



TAKINGS AND EXCESSIVE FINES CLAUSES

When the Government Forecloses on a Property and Sells It to Recover a Tax Debt, What Is the “Just Compensation” the Government Must Pay to the Former Owner: The Suppressed Public-Auction Sale Price Minus the Debt, or the Fair-Market Value Minus the Debt? If the Former, Is That an Excessive Fine?

CASE AT A GLANCE

Timothy “Scott” Pung owned a home in Isabella County, Michigan, until his death in 2004. He had taken advantage of Michigan’s Principal Residence Exception (PRE), which exempts a homeowner’s principal residence from school-district property taxes upon filing an affidavit with the county taxing authority. When Scott passed away, the house, then owned by his estate, continued to be occupied continuously by his wife and son. In 2012, the county treasurer rescinded the Pung family’s PRE exemption, which resulted in an unpaid tax bill of \$2,242. In 2014, the county foreclosed on the Pungs’ home in order to collect the 2012 unpaid taxes and sold the property at auction for \$76,008, but the county retained all of the sale proceeds, not just the amount of the tax debt. The Pung family sued the county and county officials, claiming the county was required to pay them just compensation for taking and selling their home, which was the fair-market value of the property from the time of the tax sale. The surplus funds generated by the tax sale were just under \$74,000. Because the county sold their property for only \$76,008, but its fair-market value was \$194,400, “just compensation” should be the fair-market value of the property (the amount the county could have sold the property for), minus the tax debt. The tax-foreclosure sale extinguished any interest the Pungs had in the property, including their \$192,158 in equity, which, the Pungs argued, imposed an impermissible excessive fine under the Eighth Amendment.

Pung v. Isabella County, MI **Docket No. 25-95**

Argument Date: **February 25, 2026** From: **The Sixth Circuit**

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Introduction

When a landowner is delinquent in paying property taxes, the local government can foreclose on and sell the property to satisfy the tax debt. Over a dozen states, including Michigan, had authorized local governments to keep all of the proceeds from a tax-foreclosure sale, not just the amount of proceeds equal to the tax debt.

This changed in 2023, when the Supreme Court held, in *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631 (2023), that the Fifth Amendment’s Takings Clause required the government to pay the landowner all surplus tax-sale proceeds generated by a government tax-foreclosure sale. Michigan law had provided for the forfeiture of all proceeds of the tax-foreclosure sale, allowing the

government to keep all surplus proceeds, including the owner's equity in the property.

When Isabella County foreclosed on and sold the Pung family's property for \$76,008 at auction and kept all the sale proceeds—not just enough to pay the \$2,242 tax debt—the Pungs sued the county, claiming that the “just compensation” the Fifth Amendment Takings Clause guarantees be paid to landowners when their property is taken is the fair-market value of the property after payment of the tax debt, not just the amount surplus sale-proceeds generated by a foreclosure-sale public auction. The county auctioned off the Pungs' property for \$76,008, but the property was worth \$194,400. Thus, the Pungs argued, the county should have paid them just compensation in the amount of \$192,158, based upon the property's fair-market value, and not \$73,766, which was the amount collected from the public auction minus the tax debt. The Pungs also claimed the county violated the Eighth Amendment's Excessive Fines Clause because imposing a \$118,392 penalty of lost equity for a \$2,242 total tax debt was punitive in nature.

Issues

Does taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violate the Takings Clause of the Fifth Amendment when the compensation is based on the artificially depressed sale price rather than the property's fair-market value?

Does the forfeiture of real property worth far more than needed to satisfy a tax debt but sold for a fraction of its real value constitute an excessive fine under the Eighth Amendment, particularly when the debt was never actually owed?

Facts

Scott Pung owned a home in Isabella County, Michigan, and took advantage of Michigan's PRE property-tax exemption. A homeowner qualifies for this exemption from local school district taxes by filing an affidavit stating that he or she is the owner of the property used as the person's principal residence. Following Scott's death in 2004, his wife, Donnamarie, and son, Marc, continued to live in the home but did not refile a new PRE affidavit. In 2008, Donnamarie passed away, and Marc continued to live in the home. After Scott's death, the home and property were owned by his estate with Scott's uncle, Michael, serving as the personal representative of the estate.

