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 *AMICUS CURIAE* THE WISCONSIN COUNTIES ASSOCIATION IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Cited Authorities

Statutes

Page

STATEMENT OF INTEREST[1]

The Wisconsin Counties Association ("WCA") was statutorily authorized in 1935 and is committed to protecting the interests of Wisconsin counties and promoting better county government. Wis. Stat. § 59.52(22). To meet its mission, the WCA represents interests common to Wisconsin's counties. In fact, one of the primary purposes of the WCA is to monitor and participate in the legal developments affecting county governments, and the WCA often appears as *amicus curiae* in cases that could affect county interests in the State of Wisconsin. Some examples of cases in which the WCA has appeared as *amicus curiae*, either on its own or with others, include *Tyler v. Hennepin Cty.*, 598 U.S. 631 (2023); *Murr v. Wisconsin*, 582 U.S. 383 (2017); *Wisconsin Voter Alliance v. Secord*, 414 Wis. 2d 348, 15 N.W.3d 872 (Wis. 2025); *Waukesha Cty. v. M.A.C.*, 412 Wis. 2d 462, 8 N.W.3d 365 (Wis. 2024); *Town of Rib Mountain v. Marathon Cty.*, 386 Wis. 2d 632, 926 N.W.2d 731 (Wis. 2019); *Golden Sands Dairy LLC v. Town of Saratoga*, 381 Wis. 2d 704, 913 N.W.2d 118 (Wis. 2018); and *AllEnergy Corp. v. Trempealeau Cty. Environmental & Land Use Committee*, 375 Wis. 2d 329, 895 N.W.2d 368 (Wis. 2017).

This is an important case to the WCA because the positions advocated by the Petitioner, if adopted by the Court, would upset the expectations of Wisconsin

1. No counsel for a party authored this brief in whole or in part. No party or a party's counsel contributed money that was intended to fund preparing or submitting this brief. No other person, other than WCA, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

counties in the wake of this Court's decision in *Tyler v. Hennepin County*. Wisconsin legislators, both before and after this Court's decision in *Tyler*, have taken steps to ensure compliance with this Court's mandate that surplus proceeds from the sale of tax-foreclosed properties be returned to the former property owner. The position advocated by Petitioner here—that a government must compensate a former property owner for the "fair market value" of the property (minus the tax debt)—would, if adopted by this Court, likely require a wholesale re-evaluation of Wisconsin's tax-foreclosure statutes and would, as a practical matter, eliminate the ability of Wisconsin counties to collect taxes through the tax foreclosure and sale process. In short, the WCA seeks to preserve the reliance that Wisconsin counties have placed on this Court's decision in *Tyler* and to ensure that Wisconsin counties remain able to use a longstanding and traditional method of tax collection in the State of Wisconsin.

SUMMARY OF ARGUMENT

This Court should affirm the decision of the Sixth Circuit below, as the Petitioner cannot establish violations of the Takings Clause or the Excessive Fines Clause.

I. There is no violation of the Takings Clause when a government, after complying with due process requirements and state law, sells a tax-foreclosed property and refunds to the former property owner the surplus proceeds of the sale, even if the former property owner alleges the "fair market value" of the property exceeds the price obtained in the foreclosure sale.

A. First, history and precedent confirm that "just compensation" in the forced-sale context is not the "fair market value" but is instead satisfied by remittance to the former property owner of the surplus proceeds of a forced sale.

B. Second, adopting Petitioner's proposed rule—that a taking occurs at the time a government takes title to a tax-foreclosed property and that the just compensation owed is the fair market value of the property—would effectively eliminate the ability of local governments to use *in rem* foreclosures to obtain payment of taxes when taxpayers refuse to pay what is owed.

C. Third, so long as a government complies with due process requirements and provides for a former owner's recovery of surplus proceeds, the Takings Clause does not provide former property owners with a mechanism for challenging the adequacy of the price obtained, the "fairness" of state law procedures, or for raising what are essentially state law or equitable claims challenging compliance with state law procedures or alleging collusive or fraudulent conduct.

D. Finally, Wisconsin has taken steps in the wake of this Court's decision in *Tyler v. Hennepin County* to ensure compliance with this Court's mandate that former owners receive the surplus proceeds from the sale of a tax-foreclosed property. Adopting the Petitioners' proposed rule—that just compensation is provided by "fair market value" and not surplus proceeds—would upend these efforts.

