

ARTICLE:**PUNG V. ISABELLA COUNTY: WILL THE U.S. SUPREME COURT ACCEPT AN INVITATION TO UPEND TAX FORECLOSURES ACROSS AMERICA?**

*By Carolyn Nelson Rowan**

In February of this year, the United States Supreme Court heard oral argument in the case of *Pung v. Isabella County*,¹ which raises the issue of whether the owner of a home sold at a tax foreclosure sale is entitled to compensation based on the fair market value, rather than the surplus from the sale price. The home at issue, located in Isabella County, Michigan, had a fair market value of \$194,000, but was sold at auction for \$76,008, to satisfy an alleged tax debt of \$2,241.93. After the owner's estate filed a lawsuit alleging a violation of the Takings Clause of the Fifth Amendment, among other claims, the lower courts held there was a taking and damages should be calculated based on the surplus proceeds from the sale, even though the sale price was much less than the fair market value.

Depending on how the Court rules, the case has the potential to upend tax foreclosures across the country. This article examines the case, the parties' positions and justices' questions at oral argument, and attempts to predict whether the case will effect sweeping change in the tax foreclosure system or carry little import beyond the parties.

CASE BRIEF**Key Constitutional Provisions at Issue**

The key constitutional provisions at issue in *Pung v. Isabella County* are the Takings Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment.

The Fifth Amendment provides that private property shall not be taken for public use without just compensation.² To establish a taking under the U.S. Constitution, a plaintiff must establish: "(1) a cognizable property interest; and

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(2) that a taking occurred. The Fifth Amendment, however, does not create property rights, it enforces them.”³

The Eighth Amendment provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”⁴

Factual Background

Under Michigan law, a property owner can apply for an exemption from local school district taxes for their primary residence, known as the Principal Residence Exemption (PRE). An owner can claim this exemption by filing an affidavit. The local tax assessor determines whether the owner is eligible for the exemption and must include their reasons in any denial.⁵

The case pending before the Supreme Court centers on the foreclosure of a property in Union Township, Isabella County, Michigan, previously owned by Timothy Scott Pung. In 1994, Timothy filed an affidavit for a PRE, which was granted and still active when he died in 2004.⁶ After his death, his wife continued to live at the house until she died in 2008, at which time his son started living there.⁷

However, in 2010, county officials denied the Pungs’ PRE. Specifically, the local assessor, Patricia DePriest (DePriest), retroactively denied the PRE for tax years 2007, 2008, and 2009, and denied the PRE for the 2010 and 2011 tax years.⁸ DePriest claimed to be unsure who owned the property after Timothy’s death and believed the law required any new owner to file a new PRE affidavit.⁹

The Pungs appealed the denial regarding 2007, 2008, and 2009 tax years and refused to pay the extra taxes for 2010 and 2011.¹⁰ The tax tribunal granted the PRE for years 2007, 2008, and 2009, explaining that the property was still owned by Timothy’s estate, of which his wife and son were beneficiaries, and therefore his wife and son were not new owners.¹¹ During the hearing, the administrative law judge of the tribunal stated the Pungs did not need a new affidavit, but the tribunal’s written order entered in March 2012 did not address the question of whether a new affidavit was required.¹²

Isabella County claimed \$2,241.93 was owed in unpaid real estate taxes for years 2010 and 2011. In June 2012, the county treasurer, Steven Pickens (Pickens), initiated foreclosure proceedings. In December 2012, DePriest granted the 2012 PRE based on the administrative law judge’s oral statements

at the hearing, but at the same time, she contacted the former chief clerk of the tribunal, who told her she needed to deny the PRE because a new affidavit was never filed.¹³

On February 4, 2013, the Pungs moved to dismiss the foreclosure proceeding based on the tribunal's ruling, and three days later the county removed the Pung property from its foreclosure petition, requesting that the motion to dismiss be denied as moot. The same day, DePriest revoked the 2012 PRE. On February 15, the circuit court rejected the county's mootness argument, held the tribunal's ruling applied to the 2010 and 2011 tax years, declared the Pungs' taxes were paid in full, and dismissed the foreclosure petition.¹⁴ This ruling was affirmed by the Michigan Court of Appeals in 2015.¹⁵