In 2010, the township tax assessor retroactively denied the property's PRE exemption for 2007, 2008, and 2009, and denied extending the tax exemption to 2010 and 2011, because she could not determine who owned the property after Scott's death and no current resident of the property had filed a new PRE affidavit. Michael Pung filed an administrative appeal with the Michigan Tax Tribunal challenging the assessor's PRE denial. The administrative law judge for the Tax Tribunal ruled that the Pungs did not need to file a new PRE affidavit to continue claiming the tax exemption, because Scott's wife and son had continued to reside in the home. The local tax assessor and the county treasurer, however, disagreed with the Tax Tribunal's ruling, and in 2012, the assessor again denied the exemption and initiated a tax-foreclosure proceeding for the Pungs' unpaid 2010 and 2011 property taxes. The Pungs challenged the foreclosure in state court based upon the Tax Tribunal's decision. In response, the county rescinded its foreclosure and asked the court to deny the Pungs' request as moot. The assessor testified in a later court hearing, “I don't care what [the Tax Tribunal's administrative law judge] says; the law says that you do [need to refile a PRE affidavit].”). But the court granted the Pungs' motion to dismiss the foreclosure proceeding and declared the Pungs had fully paid their 2010 and 2011 property taxes. This decision was subsequently affirmed by the Michigan Court of Appeals.

Undeterred, the assessor revoked the Pungs' PRE in 2012. The Pungs claimed they never received written notice of the 2012 PRE denial as required under Michigan law. According to the Pungs, they did not receive any notice, and they only became aware of the PRE denial the following year when they tried to pay their 2013 taxes. Now aware of the PRE denial, Michael wrote multiple letters to the Tax Tribunal asking it to enforce its prior ruling and reinstate the Pung's PRE exemption. But the clerk of the Tax Tribunal responded that he could not address their request and informed the Pungs that they should have filed another formal appeal with the Tax Tribunal. Michael Pung's attorney then unsuccessfully asked the county treasurer to abate the assessed taxes and then requested the Tax Tribunal to clarify the application of its prior ruling, but to no avail. The Pungs, believing that the original Tax Tribunal's ruling protected them from PRE denials while they continued to live in the house, refused to pay the 2012 taxes assessed, which resulted in a property tax liability of \$2,242, including interest and penalties. In 2014, the county treasurer again initiated foreclosure proceedings. Michael failed to appear at the

foreclosure hearing because, he claimed, the Pungs never received written notice of the proceedings as required under Michigan law. He further claimed the Pungs had only become aware of the foreclosure action when they received the posthearing notice of the foreclosure finalization. For the second time, the Pungs asked the circuit court to set aside the foreclosure for lack of notice, which the court did. The court of appeals, however, reversed and directed the circuit court to reinstate the foreclosure. The county then proceeded to sell the Pungs' property at auction for \$76,008.

Following the foreclosure sale, the Pungs filed a lawsuit in federal district court, claiming that the Fifth Amendment Takings Clause required the county to pay them the surplus funds generated by the tax sale of at least \$73,766. The Pungs further claimed that the amount of "just compensation" guaranteed to them by the Takings Clause must be determined according to the fair-market value of their property, not the depressed value produced by the county's tax sale auction, which the Pungs argued artificially depressed the sale value because, under Michigan law, individuals with delinquent property taxes or any other civil fines in the county are not allowed to bid. Because the assessed fair-market value of their property was \$194,400, which the county acknowledged, the Pungs claimed the government must pay them the fair-market value of the home, minus the tax debt, which totaled \$192,158. As it turned out, the successful purchaser of the Pungs' property at the foreclosure sale resold the property for \$195,000. The county's refusal to pay the surplus proceeds based upon property's fair-market value, the Pungs argued, violated both the Takings Clause, as a denial of just compensation, and the Excessive Fines Clause, as a punitive, disproportionate forfeiture of over \$190,000 of equity to pay a \$2,000 tax debt.

