity, the county auditor must notify interested parties, in writing, within 60 days of the sale. *Id.*, subd. 6(a). Interested parties then have six months to file a claim for the surplus. *Id.* The county auditor must distribute the surplus "according to each claimant's interest in proportion to the interest of all claimants." *Id.*, subd. 6(b)-(c). If the county auditor does not believe a claimant is entitled to the claimed surplus, or if there are multiple claimants who do not agree on the distribution of funds, then the county auditor may file an interpleader action with the state district court to resolve these disputes. *Id.*, subd. 6(c).

6. The State reserves mineral interests and provides separate compensation for those interests

As explained above, Minnesota law retains the feature of "automatic" transfer of title to the state at a certain point in the collection process. Yet there is a requirement in Minnesota's constitution that the state reserve mineral rights when transferring land. This constitutional provision reads in full:

> As the legislature may provide, any of the public lands of the state, including lands held in trust for any purpose, may be exchanged for any publicly or privately held lands with the unanimous approval of the governor, the attorney general and the state auditor. Lands

> so acquired shall be subject to the trust, if any, to which the lands exchanged therefor were subject. The state shall reserve all mineral and water power rights in lands transferred by the state.

Minn. Const. Art. XI, Sec. 10. The effect of this provision is to sever a property's mineral estate from the fee simple estate when title transfers from the state to a third party.

The mineral estate is, of course, a property interest which must be compensated. The automatic reservation of this property interest to the state presented a difficult valuation problem. The vast majority of mineral estates have no value, or highly speculative value. A more precise estimate of value cannot be obtained without physical exploration of the estate, which can be quite costly. To solve this dilemma, Minnesota crafted a process designed to comport with both *Tyler* and *Nelson v. City of New York*, 352 U.S. 103 (1956), which *Tyler* distinguished on the ground that the property owner had the opportunity to request a foreclosure sale to generate monetary surplus. *Tyler,* 598 U.S. at 643-44.

Under the post-*Tyler* state statute, "[u]pon forfeiture, any iron-bearing stockpiles, minerals, and mineral interests shall be sold to the state for $50." Minn. Stat. § 282.005, subd. 8(a). The statute creates a presumption that the mineral estate—which is probably worth nothing but could be worth much more—is worth $50. This amount is automatically added to the surplus available for distribution to interested parties. Within the same six-month period allowed to submit a claim for surplus, "[a]n interested party may submit a claim alleging that the value of the iron-bearing stockpiles, minerals, or mineral interests in the property exceeds the minimum bid."[4] *Id.* At that point, the state's Department of Natural Resources "must determine the value of the forfeited iron-bearing stockpiles, minerals, and mineral interests." *Id.*, subd. 8(b). Anticipating the increase in resources required to value mineral interests, the 2024 legislation included an annual appropriation of $1,537,000 to the Department of Natural Resources "to perform the duties required under Minnesota Statutes, section 282.005." Minn. Laws 2024, ch. 127, art. 70, sec. 11.

Thus, just as *Nelson* gave interested parties the opportunity to initiate a sale to generate a surplus, Minnesota's new law allows interested parties to initiate an appeal of the value of the mineral estate. This presumption of a nominal surplus combined with the opportunity to appeal meets the Fifth Amendment's just compensation requirements as set out in *Tyler* and *Nelson*.

In sum, *Tyler* resulted in added complexity to Minnesota's property tax system but created an important opportunity for interested parties to claim surplus equity following a public sale.

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4. The minimum bid—or the amount of the delinquency—is used to determine whether there is any surplus for the mineral estate because under state law, the property tax lien attaches to the entirety of the parcel, including "all minerals therein." Minn. Stat. § 272.31.

III. Property tax collection in Hennepin County following *Tyler*

Property tax collection rates in Hennepin County have remained relatively steady. Despite having nearly half a million parcels of land, only 1.5 percent of parcels became delinquent in 2025, and only 0.004 percent of parcels forfeited. This high collection rate stands in contrast to the 65 percent collection rate of personal property taxes on manufactured homes, for which there is no automatic transfer and fewer collection options.

Because of the statutorily-prescribed timing of the tax forfeiture process, redemption periods expire during the second part of the year. The forfeitures in 2024—the first group of forfeitures following the *Tyler* changes—were offered for sale at auction in 2025. Those properties that forfeited in 2025 will be offered for sale early this year.

Hennepin County forfeited just 22 parcels in 2024. Of those, 11 were sold through an online public auction, one could not be sold so was deemed purchased by credit bid, seven were repurchased by former owners for the amount of canceled tax, and three have not yet been listed for sale for various reasons. Of the 11 parcels that sold, 10 generated a surplus ranging from $40 (for a 295-square-foot sliver of land) to $175,000 (for an office building). On average, the properties sold for approximately 40 percent of their estimated market value (the value set by the county assessor for purposes of assessment). Just one parcel sold for more than its estimated market value, and that was a 1,772 square foot strip of land separating a residence from an alleyway. The residence's detached garage encroached on the forfeited parcel, and the owner of the residence outbid other auction participants.