With respect to DePriest's revocation of the 2012 PRE, the parties disputed whether Pung received written notice of the denial. However, in late February 2013, Pung received verbal notice when he was trying to pay his tax bill.¹⁶ Pung immediately asked the tribunal to enforce its 2012 order for the years 2010-2012. The chief clerk of the tribunal, Peter Kopke refused, asserting the order only applied to years 2007-2009.¹⁷

The removal of the 2012 PRE led to an unpaid \$2,241.93 tax bill, for which Pickens initiated foreclosure proceedings in June 2014. Pung failed to appear, and the county circuit court entered a judgment of foreclosure in February 2015. In May 2015, Pung moved to set aside the foreclosure, claiming a violation of due process based on alleged lack of notice. After the circuit court set aside the foreclosure, the Michigan Court of Appeals reversed and the property was sold at public auction for \$76,008.00.¹⁸ At the time of the sale, the fair market value of the home was \$194,400.¹⁹ The county kept all proceeds from the sale, not only the amount necessary to satisfy the balance of the tax bill.²⁰

Proceedings in the District Courts

In 2018, Timothy's brother, Michael, acting as the representative of the estate (hereafter referred to as "Pung"), filed an action in the Western District of Michigan against Isabella County, Kopke (who was later dismissed²¹), Pickens, and DePriest. After amendments, the complaint alleged multiple claims: conspiracy to violate due process; violation of the Equal Protection Clause; violations of the Excessive Fines Clause of the Eighth Amendment; and violations of the Takings Clause under the Fifth and Fourteenth Amendments.²²

Pung filed a partial motion for summary judgment on the takings claims, as-

serting that the county effected a taking when it kept the proceeds of the sale, rather than the amount necessary to satisfy the tax bill. Citing a recent Michigan Supreme Court opinion, the district court agreed the county was not entitled to keep the sale proceeds in excess of the amount necessary to satisfy the unpaid taxes.²³ Because the county kept the full amount and did not return the excess to Pung, the court held “it has taken property in violation of Plaintiff’s constitutionally protected interest and is obligated to account to Plaintiff for it.”²⁴ The decision left the question of damages open for further litigation, noting “a potential dispute over whether the Fifth and Fourteenth Amendments require an accounting for not only the excess proceeds, but also for the full fair market value of the property, which could be a higher amount.”²⁵ Because Pung raised the Excessive Fines Clause as an alternative theory, the court dismissed it without prejudice.²⁶

Shortly thereafter, the case was transferred to the Eastern District of Michigan,²⁷ where Pung filed a motion for summary judgment presenting the question of damages, i.e. whether he should be compensated for equity in the property (i.e., the fair market value), or only the amount by which the actual sale price exceeded the tax debt (the “surplus proceeds”). The court stated that Pung had not submitted any authority to support his position that he was entitled to the equity. While the Michigan Supreme Court expressly recognized a property right in the “surplus proceeds,” it rejected the idea that just compensation needed to be based on fair market value.²⁸ Given that other courts had identified the property interest as the surplus proceeds, and plaintiff had not cited any authority to support his argument, the district court concluded that plaintiff was only entitled to the “surplus proceeds,” plus interest from the date of the foreclosure sale.²⁹

Accordingly, the Eastern District granted Pung’s motion for summary judgment to “to the extent that he is entitled to the ‘surplus proceeds’ of the tax-foreclosure sale of the Property, as well as interest from the date of the foreclosure sale,” but denied it to the extent it sought “excess equity” measured by the fair market value.³⁰ The court denied Pung’s Excessive Fines claims as moot for the same reason as the judge in the Western District, and granted defendants’ motions for summary judgment on the conspiracy and equal protection claims.³¹