The district court ruled that the government was, in fact, required to pay the Pungs the surplus funds generated by the tax sale, but the court said the government was not required to pay the amount of surplus equity based upon the Pungs' claimed fair-market value of the property. But the district court did rule in favor of the Pungs' claim to interest that had accrued on the tax-sale surplus funds since the date of the tax sale. Because the court ruled in favor of the Pungs on their Fifth Amendment claim, at least in part, it denied their Eighth Amendment claim as moot.

On appeal, the Sixth Circuit affirmed the district court's decision. Although the court was "sympathetic to Pung's plight," it, too, rejected their argument that the

fair-market value of the property should be the basis of the "just compensation" guaranteed by the Fifth Amendment. Under circuit precedent, the Sixth Circuit panel explained, the measure of just compensation is the amount the property sells for in the tax foreclosure proceeding, notwithstanding the alleged deficient process by which the county sold the property at an artificially depressed sale price. But the court of appeals also denied the government's claim that it shouldn't be required to pay interest on the surplus funds. The court looked to the Supreme Court's decision in *Knick v. Township of Scott*, 588 U.S. ____ (2019) which held that the government's obligation to compensate a landowner arises contemporaneously with the taking of the property. Because the government had kept the surplus proceeds of the foreclosure sale, it must pay the Pungs not only the surplus proceeds generated by the foreclosure sale, but also the interest from the date of the sale for the county's delay in paying just compensation.

The Sixth Circuit denied the Pungs' Eighth Amendment excessive fine claim. The court noted that, in *Tyler*, the Supreme Court declined to consider the landowner's claim under the Excessive Fines Clause because it granted the landowner's Fifth Amendment claim, despite Justice Neil Gorsuch's concurring opinion, which stated that the forfeiture of surplus funds resulting from a foreclosure sale could implicate the Eighth Amendment. But the court explained that prior circuit precedent has followed the ruling of the Michigan Supreme Court, holding that Michigan's General Property Tax Act, which provides for tax-foreclosure sales, does not *necessarily* punish property owners for failing to pay property taxes—its aim is to encourage, not punish, landowners to timely pay taxes due—and therefore, the foreclosure sale process does not implicate the Eighth Amendment.

Case Analysis

The Court has already ruled, in *Tyler*, that when the government takes private property through a tax-foreclosure process in order to recover a tax debt, the government must, under the Takings Clause of the Fifth Amendment, pay any surplus proceeds generated by the tax sale to the landowner.

As Chief Justice John Roberts explained on behalf of the unanimous Court in *Tyler*, the county "had the power to sell Tyler's home to recover the unpaid property taxes[, b]ut it could not use the toehold of the tax debt to confiscate more property than was due."

This case takes the Court's holding in *Tyler* a step further by asking two questions. First, does the Takings Clause require that "just compensation" be based on the appraised fair-market value of the property instead of the lower amount the property typically sells for at a public tax-sale auction? And second, when the government takes property and sells it for an amount well below the property's fair-market value, does the landowner's loss of the fair-market value equity constitute a punitive government fine barred by the Eighth Amendment's Excessive Fines Clause?

The Fifth Amendment to the U.S. Constitution provides, among other things, that private property shall not "be taken [by the government] for public use, without just compensation." The Takings Clause was the first provision of the Bill of Rights that the Supreme Court made applicable to the states through the Fourteenth Amendment's Due Process Clause, as set forth in *Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*, 166 U.S. 258 (1897). When government takes private property for public use, such as to recover unpaid taxes, it must still pay the landowner "just compensation" for any remaining interest in the property the owner would have retained, after payment and satisfaction of the tax debt, had the government not extinguished the owner's interest by foreclosing on and selling the property. As Chief Justice Roberts wrote for the unanimous court, in *Tyler*, "[t]he taxpayer must render unto Caesar what is Caesar's, but no more."