II. This case also does not implicate the Excessive Fines Clause because the purpose of *in rem* tax-forfeiture statutes like the one at issue here is to ensure the payment of taxes and collection of revenue, not to punish property owners. Further, any loss in value resulting from the forced sale of a tax-foreclosed property is not a payment to the government, but rather the predictable economic consequences of a property owner's failure to pay his or her taxes.

ARGUMENT

I. The Takings Clause Is Satisfied When Former Property Owners Are Provided the Surplus Proceeds of a Government's Sale of Tax Foreclosed Property

"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). Of course, in doing so governments must comply with due process requirements that they provide adequate notice to the property owner before taking the property as payment. *Id.* And, as this Court recently held in *Tyler*, a violation of the Takings Clause occurs when a government seizes and sells a delinquent taxpayer's real property to satisfy past due taxes but does not allow the delinquent taxpayer the opportunity to recover any remaining surplus proceeds. 598 U.S. 631, 638 (2023).

This case presents the different question of whether the Takings Clause requires governments to provide the former property owner, not only with the surplus proceeds remaining after satisfaction of the former

owner's tax debt, but also with the difference between the "fair market value" of the property and the sales price obtained by the government in a forced sale. The answer this Court must provide is "no." When a government complies with due process requirements before taking a delinquent taxpayer's property, there is no violation of the Takings Clause when the government sells the property in compliance with state law and provides the former property owner with the surplus proceeds of a subsequent sale. This is so even if the former owner claims the sales price was below the fair market value of the property. This Court should reject the Petitioner's arguments and affirm the court below.

A. History and Precedent Confirm that Just Compensation in this Context Is Not "Fair Market Value" But Rather the Surplus Proceeds of a Forced Sale

First, the Petitioner's argument in this case conflicts with both historical practice and this Court's precedents. WCA will not belabor this point, which is ably demonstrated both by Respondent and the United States. *See* Resp. Br. 17-22; U.S. Br. 10-18. WCA wishes to emphasize the following arguments and call additional authority to the attention of the Court.

As it relates to historical practice, the Petitioner invokes the principle that "governments collecting debts owed a duty not to seize or sacrifice more property than necessary." Pet. Br. 10. As this Court explained in *Tyler*, historically the federal government and most states allowed only for the seizure and sale of so much land as would satisfy the taxes due and required that any surplus

proceeds be returned. *See generally Tyler*, 598 U.S. at 640-41. The general practice seems to have been that governments would auction off the least amount of acreage that a buyer at a tax sale was willing to accept in exchange for paying the tax debt.

These were still forced sales, however, which presumably affected the value placed on the acreage of the delinquent taxpayers. There is no suggestion in this Court's discussion of history in *Tyler*—or in the cases on which Petitioner relies—that property owners, after such tax sales, then could argue the amount of acreage properly sold for a price equal to the tax debt was actually worth more in a sale between private parties and to seek the difference as just compensation. Yet that is what the Petitioner here seeks: the ability, after a forced sale of tax-foreclosed property, to obtain not just the benefit of the extinguishment of the tax debt and any surplus proceeds generated by the tax sale, but also the ability to further compare the sales price in the tax sale against the price the taxpayer believes the same property would warrant in a voluntary exchange between private parties and to make the public pay the difference.

The Petitioner provides no authority for such a claim, either in the historical practices of the States or in this Court's early precedents. The Petitioner cites *Graffam v. Burgess*, 117 U.S. 180 (1886), for the proposition that the government must "prevent sacrificial prices" and "grossly inadequate" sales, and asserts the remedy for a violation of this duty is to pay fair market value as compensation. Pet. Br. 10-11. *Graffam* is just an example of equity stepping in to set aside a forced sale under circumstances warranting such a remedy and allowing the property owner to redeem

the property (in that case, a debtor who was misled into not redeeming the property). Such cases are discussed in more detail *infra*, but they do not stand for the proposition that the Takings Clause requires payment to the former property owner of the fair market value of the property. Rather, such cases represent a separate claim and remedy (setting aside the sale) available to former property owners.

Indeed, as both the United States and the Respondent point out, this Court's precedents support treating the surplus proceeds here as the just compensation owed the Petitioner. WCA will not repeat their arguments. In addition to the cases cited by the United States and Respondent,[2] however, this Court's decision in *United States v. Rodgers*, 461 U.S. 677 (1983), is also instructive.