Sixth Circuit Court of Appeals Opinion

On appeal, the Sixth Circuit affirmed the district court’s decisions in all

substantive respects. With regard to Pung's takings claims, the court considered whether the district court erred when it awarded surplus proceeds plus interest. Pung argued that the district court should have awarded an amount based on the fair market value of the property, but the court disagreed, explaining that Sixth Circuit precedent provides that "[t]he government commits a Fifth Amendment taking when it retains the proceeds from a tax foreclosure sale that exceed the delinquent property tax debt."³² Although the district court committed a minor mathematical error in its calculations, its award of surplus proceeds was consistent with this precedent.³³

The court of appeals went on to reject Isabella County's argument that Pung was not entitled to any interest on the sale proceeds. "[A] property owner's right to full compensation arises at the time of the taking,"³⁴ and the owner is "entitled to compensation as if it had been 'paid contemporaneously with the taking.'"³⁵

Next, the court addressed Pung's claim that the county violated the Excessive Fines Clause of the Eighth Amendment. Although the district court declined to address this claim as moot, Pung argued that it should have been addressed because he was only awarded surplus proceeds while the market value of his property was \$194,400, meaning he lost approximately \$118,000 in equity.³⁶ The court explained that "[t]he Excessive Fines Clause 'limits the government's power to extract payments, whether in cash or kind, as punishment for some offense.'"³⁷ "In the property context, the Supreme Court has traditionally applied the Excessive Fines Clause to statutes that impose property forfeiture in addition to other criminal punishments."³⁸

The court noted that in *Tyler v. Hennepin County*, the Supreme Court did not reach Eighth Amendment issues in the context of tax delinquency foreclosure proceedings,³⁹ but Justice Gorsuch did argue in a concurring opinion that the scheme under review might implicate the Excessive Fines Clause to the extent the scheme imposed economic penalties for willful noncompliance with the law.⁴⁰ However, the court did not consider the issue further because the Michigan Supreme Court previously held that the statutory scheme at issue did " 'not necessarily punish property owners for failing to pay their property taxes'; because '[i]ts aim is to encourage the timely payment of property taxes,'"⁴¹ and the Sixth Circuit previously held that "the GPTA's tax forfeiture scheme does not fall within the ambit of the Eighth Amendment."⁴² Bound by precedent, the court found no Eighth Amendment violation.

The court also went on to affirm the district court's grant of summary judgment on Pung's claims for violation of equal protection and conspiracy to violate due process.⁴³ Thus, with the exception of correcting a minor arithmetical error in the damages calculation, the Sixth Circuit affirmed the district court's rulings.⁴⁴

U.S. Supreme Court Review

On July 22, 2025, Pung filed a petition for writ of certiorari with the U.S. Supreme Court,⁴⁵ arguing that for purposes of the Takings Clause, "just compensation" should be the fair market value of what was taken. The petition acknowledged that "[t]axes themselves are not a taking," but asserted that when a property is sold to satisfy a tax debt, keeping the "remaining value" is.⁴⁶ The petition asked the Court to consider an issue not reached in *Tyler v. Hennepin County*: whether the government can sell property for a "tiny fraction of its fair market value" to satisfy a tax debt, or whether doing so constitutes a taking or excessive fine.⁴⁷

The Court granted Pung's petition on October 3. The questions presented for the Court are: (1) "Whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the Takings Clause of the Fifth Amendment when the compensation is based on the artificially depressed auction sale price rather than the property's fair market value"; and (2) "Whether the forfeiture of real property worth far more than needed to satisfy a tax debt but sold for fraction of its real value constitutes an excessive fine under the Eighth Amendment, particularly when the debt was never actually owed."⁴⁸

In addition to the briefs of the parties below, multiple parties, including the United States and the National Association of Realtors, filed amicus briefs. Oral argument took place on February 25, 2026. A decision is expected by the end of this term (June 2026).

THEMES AT ORAL ARGUMENT

During the oral argument in February, a few notable themes emerged from the parties' arguments and the justices' lines of questioning.

First, several justices expressed concerns about fairness.