But the question remains, how is the amount of "just compensation" the government must pay the Pung family determined? The Sixth Circuit, after reviewing the Supreme Court's decision in *Tyler*, adopted a clear rule—the tax-foreclosure sale price is the measure of the property's value because it is the "best evidence of a foreclosed property's value," not what the property might have been worth before the foreclosure. The Pung family disagrees because (1) the Supreme Court in *Tyler* held that a landowner's equity in his or her property is a constitutionally protected property right that cannot be taken by the government without payment of "just compensation"; (2) the amount of "just compensation" the Fifth Amendment requires the government to pay must make the owner whole, which the Court has long held to be the fair-market value of the property the government took; and (3) a tax-foreclosure-sale process that depresses the sale price of the property did not produce a sale price reflecting the property's fair-market value because

fair-market value is what a willing buyer would pay a willing seller on the open market—a market that is not closed to many prospective buyers or restricted to an in-person sale conducted during a limited time on a single day by auction without allowing for the prior inspection of the property and where cash payment is due within two hours of the purchase from the winning bidder. This is evidenced, the Pungs note, by the fact that the winning bidder of their property, who purchased the property at the auction for \$76,008, later resold the property for \$195,000. Therefore, the Pungs contend, the government must pay them the surplus proceeds based upon the fair-market value of their property, not the depressed value resulting from the forced tax-foreclosure sale.

Over half a century ago, in *Armstrong v. United States*, 364 U.S. 40 (1960), the Court explained that the "Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Since at least 1893, with its decision in *Monongahela Navigation Co. v. United States*, 148 U.S. 312 (1893), the Court has maintained that the amount of "just compensation" guaranteed by the Takings Clause is "a full and perfect equivalent for the property taken." And the Court has repeatedly said that "just compensation" is best measured by the market value of the property taken. *See*, that is, *United States v. Miller*, 317 U.S. 369 (1943).

The Pungs also assert that the forced forfeiture of the equity they held in their property was a punitive penalty by the government, disproportionate to the amount of tax owed, which is barred by the Eighth Amendment's Excessive Fines Clause. The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Excessive Fines Clause is the provision of the Bill of Rights that the Court has most recently held to be applicable to the states through the Fourteenth Amendment. *See Timbs v. Indiana*, 586 U.S. 146 (2019). The Court has explained that "excessive fines" applies to both criminal and civil fines and penalties. *Austin v. United States*, 509 U.S. 602 (1993). The district court did not reach this issue because it disposed of the case exclusively on Fifth Amendment grounds. But the Sixth Circuit proceeded to explain that it was unnecessary to consider the Pungs' Eighth Amendment claim at all under existing Sixth Circuit precedent, which adopted a

Michigan Supreme Court holding that Michigan's General Property Tax Act does not necessarily punish property owners for failing to pay property taxes because the law's aim is to encourage, not punish, landowners to timely pay taxes due. The landowner in *Tyler* had also alleged an Eighth Amendment claim, but the Supreme Court, like the district court in this case, declined to address it. The Pungs claim here reminds the Court of Justices Neil Gorsuch and Ketanji Brown Jackson's concurring opinion in *Tyler*, instructing that "[e]conomic penalties imposed to deter willful noncompliance with the law are fines by any other name[, a]nd the Constitution has something to say about them: They cannot be excessive."

Isabella County counters that it fully satisfied its obligations under the Fifth Amendment by turning over the surplus proceeds of the foreclosure sale, that it afforded the Pung family all required notice, and that the Pungs could have easily avoided the loss of the full fair-market value of their property. A landowner, they continued, is due the surplus proceeds generated by the tax-foreclosure sale and no more. A foreclosure sale is inherently different than a market sale. For centuries, governments have foreclosed on property to recover unpaid property taxes, and thus, a foreclosure sale producing the "forced-sale value" of the property is the measure of the "just compensation" due to the former owner once the tax debt has been paid. The Pungs cannot now be heard to complain about the loss of the full fair-market value of their property because tax-foreclosure sales throughout history have operated like this one—limiting the amount of "just compensation" to the surplus proceeds generated by the sale at a tax-sale auction—and if the Pungs wanted to ensure they received the surplus proceeds of a "market sale," they could have sold their property on the open market prior to the foreclosure and pay the county only the delinquent taxes, interest, and penalties. Furthermore, the county asserts, if the Pungs wanted to prevent the foreclosure sale and the loss of their equity in their property based on its fair-market value, they could have refiled the PRE affidavit, paid the delinquent property tax assessed, appealed the assessment with the Tax Tribunal, appeared at the tax-foreclosure court hearing, or redeemed the property prior to the foreclosure sale. Instead, the Pungs "dug in their heels" and refused to refile the PRE affidavit or pay the delinquent taxes. Finally, the Excessive Fines Clause is inapplicable for two reasons. First, the government's action cannot violate both the Eighth Amendment and the Fifth Amendment, and second, the