This very limited data on post-*Tyler* sales confirms Hennepin County's pre-*Tyler* experience that a forfeited property's assessed value is nearly always higher than the price it can yield at a public sale.

IV. The fact of the property's forfeiture bears upon what is "just compensation" under the Fifth Amendment

Under Petitioner's view of the law, the just compensation owed to former owners is measured as the amount of a property's assessed value less the tax debt. *See* Pet. Br. at 8. This is not a reasonable or just expectation in the context of property tax collection. Even though assessors are tasked with assessing property at market value, *see, e.g.*, Minn. Stat. § 273.08, a required or "forced" sale—as a post-forfeiture sale must be—typically is *not* reflective of market value. Indeed, the leading appraisal authority recognizes that the sale of property in a collection context is fundamentally different than a sale under more traditional market conditions. "Sales of properties in distressed markets often do not meet the conditions specified in the definition of *market value*." The Appraisal Institute, *Appraisal of Real Estate* 55 (15th ed. 2020). A "forced sale" includes "[a] sale at public auction made under a court order." The Appraisal Institute, *The Dictionary of Real Estate Appraisal* 77 (7th ed. 2022). This Court has agreed that a forced sale is not a market sale. *BFP*, 511 U.S. at 537 ("[M]arket value, as it is commonly understood, has no applicability in the forced-sale context; indeed, it is the very *antithesis* of forced-sale value."). But a forced sale could, depending upon the circumstances, result in market value. "How closely the price received in a forced sale is likely to approximate fair market value depends upon the terms of the forced sale—how quickly it may be made, what sort of public notice must be given, etc." *Id.* at 540.

The reasoning in *Tyler* and *BFP* supports the conclusion that the actual surplus generated at a public sale satisfies the Fifth Amendment's "just compensation" requirement. The financial consequences for local government of any other rule reinforces this conclusion.

1. *Tyler* did not change the authority of a sovereign government to confiscate property and sell it

No property rights can be absolute; they must be subject to the authority of government to enforce the collection of taxes, among other things. "People must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property." *Jones v. Flowers*, 547 U.S. 220, 234 (2006). "Failure to enforce payment of such taxes in a fair and efficient manner can have a devastating impact on property owners, on neighborhoods, and on local governments." Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 Ind. L.J. 747, 748–49 (2000). Until *Tyler*, property tax collection was analyzed, from a constitutional perspective, under procedural Due Process standards. *Id.* at 764-69 (discussing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950) and *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983)). *Nelson* likewise resolved the constitutional question on procedural due process grounds: "What the City of New York has done is to foreclose real property for charges four years delinquent and, in the absence of timely action to redeem or to recovery any surplus, retain the property or the entire proceeds of its sale." 352 U.S. at 110. "We hold that nothing in the Federal Constitution prevents this where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings." *Id.*

But as *Tyler* emphasized, the law at issue in *Nelson* did include a procedure through which an owner could request a foreclosure sale to generate surplus funds. *Tyler*, 598 U.S. at 644. "The owners did not take advantage of this procedure, so they forfeited their right to the surplus." *Id.* In contrast, the Court wrote, Minnesota's law was defective because it "provides no opportunity for the taxpayer to recover the excess value." *Id.* Moving the constitutional analysis from procedural due process to the Takings Clause, this Court held that "requiring a taxpayer to sell her house to avoid a taking is not the same as providing her an opportunity to recover the excess value of her house once the State has sold it." *Id.* at 645.

Importantly, none of the cases *Tyler* relies upon as demonstrating the history of monetary compensation in tax collection requires compensation beyond whatever surplus equity the actual sale yields. *United States v. Taylor*, 104 U.S. 216, 219 (1881) (holding former owner was entitled to "surplus proceeds of the sale of his lands" pursuant to 1861 act); *United States v. Lawton*, 110 U.S. 146, 149-50 (1884) (applying *Taylor* to arrive at the same result in a sale that generated no money because the property was "struck off to the United States" pursuant to statute allowing the government to buy property for "a sum not exceeding two-thirds of its assessed value, unless some person should bid a higher sum"); *Nelson*, 352 U.S. at 110 (evaluating statute that allowed a judicial sale).

Petitioner's proposal to measure *assessed or market value* would represent a fundamental change in this landscape.