Most of the fairness concerns seemed tied to the particular fact pattern at

issue: The alleged tax debt was only \$2,241.93, while the sale yielded \$76,008, and the fair market value was \$194,000. Furthermore, there was a dispute as to whether the taxes were actually owed, along with questions about the particular process at issue.

Against this backdrop, Justice Barrett noted it seemed like there was some “real unfairness” to Pung;⁴⁹ Justice Sotomayor described the situation as “fundamentally unfair”⁵⁰ and asked for cases on the issue of a “standard of fairness.”⁵¹ More specifically, Justice Gorsuch emphasized the difference between the sale price and the fair market value,⁵² and Justice Sotomayor raised the issue that a year and a half went by between the foreclosure order and the sale.⁵³

Others seemed to be less sympathetic to Pung’s plight. For example, Justice Jackson seemed wary of creating a sort of fiduciary duty on the part of the government to maximize the value of the asset at a sale. Her view was that if Pung wanted to maximize the price, he could have sold it himself or taken steps to avoid foreclosure when it was threatened, but instead he forced the government to do it.⁵⁴ Justice Jackson also noted a distinction between taking property because someone did not pay their taxes and taking property to build a railroad or a park. “[T]hat context makes the just compensation analysis different.”⁵⁵

There was a good deal of argument and questioning regarding how to decide what is “fair.” Mr. Liu, the attorney appearing for the United States as amicus, argued that if the process was fair, then the amount received at the sale should constitute a sufficient measure of valuation. Meanwhile, when pressed by the justices regarding whether the auction price would be the proper measure where the process was completely fair, Mr. Ellison, Pung’s attorney, stated, “the auction price is just one piece of evidence . . . in the overall scheme of possible evidence that competing parties could—submit to the court to determine what is, in fact, the fair market value.”⁵⁶

Justice Alito pointed out that some other jurisdictions have taken steps to make the tax foreclosure process fairer. For example, other jurisdictions have adopted requirements that the government “must first list the property for sale at market value via real estate brokers or real estate agents, and then, if the realtor listing is unable to proceed, then a public auction is allowed where the minimum strike price at auction is two-thirds of the fair market value, et cetera, et cetera.”⁵⁷ However, he also expressed concerns about getting into the details of which reforms are necessary to comply with the Takings Clause.⁵⁸

Even those who expressed fairness concerns grappled with whether and how they should fit into the analysis. Justice Barrett, for example, was struggling to understand how the “real unfairness” to Pung fit into the takings framework.⁵⁹ Justice Jackson posed the question of whether the fairness concerns were really more an issue of due process than taking,⁶⁰ and Mr. Liu, the attorney representing the United States at argument, seemed to suggest that was possible.

Justice Barrett also pressed on the issue of whether the foreclosure is just an exercise of the taxing power, not a taking. Pung’s response sounded like a fairness argument: “Because the government is taking more property than necessary to fulfill the debt because, at that point, they’re no longer a debt collector anymore. When they’ve taken that much property over the debt itself, they’ve become a confiscatory government now as opposed to a debt collector. When—when a—if a client doesn’t pay my bill, I don’t get to go seize their whole entire house. I can only collect on the piece of the debt that I’m entitled to do so. The government has different powers. They can act as a super debt collector, and they’re utilizing their takings power to be able to take more property than necessary. And when you trigger that taking obligation, here—again, what’s taken is not the surplus; it’s the equity that’s in the home at the time of the taking—that’s what triggers the obligation to pay just compensation because the Fifth Amendment requires it.”⁶¹

Thus, whether considered in the takings framework or otherwise, the issue of fairness, or lack thereof, was front and center at oral argument.

Second, many questions and arguments addressed history and tradition.