Excessive Fines Clause "constrains the power to punish, not the power to take property for public use, and taking property for public use [(such as recovering payment of unpaid taxes)] is not punishment."

Significance

This case is exceptionally significant for three reasons—its acceptance by the Supreme Court for review and potentially pivotal effect on the fundamental right to "just compensation" under the Takings Clause, the potential expansion of what constitutes an "excessive fine" under the Eighth Amendment, and its potential practical implications. First, *Pung v. Isabella County* stands out because it is the first case regarding the measure of "just compensation" that the Court has accepted for review in 40 years. The Court last took up and considered the issue of the measure of "just compensation" in *United States v. 50 Acres of Land*, 469 U.S. 24 (1984). This signals, some Takings Clause experts say, that the Court has developed a greater appetite to bite into Fifth Amendment takings cases. It also may suggest that the Court is willing to put more teeth in the judiciary's bite in overseeing how states define property and the amount of compensation that is "just." As the Court clarified over a hundred years ago in *Monongahela*, "the right to determine what shall be the measure of compensation.... is a judicial, and not a legislative, question." As the Court added in *Tyler*, a state cannot "sidestep the Takings Clause by disavowing traditional property interests" in assets it wishes to appropriate. Should the Pungs prevail, landowners and their counsel may endeavor to bring more "just compensation" cases to the Court, including cases involving the appropriate rate of interest that accrues on the principal owed to the landowner and whether just compensation includes the landowner's attorney fees and litigation expenses. It could even hint that the Court may also be willing to reconsider its much-disparaged "public use" decision in *Kelo v. City of New London*, 545 U.S. 469 (2005).

Second, the Pung family in this case, as the landowner in *Tyler*, have also asserted a claim that the forced forfeiture of their equity in their property violates the Eighth Amendment's Excessive Fines Clause. But as pointed out by Justice Gorsuch, joined by Justice Jackson, in his concurring opinion in *Tyler*, the lower court's error in its ruling on Tyler's excessive fine claim cried out for correction. The "Constitution has something to say about" the imposition of "economic penalties...to deter willful noncompliance with the law," Justice Gorsuch explained.

Such penalties are fines, he continued, and they “cannot be excessive.” It is certainly possible that the Court may start in *Pung* where it left off in *Tyler*.

And finally, should the Court rule in favor of the Pung family, there could be dramatic practical consequences. First, more state and local governments may choose to follow the Supreme Court’s direction in *Tyler* that the landowner is due surplus proceeds instead of refusing to do so as Isabella County did. Furthermore, should the Court define just compensation as the fair-market value of the property, local governments would likely reform their tax-foreclosure-sale process to avoid foreclosure when the tax debt is minimal, and when foreclosing, to maximize the amount of the sale price.

Even if the Court rules in favor of the Pung family on narrower grounds—for instance, by holding that the tax-foreclosure sale price is determinative of the amount of “just compensation” only if the government endeavors in good faith to produce the highest sale price—such a ruling could, like *Tyler*, raise and reinforce the guardrails protecting private property rights. This could hold governments accountable for failing to *justly* compensate landowners when taking and selling their property, and avoid the situation faced by the Pungs, where the county foreclosed and sold the property for less than half its value to recoup a tax debt equaling only 1.2 percent of what the property was worth.

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