Rodgers dealt with the application of the federal statute authorizing the judicial sale of property to satisfy tax indebtedness to a nondelinquent spouse's interests in the property. As relevant here, this Court explained that, when unindebted third persons shared an ownership interest with a delinquent taxpayer, the United States could nonetheless seek a forced sale of the entire property and that "[t]o the extent that third-party property interests are 'taken' in the process, [26 U.S.C. § 7403] provides compensation for that 'taking' by requiring that the court distribute the proceeds of the sale 'according to the findings of the court in respect to the interests of

2. *See, e.g.*, *Tyler v. Hennepin Cty.*, 598 U.S. 631 (2023); *Nelson v. City of New York*, 352 U.S. 103 (1956); *United States v. Lawton*, 110 U.S. 146 (1884); *United States v. Taylor*, 104 U.S. 216 (1881).

the parties and of the United States.'" 461 U.S. at 697-98. *Rodgers* thus indicates that there is no violation of the Takings Clause so long as a former property owner receives surplus proceeds from a forced sale, even if the forced sale will yield less than the fair market value of the property. *United States v. Davis*, 815 F.3d 253, 260 (6th Cir. 2016).

B. Petitioner's Proposed Rule Is Not Equitable and Would Effectively Eliminate a Traditional Tool of Tax Collection

Next, this Court should reject the Petitioner's proposed "fair market value" rule for compensating delinquent taxpayers whose properties are sold in tax sales because it is inequitable to the public. Further, as the Respondent and United States point out, adoption of this rule would have the effect of depriving governments of a traditional method of tax collection.

First, adopting a "fair market value" rule is inequitable to the public because it would convert tax foreclosures and sales into a drain on public resources. Certain *amici* suggest such fears are overblown because it is likely that in many tax foreclosures the prices generated in the forced sale already do not exceed the amount of the tax debt. *See* Realtors' Br. 17. The implication seems to be that, because counties are already losing money on tax foreclosures, the Court should discount concerns that adopting the "fair market value" rule would harm the public fisc or cause counties to refrain from such foreclosures in the future. Such an argument ignores reality. Assuming it is true that many tax sales do not generate prices that exceed the amount of tax debt, any "loss" to the government is

generally the write-off of the underlying tax debt. That is a "loss" that governments are likely willing to stomach in order to collect what they can and get properties back on the tax rolls.

Under Petitioner's proposed rule, however, governments would not only have to write off whatever part of the tax debt goes uncompensated (or use any remaining tools of collection), but also to find the cash to pay the delinquent taxpayer the fair market value of the property. In other words, governments would need to compensate delinquent taxpayers using public funds (not just surplus proceeds) to collect from those delinquent taxpayers.

Consider the hypothetical of a home that has an alleged fair market value of $50,000.00, a tax debt of $20,000.00, and the property ultimately sells for $18,000.00 in a sale after tax foreclosure. Under *Tyler*, the $18,000.00 purchase price is applied to the tax debt and there is no taking because there are no surplus proceeds to distribute. Under the Petitioner's proposed rule, however, the government would need to pay the delinquent taxpayer $30,000.00 even though the government never obtained cash sufficient to satisfy the taxpayer's underlying debt. The transaction would result in less cash available to the government than before the tax foreclosure. Such a rule is not equitable to the public, and it would have the effect of requiring the taxpaying public to insure delinquent taxpayers against any loss in the value of the delinquent taxpayers' property that results when tax foreclosures and sales are required to obtain payment.

Certain *amici* (Realtors' Br. 18) also suggest that such concerns are tempered by placing the burden on the

homeowner of establishing that the fair market value of the property exceeded the tax sales price. But this just means that governments, to collect taxes through the tax foreclosure and sales process, would need to be prepared to also incur the additional time and expense of engaging in disputes over the fair market value of the properties. Determining fair market value in a takings context is not as simple as checking Internet websites such as Realtor.com, Redfin, or Zillow, or relying on the assessed value of the property for tax purposes. *See, e.g.*, *State ex rel. Stupar River LLC v. Town of Linwood Portage Cty. Bd. of Review*, 336 Wis. 2d 562, 574, 800 N.W.2d 468, 474 (Wis. 2011) (explaining that "a property's fair market value is not synonymous with its assessed value"). And since tax sales generally do not result in obtaining the same price as would occur in a voluntary exchange between private parties, it stands to reason that such disputes would arise in most cases. Thus, not only would the Petitioner's proposed rule harm the public by requiring the public to insure delinquent taxpayers against any loss in the value of delinquent taxpayers' property caused by a tax foreclosure and forced sale, it would also require governments to face the prospect of costly and time-consuming disputes to determine the fair market value.