The justices seemed somewhat wary of Pung’s argument that he was entitled to fair market value at the time of the take, noting that history and tradition seemed to permit these types of foreclosures.⁶² Justice Thomas queried, “What do you do with the fact that the English and American legal traditions seem to permit these sorts of foreclosures?”⁶³ and Justice Barrett stated, “[I]t seems to me the historical evidence shows that you’re entitled to the surplus of the proceeds from the auction.”⁶⁴

With regard to what a fair process would look like, Mr. Liu told the Court they should look to history and tradition, identifying three guideposts: public notice, a public auction (rather than a secret sale), and a competitive auction.⁶⁵ He noted there could be more, and that could be a topic on remand because the

issue had not been fully briefed below.⁶⁶ “The reason why I say it’s not an exhaustive list is because, while there are certain procedures that you can point to that will provide fair procedures, there’s any number of things a state could put on top that would actually make those—you know, undercut those same procedures. So I—I don’t think it’s—it’s—it’s as simple as going through and saying there’s X, Y, and Z. I think you need a catch-all that’s something like: And a state can’t do anything else to kind of undercut all—all the procedures on that list.”⁶⁷ However, the core of his argument regarding the basic “guideposts” was couched in history and tradition.

Third, multiple justices raised the concept that foreclosed property is simply worth less.

This issue came up again and again. Many of the justices, as well as the attorneys, mentioned Justice Scalia’s opinion in *BFP v. Resolution Trust Corp.*⁶⁸ as support for the proposition that a foreclosure redefines the market and necessarily depresses property value. Justice Sotomayor noted, this is not a “fair market value sale. An auction is a different, forced sale, and so it will yield a different measure.”⁶⁹

Justice Kagan focused on the practical realities of requiring compensation based on fair market value given that foreclosures depress property values. She asked Pung’s attorney directly, “[W]ouldn’t your primary position effectively stop states from using foreclosure scale—sales?”⁷⁰ He suggested not necessarily because it should be a multi-factor approach.⁷¹ She also asked Mr. Liu, “So what would it mean if we said that the measure was fair market value with respect to foreclosure sales?” Mr. Liu responded bluntly, “It would spell the end of tax sales in America. Every tax sale is necessarily going to yield less than fair market value.”⁷²

Although the parties did not agree regarding the potential repercussions of their positions, the justices, based on their questions, seemed to agree that foreclosed properties will often yield less.

Fourth, the parties and justices also focused on the question of when just compensation should be calculated.

At the argument, the justices pressed the attorneys to identify the date on which just compensation should be calculated. Mr. Ellison began by arguing that just compensation must be measured by the value of what is taken, the fair market value measure from the time of the take.⁷³ He also explained Pung’s po-

sition that the initiation of the foreclosure process is when the taking occurs, not on the day of the actual sale.⁷⁴ When Justice Barrett asked what is the correct date for gauging fair market value, Mr. Ellison said, “[W]hen they take title. When they assume full and complete title, that is the taking because the govern—the person is dispossessed of the ownership of that property at that point.”⁷⁵ Meanwhile, Mr. Liu took the position it should be the date the owner loses control of the property, e.g., after the time to exercise the right of redemption has expired.⁷⁶

Although the justices and parties engaged in this line of questioning, it does not appear it was fully briefed below.

Fifth, the Excessive Fines Clause was not a major focus at argument.

At one point in the argument, Mr. Ellison asserted that “even if this is not a takings—if we—if we take it out of the takings context and we put it in the excessive fines, what we have here is a government that says, for a very small debt, we are going to take and destroy vast majorities of the equity that’s valued at the time that we took title to the property itself. So, even if the takings part of this doesn’t provide the answer, the excessive fines in particular circumstances, which where the delta is so high here, can provide alternate relief.”⁷⁷ Despite that and a couple other mentions in the parties’ arguments, the justices essentially ignored the Excessive Fines issue in their questioning. That absence could indicate the justices do not find the argument particularly persuasive.

Finally, there were hints at possible remand.

The justices and the parties discussed the possibility of remand on a number of potential issues, including: whether government should have taken personal property or something less significant first given the amount of the debt;⁷⁸ history and tradition;⁷⁹ and the proper date of the taking.⁸⁰

Also, the justices and the parties discussed whether remand could be appropriate for a determination of what makes a fair process. Although he acknowledged that some jurisdictions have taken steps to make the process fairer, Justice Alito expressed concerns about getting into the details of which reforms are necessary to comply with the Takings Clause.⁸¹ Those could be issues for remand.