2. A public sale provides a reasonable measure of just compensation

This Court has previously recognized that the price a property yields at a public sale is a reasonable measure of value in the bankruptcy context, and that recognition should apply here with equal weight. In *BFP*, this Court held that sale price at a forced sale was "reasonably equivalent value" under the Bankruptcy Code. 511 U.S. at 545 ("We deem, as the law has always deemed, that a fair and proper price, or a 'reasonably equivalent value,' for foreclosed property, is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with."). *BFP* did not decide a Takings question, but did recognize, at least implicitly, the impracticality of using anything other than sale price as a determination of value in the forced sale context. Although *BFP* addressed a mortgage foreclosure, the same considerations apply for measuring just compensation in the context of property tax collection. 511 U.S. at 537, n.3.

Minnesota's sale procedures, like Michigan's, contain measures designed to make a forced sale more like a market sale, such as mandatory public notice. Minn. Stat. § 282.005, subd. 4; Mich. Comp. Laws § 211.78m(2).

But a market sale price has never been required in a foreclosure proceeding. "[I]t is black letter foreclosure law that, when a State's procedures are followed, the mere inadequacy of a foreclosure sale price is no basis for setting the sale aside." *BFP*, 511 U.S. at 532. The result of a fair sale process should be accepted for purposes of just compensation in this context as well.

Petitioner's alternative—that assessed market value be used in determining the amount of surplus equity due to a former owner—is flawed. For example, assessed market value is not always an accurate measure of value, especially when a property has forfeited. In both Minnesota and Michigan, assessors aim to set the value of real estate for tax assessment purposes at market value. Yet this valuation is not always precise. The Minnesota Supreme Court, which hears appeals of Minnesota Tax Court decisions on property tax valuations, has "repeatedly acknowledged that assessing the value of properties, although necessarily based on meaningful and adequate evidentiary support, is an inexact science—it is an estimate of value based on assumptions and projections offered by professional appraisers." *Bloomington Hotel Invs., LLC v. Cnty. of Hennepin*, 993 N.W.2d 875, 886 (Minn. 2023). Minnesota has informal and formal appeal procedures to contest a property's assessed value, which are well-used: nearly 2,000 new Tax Court appeals were filed in 2025 in Hennepin County alone. A property's assessed value is not intended to be a definitive measure of market value.

The accuracy of assessed value in the context of property tax forfeiture is even more questionable. Forfeited properties are often distressed properties.

Upon forfeiture, county staff find properties that may be contaminated, unsafe, or simply neglected. The county assessor, who visits the property just once every five years in Minnesota pursuant to state statute, may be unaware of the property's current condition. It is no coincidence that forfeited properties typically sell for far less than their assessed value at public auction. Only after a property forfeits does the county auditor discover its true condition.

When state law requires public sales to follow reasonable procedures to generate participation and thus maximize value, any surplus from that sale constitutes just compensation.

3. The Petitioner's alternative is unworkable

The alternative Petitioner proposes is both unfair and unworkable. First, using the assessed value to measure just compensation will nearly always require the local government to pay out money to the former owner that it simply does not have. A forfeited or foreclosed property's sale price, as evidenced in this case and in Minnesota's experience, is unlikely to match its assessed value. It is unclear whether and how local government could come up with these funds. Using taxpayer dollars—rather than actual sale proceeds—to compensate owners of delinquent properties creates a windfall for those owners and an incentive not to redeem and harms diligent owners that pay their property taxes on time. States like Minnesota who have "automatic" transfer of title will have significantly more liability than those states who initiate judicial foreclosure proceedings affirmatively, because more properties will transfer to the state.

If local government can elect to forego a forfeiture or foreclosure proceeding because the collection procedure will result in a loss, communities risk increased blight and reduced property tax collection rates. Given a state law that requires automatic forfeiture of property after a three-year redemption period, Hennepin County's property tax collection rate is extremely high: 98.5 percent. By contrast, Hennepin County has a significantly lower collection rate for manufactured homes, for which there is no automatic forfeiture. Because of the way property taxes are levied in Minnesota, lower collection rates do not result in less revenue. They simply shift the tax burden to those who do pay their taxes.

Petitioner's proposal not only increases costs for local government, it also incentivizes efficient breach of the civic obligation to pay property taxes. In many instances property owners, especially those who are indifferent about retaining ownership of a particular property, may choose to let the forfeiture or foreclosure process play out. In such a situation, the government does the work of selling the property to generate compensation for the property owner. Using assessed value to calculate surplus only makes this option more attractive.

In sum, Petitioner's proposal to use assessed value to calculate "just compensation" for tax-forfeited properties will likely increase costs for local government, shift the property tax burden, and increase blight where local government cannot afford to enforce property tax collection. This result is unnecessary to provide a property owner with just compensation following a public sale, the authority for which is undisputed. Rather, payment of the actual surplus that arises from the public sale constitutes just compensation in these circumstances.

CONCLUSION

Hennepin County and the Minnesota County Attorneys Association respectfully request the Court affirm the Sixth Circuit's decision and hold that the surplus equity that arises from a procedurally sufficient public sale constitutes just compensation in satisfaction of the Takings Clause.

Dated: January 20, 2026

Respectfully submitted,

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