The consequences of such a state of affairs are predictable. Counties, faced with having to pay delinquent taxpayers out of the public fisc to foreclose on properties to satisfy tax debts, and faced with the prospect of having to litigate questions of fair market value as part of any foreclosure process, will simply refrain from using the tax foreclosure process to collect taxes. That other mechanisms for collecting delinquent taxes might exist is no answer. This Court should not constitutionalize a rule

that would have the practical impact of eliminating one of the primary tools on which governments historically have relied to collect taxes. Indeed, that the Petitioner's proposed rule would have such an effect is a good indicator that it is not required by our Constitution.

C. This Court Should Refrain from Imposing Any Type of Nationwide "Fairness" Standard under the Takings Clause

Although the United States agrees just compensation of a tax sale is the surplus proceeds generated from the sale—and should not be measured through reference to "fair market value"—the United States suggests it is nevertheless appropriate to review tax sales to ensure they are conducted fairly. For example, the United States suggests that taxpayers may "challenge the procedural fairness of the sale by arguing, for example, that it was conducted with insufficient notice or opportunity for bidding." U.S. Br. 2. And, later the United States provides certain indicia of a "fairly" conducted sale: public notice, open competition, and sale to the highest bidder. U.S. Br. 20. The United States asserts that "[w]hat constitutes a fairly conducted tax sale for purposes of the Takings Clause should be understood in light of the Nation's history and tradition of tax sales." U.S. Br. 26.

Notwithstanding the suggestion of the United States that the Takings Clause requires that a tax sale be conducted "fairly," WCA respectfully urges this Court to refrain from using the Takings Clause to impose any kind of "fairness" review of tax sales. Although such sales may be subject to attack under certain circumstances under state law, that does not mean a former property

owner who has not obtained such relief under state law may use the Takings Clause to assert such claims and seek a different remedy entirely. So long as a state's tax foreclosure and tax sale processes comply with due process requirements and provide former owners with the opportunity to obtain any surplus proceeds generated in a tax sale, this Court should reject any suggestion the Takings Clause provides an avenue for property owners to challenge the "fairness" of the price received in a forced sale or the state's procedures for conducting such a sale, or to raise state-law equitable claims.

As an initial matter, allowing property owners to use the Takings Clause to challenge the "fairness" of the prices obtained in tax sales conflicts with the long-accepted principle that "mere inadequacy of the foreclosure sale price is no basis for setting the sale aside." *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 542 (1994). Regardless, as this Court has explained in other forced-sale contexts, what is a "fair" or "reasonable" price represents a policy judgment. *See BFP*, 511 U.S. at 540; *cf. Geifert v. National City Bank of N.Y.*, 313 U.S. 221, 234 (1941) ("The fact that men will differ in opinion as to the adequacy of any particular yardstick of value emphasizes that the appropriateness of any one formula is peculiarly a matter for legislative determination."). Courts simply are not best positioned to determine whether a price received in a tax sale was "fair" to the delinquent taxpayer, and this Court should refrain from trying to define what a "fair" price would be in this context.

Indeed, the prices obtained in forced sales necessarily depend on the terms of the sale. *BFP*, 511 U.S. at 540. But, as with the mortgage foreclosure sales at issue in *BFP*,

the terms governing tax sales "are not standard" and "vary considerably from State to State[.]" *Id.* Taxation and governing titles to real estate are essential state interests. "The federal balance is well served when the several States define and elaborate their own laws through their own courts and administrative processes and without undue interference from the Federal Judiciary." *Arkansas v. Farm Credit Services of Central Arkansas*, 520 U.S. 821, 826 (1997). And, "[t]he States' interest in the integrity of their own processes is of particular moment respecting questions of state taxation." *Id.* Absent clear historical precedent for using the Takings Clause to dispute the "fairness" of a price obtained in a tax sale or to challenge the "fairness" of a state's procedures for conducting such sales, this Court should refrain from imposing a nationwide standard for what a "fair" tax sale would be and thus supplanting state regulation in this area.