The attorneys for Pung and the United States agreed that remand could be

appropriate for a determination of what makes a fair process. For example, the lower court could consider whether the fairness of the process is the sole consideration or one of many, and what test or guidelines courts should follow to determine whether a process is fair.⁸² Justice Kavanaugh asked Mr. Ellison: “On the possibility of remand for consideration of fair process, the Solicitor General says, as part of that, the courts below could consider whether and to what extent Petitioner has preserved the issue. If he has, he’ll bear the—bear the burden of showing that the sale was not conducted fairly. Do you agree with that?”⁸³ And Mr. Ellison responded that they did not necessarily agree.⁸⁴ This could be an indication of the type of issue that might be the subject of remand.

PREDICTIONS

Any attempt to predict how a court will rule in a given case is a bit like reading tea leaves. That said, the themes that emerged at oral argument may provide some hints at possible outcomes.

Everyone seems to accept that there was a taking here. The question is how compensation should be calculated. Pung asks the Court to hold that the valuation must be based on the fair market value. This would be a clear, defined rule, but it seems unlikely for a couple reasons. First, based on the oral argument, it would appear to be at odds with history and tradition. Second, it could have extreme practical consequences. It might even “spell the end of tax sales in America,” as Mr. Liu argued. If a government entity risks having to pay an owner the difference between the sale price (which will likely be depressed due to the fact of foreclosure), and the fair market value, tax sales would arguably become too risky in many, if not all, cases. Given that these types of sales have been going on for a very long time, and given the expressions of reluctance by some justices at oral argument, it seems unlikely the Court will go that far and adopt a blanket rule.

At argument, Pung also suggested a narrower path forward. The Court could find that while the sale price may be, or even is typically, fair market value, it is not categorically so. The Court could hold that if the process is fair, the amount received at sale should constitute a sufficient measure of valuation, or that the auction price should just be one piece of evidence the Court may consider. Given the focus of the questions, it seems more likely the Court would adopt the former. If it does, there will still be questions about what is a fair process, and while the Court could provide a framework or establish guideposts of a fair

proceeding, remand for initial consideration by the lower courts may be more likely.⁸⁵ Such an approach would allow the Court to address the equities in the case, by asking the lower courts to take a second look without necessarily upending long-standing tax foreclosure practices.

It is also possible the justices could simply voice their discomfort with the fact pattern, and possibly note the fairness concerns are real but not necessarily relevant in the takings context, while upholding the Sixth Circuit's decision based on history and tradition. The Court might choose this approach if it prefers a bright-line rule and finds the proposals from Pung and the United States to be too difficult to administer. However, enough justices focused on fairness and what constitutes a fair process that there seems to be a real possibility they will reach a decision that requires remand of some sort.

It seems less likely the Court will entertain the Excessive Fines Clause question, given the justices' apparent lack of interest at oral argument. However, in light of Justice Gorsuch's concurring opinion in *Tyler v. Hennepin County*, which argued the tax forfeiture scheme at issue there could implicate the Excessive Fines Clause,⁸⁶ this argument should not be fully discounted and could still rear its head.

CONCLUSION

While the Supreme Court's decision in *Pung v. Isabella County* has the potential to effect sweeping change to tax foreclosures in the country, it seems more likely the Court will opt for a narrower path, aimed at ensuring basic principles of fairness are met while allowing these types of proceedings to move forward and ensuring local governments retain this tool for enforcing tax debts in their jurisdictions. Alternatively, the Court may decide the fairness concerns raised in this case are real but do not implicate the Takings Clause at all. Either way, those interested in the outcome can expect a decision by June of this year.

ENDNOTES:

¹*Pung v. Isabella County*, Case No. 25-95.

²U.S. Const., amend. V. For an in-depth discussion of takings law, see Miller & Starr, *California Real Estate* (4th ed. 2025) §§ 23:1, 23:2.

³*Pung v. County of Isabella*, 632 F. Supp. 3d 743, 751 (E.D. Mich. 2022), aff'd, 2025 WL 318222 (6th Cir. 2025), cert. granted, 146 S. Ct. 80, 222 L. Ed. 2d 1241 (2025).

⁴U.S. Const., amend. VIII.

⁵*Pung v. Kopke*, 2025 WL 318222, *1 (6th Cir. 2025), cert. granted, 146 S. Ct. 80, 222 L. Ed. 2d 1241 (2025).

⁶*Id.* at *1.

⁷*Pung v. Kopke*, Opinion and Order, W.D. Mich., Case No. 1:18-CV-1334, ECF 119 (Sept. 29, 2020), p.1.

⁸*Pung v. Kopke*, 2025 WL 318222, at *1 (6th Cir. 2025), cert. granted, 146 S. Ct. 80, 222 L. Ed. 2d 1241 (2025).

⁹*Id.*

¹⁰*Id.*

¹¹*Id.* at *1- *2.

¹²*Id.* at *2

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.*

¹⁷*Id.*

¹⁸*Id.*

¹⁹*Id.* at *3.

²⁰*Id.* at *2.

²¹*Pung v. Kopke*, ECF 119, at pp. 7-8.

²²*Pung v. Kopke*, 2025 WL 318222, at *3 (6th Cir. 2025), cert. granted, 146 S. Ct. 80, 222 L. Ed. 2d 1241 (2025).

²³*Pung v. Kopke*, ECF 119, at pp. 10-11 (citing *Rafaeli, LLC v. Oakland County*, 505 Mich. 429, 952 N.W.2d 434, 448 (2020)).

²⁴*Id.* at p.11.

²⁵*Id.* at p.11 & n.3.

²⁶*Id.* at p.11 n.4, p. 12.

²⁷*Pung v. Kopke*, 2025 WL 318222, at *3 (6th Cir. 2025), cert. granted, 146 S. Ct. 80, 222 L. Ed. 2d 1241 (2025).

²⁸*Pung v. County of Isabella*, 632 F. Supp. 3d at 751.

²⁹*Id.* at 752.

³⁰*Id.*

³¹*Pung v. Kopke*, 2025 WL 318222, at *3 (6th Cir. 2025), cert. granted, 146 S. Ct. 80, 222 L. Ed. 2d 1241 (2025).

³²*Id.* at *3 (citing *Freed v. Thomas*, 81 F.4th 655, 658-59 (6th Cir. 2023)).

³³*Id.* at *4.

³⁴*Id.* (citing *Knick v. Township of Scott, Pennsylvania*, 588 U.S. 180, 190, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019)).

³⁵*Id.* (quoting *Jacobs v. U.S.*, 290 U.S. 13, 17, 54 S. Ct. 26, 78 L. Ed. 142 (1933)).

³⁶*Id.*

³⁷*Id.*

³⁸*Id.*

³⁹*Id.* at *5 (citing *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 647-648, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023) (“deeming it unnecessary to reach the Excessive Fines claim under the Eighth Amendment because the Fifth Amendment Takings Clause fully remedied the harm”). For additional discussion of *Tyler v. Hennepin County*, see Miller & Starr, *California Real Estate* (4th ed. 2025) § 23:1 (Basis for inverse condemnation).

⁴⁰*Id.* (citing *Tyler v. Hennepin County*, 598 U.S. at 649-650 (Gorsuch, J., concurring) (“economic penalties ‘to deter willful noncompliance with the law’ . . . were still fines and the Constitution deems that ‘[t]hey cannot be excessive’ ”)).

⁴¹*Id.* at *5 (citing *Rafaeli, LLC v. Oakland County*, 505 Mich. 429, 952 N.W.2d 434, 448 (2020)).

⁴²*Id.* at *5 (citing *Freed v. Thomas*, 81 F.4th at 659).

⁴³*Id.* at *5-*7.

⁴⁴*Id.* at *7.