To be sure, remedies may exist if a tax sale violates a state's own procedures or is collusive or fraudulent. WCA does not dispute, for example, that there is a tradition in this country of using equity to set aside forced sales that are fraudulent, or collusive, or that result in an inadequacy of price that "shocks the conscience." *See BFP*, 511 U.S. at 542. But this Court has viewed such remedies as matters of state law or equitable relief, not the Takings Clause. *Id.* Indeed, whereas the purpose of the Takings Clause is to provide just compensation, the purpose of such equitable claims is to set aside the forced sale and permit the former owner to redeem. *See, e.g.*, *Schroeder v. Young*, 161 U.S. 334 (1896). But the point remains: delinquent taxpayers whose properties are sold under circumstances that traditionally would merit equitable relief likely have remedies under state law to set aside

such sales. In Wisconsin, for example, any taxpayer (not just a delinquent taxpayer) can sue to set aside a sale of public property (like a tax foreclosed property) if there is illegality, fraud, or a clear abuse of discretion in making the sale. *See, e.g.*, *Hermann v. City of Lake Mills*, 275 Wis. 537, 541, 82 N.W.2d 167, 170 (Wis. 1957).

D. Wisconsin Has Relied on *Tyler* to Ensure Property Owners Receive Surplus Proceeds

Finally, the WCA is concerned the arguments of Petitioner and certain *amici*, if adopted, would call into question the constitutionality of Wisconsin's current statutory framework, even though Wisconsin law seeks to maximize the prices obtained when counties sell tax-foreclosed properties and to ensure timely remittance of surplus proceeds to former property owners. Although Wisconsin courts had previously rejected the idea that there was a common law right for property owners to recover the surplus proceeds from the subsequent sale of a tax-foreclosed property, *see, e.g.*, *Oosterwyk v. Milwaukee Cty.*, 31 Wis. 2d 513, 143 N.W.2d 497 (1966), over the years Wisconsin's legislature has repeatedly amended its laws, including in the wake of *Tyler*, to ensure compliance with this Court's mandate that surplus proceeds from the sale of tax-foreclosed properties be returned to the former property owner.

When a property owner in Wisconsin fails to pay property taxes, the county treasurer issues a tax certificate to the county. Wis. Stat. § 74.57(1). This creates a lien on the land and generally initiates a redemption period of at least two years during which the property may be redeemed by payment of the accrued taxes, penalties,

and interest. Wis. Stat. §§ 74.57(2); 75.01; 75.521(1)(b); 75.521(5). Notice is provided to the property owner, which includes notice that failure to pay the delinquent taxes "will result in eventual transfer, no earlier than 2 years after issuance of the tax certificate, of the ownership of the property to the county." Wis. Stat. § 74.59(1)(a)4.

If a property remains unredeemed after two years, a county may then obtain a tax deed (thus taking ownership of the property) via various mechanisms. *See* Wis. Stat. §§ 75.14, 75.19, 75.521. Upon acquiring a tax deed, a county must inform the former owner of the former owner's right to share in the surplus proceeds of a future sale. Wis. Stat. § 75.36(2m)(a). Counties are also required to provide owners of single-family, owner-occupied properties the opportunity to repurchase the properties by paying off back taxes and liens, as well as the county's costs and expenses. Wis. Stat. § 75.35(3).

Unless the property is repurchased by the former owner, the county generally must advertise the property for sale within 180 days, using an appraised value of the property determined by the county board, a committee designated by the county board, or a certified appraiser. Wis. Stat. §§ 75.36(2k); 75.69(1). The property may be sold by open bid, closed bid, or by engaging a real estate broker. Wis. Stat. § 75.35(2)(d). On the first attempt to sell the property, the county must reject every bid less than the appraised value of the property. Wis. Stat. § 75.69(1). And, if multiple bids exceed the appraised value, the county must accept the highest bid unless the county prepares a publicly available written statement explaining its reasons for accepting a bid less than the highest bid. *Id.*

If a property does not sell on the first attempt, the county must again provide public notice of the sale but may at that point accept an amount less than the property's appraised value, so long as the county board or an approved committee designated by the county board reviews and approves the sale. Wis. Stat. § 75.69(1). The county remains obligated to sell to the highest bidder unless the county board or a committee designated by the county board prepares a publicly available written statement explaining the reasons for accepting a bid that is less than the highest bid. *Id*.