⁴⁵Petition for Writ of Certiorari, Case No. 25-95 (filed Jul. 22, 2025), p. i.

⁴⁶*Id.* at p. 9 (citing *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023)).

⁴⁷*Id.*

⁴⁸*Id.* at p. i.

⁴⁹Transcript of Oral Argument in *Pung v. Isabella County*, available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/25-95_32q3.pdf (last accessed Apr. 3, 2026), at 52:10-11.

⁵⁰Transcript, at 73:16-20.

⁵¹Transcript, at 39:14-40:15. Mr. Ellison pointed her to *Slater v. Maxwell*, 73 U.S. 268, 18 L. Ed. 796, 1867 WL 11202 (1867), *Ballentyne v. Smith*, 205 U.S. 285, 27 S. Ct. 527, 51 L. Ed. 803 (1907), and *Graffam v. Burgess*, 117 U.S. 180, 6 S. Ct. 686, 29 L. Ed. 839 (1886).

⁵²Transcript, at 79:5-81:20.

⁵³*Id.* at 114:12-23.

⁵⁴*Id.* at 27:13-29:1. 58:25-59:24.

⁵⁵*Id.* at 31:19-32:3.

⁵⁶*Id.* at 11:21-12:2.

⁵⁷*Id.* at 72:6-21.

⁵⁸*Id.* at 72:6-73:2.

⁵⁹*Id.* at 51:8-23 (“you didn’t even owe the tax, and it’s this small tax and—and the big—you know, the big loss of the family home and—and of the money. So it—it does seem that there’s some unfairness there.”)

⁶⁰*Id.* at 88:1-5

⁶¹*Id.* at 54:5-55:4.

⁶²*Id.* at 5:25-6:3.

⁶³*Id.* at 5:25-6:3.

⁶⁴*Id.* at 19:17-23.

⁶⁵*Id.* at 61:25-62:19.

⁶⁶*Id.* at 75:23-76:4.

⁶⁷*Id.* at 76:5-17.

⁶⁸*BFP v. Resolution Trust Corp.*, 511 U.S. 531, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (1994). *BFP* is discussed further in Miller & Starr, California Real Estate (4th ed. 2025) § 13:189 (Effect of foreclosure sale before or after a bankruptcy petition).

⁶⁹*Id.* at 8:19-23; see also 12:10-13:8 (Justice Kagan noted that the fact a property is being offered at a foreclosure sale “means that there’s going to be a depressed price,” and whether in those circumstances the owner is entitled to fair market value), 61:1-10 (Mr. Liu stated, “As this Court recognized in *BFP*, foreclosed property is simply worth less. Petitioner’s approach would defy that reality and spell the end of tax sales in this country”).

⁷⁰*Id.* at 40:17-19

⁷¹*Id.* at 40:20-43:23

⁷²*Id.* at 78:9-15.

⁷³*Id.* at 4:11-20.

⁷⁴*Id.* at 14:24-15:2.

⁷⁵*Id.* at 53:5-14.

⁷⁶*Id.* at 83:21-25, 86:19-23.

⁷⁷*Id.* at 44:19-45:6.

⁷⁸*Id.* at 39:5-13, 66:19-67:15.

⁷⁹*Id.* at 66:4-18.

⁸⁰*Id.* at 106:5-9, 107: 7-13 (“But isn’t there at least a colorable argument that a taking occurs when you take title to my house?”).

⁸¹*Id.* at 72:6-73:2.

⁸²*Id.* at 22:1-6, 23:5-8, 24:11-25:19.

⁸³*Id.* at 48:15-22.

⁸⁴*Id.* at 49: 22-25.

⁸⁵*Id.* at 21:7-15.

⁸⁶*Pung v. Kopke*, 2025 WL 318222, at *5 (6th Cir. 2025), cert. granted, 146 S. Ct. 80, 222 L. Ed. 2d 1241 (2025) (citing *Tyler v. Hennepin County*, 598 U.S. at 649-50 (Gorsuch, J., concurring)).