Once a property is sold, the county treasurer determines the net proceeds of the sale by deducting the former owner's unpaid taxes, interest, and penalties (including any unpaid taxes owed on other properties), as well as various costs and fees, and sends the remainder to the former owner. Wis. Stat. § 75.36(2m)-(3). If the payment is returned to the county or otherwise not claimed by the former owner within one year, the payment is treated as unclaimed funds. Wis. Stat. § 75.36(2m)(b).

Although WCA is confident this procedure complies with *Tyler*, were this Court to adopt the Petitioner's proposed rule it would become necessary to once again re-examine Wisconsin's statutes. The statutes would need to be amended, for example, to establish some mechanism for adjudicating disputes regarding the fair market value of properties as part of the tax sale process and to create a process for counties to pay such former property owners funds in excess of any surplus funds generated in the sale of the foreclosed property. This may seem like a simple task, but every change to these statutes requires county employees and officials to learn and implement new processes.

And, as already discussed, such a rule would impose on Wisconsin counties—which already operate on tight budgets and face state-mandated levy limits—a new obligation to compensate delinquent taxpayers from county budgets to collect taxes through the tax-foreclosure process. Although Wisconsin counties seek to maximize the value of the properties they sell—by, for example, requiring on the first attempt to sell a property that all bids lower than the appraised value be rejected—often properties do not sell on the first attempt and some properties cannot be sold at all. Imposing a "fair market value" requirement to calculate compensation owed to the former owner would significantly impact the viability of tax foreclosure as a method of tax collection moving forward.

II. This Case Does Not Implicate the Excessive Fines Clause

Finally, this case does not present an unconstitutional excessive fine. Assuming this Court concludes that payment to a former property owner of the surplus proceeds of a tax sale represents just compensation under the Takings Clause, there is no basis for nevertheless allowing the former property owner to use the Excessive Fines Clause to seek additional compensation for any difference between an alleged "fair market value" of the property and the price obtained for the property in the tax sale. Indeed, allowing the use of the Excessive Fines Clause in this manner would essentially provide a backdoor for former property owners to make the same "inadequacy of price" arguments that this Court should reject in the context of the Takings Clause.

Further, as the United States points out, any loss in economic value to a property resulting from the need to employ a tax foreclosure and sale is not a "fine" as that term has traditionally been understood. U.S. Br. 28-29; *see also United States v. Bajakajian*, 524 U.S. 321, 327 (1998). The only payment a government receives when it forecloses on and sells a property for unpaid taxes, and refunds the surplus proceeds, is payment for the unpaid taxes (and any appropriate penalties and costs of collection). The difference in value between the sales price in the tax sale and an alleged "fair market value" is not a "payment" and it does not go to the government. Rather, any lost value is the predictable economic consequence of the government's need to use the foreclosure and sale process to collect taxes owed to it. This is not a "fine."[3]

For substantially similar reasons, it would not be appropriate to characterize the loss of any difference between a tax sales price and an alleged fair market value price as "punishment." *See Austin v. United States*, 509 U.S. 602, 610 (1993) (to be subject to the Excessive Fines Clause a forfeiture must "only be explained as serving in part to punish"). Governments do not employ the tax foreclosure and sales process to punish taxpayers, but rather "to ensure the payment of taxes and the collection of revenue." *Waukesha Cty. v. Young*, 106 Wis. 2d 244,

3. Indeed, adopting the position advocated by the Petitioner—that a fine includes the type of loss of economic value at issue here—could convert any number of government actions that courts have not considered "fines" to be such. For example, the loss of licensure could be subject to attack under the Excessive Fines Clause to the extent such loss carries downstream economic losses. *Cf. In re Sharp*, 674 A.2d 899, 900 (D.C. 1996) (rejecting excessive fines challenge to disbarment).

250, 316 N.W.2d 362 (1982) (describing Wisconsin's *in rem* foreclosure statute). What matters to the government is whether the obtained price in the tax sale satisfies the tax debt, not whether the sale is structured to "punish" the taxpayer by creating a difference between an alleged fair market value and the obtained price. Again, any such lost value may be an incidental and predictable economic effect of the need to use the foreclosure and sale process, but it is not the purpose of the process.

CONCLUSION

For the foregoing reasons, the Wisconsin Counties Association respectfully requests that this Court affirm the decision and judgment of the court of appeals below.

Dated this 20th day of January 2026.

Respectfully submitted,

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