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

AMICI CURIAE BRIEF OF THE BUCKEYE INSTITUTE, NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC., COMPETITIVE ENTERPRISE INSTITUTE, MOUNTAIN STATES LEGAL, ILLINOIS POLICY INSTITUTE, AND OWNERS' COUNSEL OF AMERICA IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

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?

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?

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INTEREST OF AMICI CURIAE[1]

The Buckeye Institute was founded in 1989 as an independent research and educational institution—a think tank—to formulate and promote free-market policy in the states. The Buckeye Institute accomplishes its mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating free-market policies, and marketing those policy solutions for implementation in Ohio and replication across the country. The Buckeye Institute also files lawsuits and submits amicus briefs to fulfill its mission. The Buckeye Institute is a nonpartisan, nonprofit, tax-exempt organization, as defined by I.R.C. section 501(c)(3). The Buckeye Institute has been vocal in its opposition to practices in Ohio allowing government entities to seize real property to satisfy a tax debt without compensating the property owners for their accrued equity, whether that seizure comes directly, as it did in *Tyler* v. *Hennepin County*, or in through procedural hurdles designed to frustrate the vindication of the Fifth Amendment right recognized in that case.

The **National Federation of Independent Business Small Business Legal Center, Inc.** (NFIB Legal Center) is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts

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[1] Pursuant to Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part and no entity or person, aside from amici curiae made any monetary contribution toward the preparation or submission of this brief.

through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. (NFIB), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members.

The **Competitive Enterprise Institute** (CEI) is a nonprofit educational and research organization headquartered in Washington, D.C., dedicated to promoting the principles of free markets and limited government. Since its founding in 1984, CEI has focused on raising public understanding of the problems of overregulation through policy analysis, commentary, and litigation. CEI pursues public-interest litigation to ensure that federal agencies and states act within the constraints of the U.S. Constitution. CEI's mission is to develop and advocate for policies that advance the right to freedom, fairness, property, and prosperity for Americans.

Mountain States Legal Foundation ("MSLF") is a nonprofit public-interest law firm organized under the laws of the State of Colorado. MSLF is dedicated to bringing before the courts issues that are vital to the defense and preservation of individual liberties: the right to equal justice under law, the right to speak freely, the right to own and use property, and the need for limited and ethical government.

Since its creation in 1977, MSLF attorneys have litigated the proper interpretation and application of statutory, regulatory, and constitutional provisions.

See, *e.g.*, *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200 (1995) (MSLF serving as lead counsel); *Marvin M. Brandt Revocable Tr.* v. *U.S.*, 572 U.S. 93 (U.S., 2014) (MSLF serving as lead counsel); *Bondi* v. *VanDerStok*, 145 S. Ct. 857 (2025) (MSLF serving as co-counsel).

The **Illinois Policy Institute** is a nonpartisan, nonprofit public policy research and education organization that promotes personal and economic freedom through free markets and limited government. As the strongest voice for taxpayers in Illinois, its focus includes budget, tax, and good government policies. Moreover, the institute evaluates housing policy along with the disparate impact Illinois' high property taxes have on the state's low-income residents. Illinois still allows the unconstitutional practice invalidated by this court in *Tyler* and is the only state to do so without any limitation.

The **Owners' Counsel of America** (OCA) is a nonprofit organization, organized under IRC § 501(c)(6) and sustained solely by its members. OCA is an invitation only network of the most experienced eminent domain and property rights attorneys from across the country who seek to advance, preserve and defend the rights of private property owners, large and small, locally and nationally. Since its founding in 2000, OCA has sought to use its members' combined knowledge and experience as a resource in the defense of private property ownership, and to make that opportunity available and effective to property owners nationwide. OCA member attorneys have been and are involved in landmark property rights cases in nearly every jurisdiction nationwide.

SUMMARY OF THE ARGUMENT

Filmmakers in the horror genre have long relied on the "final scare" trope to elicit one last jolt of adrenaline from their audiences. The monster seemingly destroyed, the protagonists finally safe, the audience breathes a sigh of relief. But the monster is not quite dead yet. Such is the case here. After this Court hammered a stake through the heart of the odious practice of equity theft by local governments in *Tyler* v. *Hennepin County*, 598 U.S. 631 (2023), local governments like Isabella County continue to rob homeowners of their equity through quick foreclosure sales that fail to provide anything close to the just compensation that the Fifth Amendment requires. Isabella County's position seems to be that if it cannot take the homeowner's equity, it will destroy it. The Fifth Amendment's Just Compensation Clause allows neither.

In *Tyler*, this Court relied on the Just Compensation Clause's venerable pedigree in English and American law to recognize that homeowner equity is property protected by the Fifth Amendment, and that seizure and sale of real property to collect a tax debt is a taking requiring return of the surplus proceeds. The historical analysis that guided the *Tyler* Court is again instructive. The principle of just compensation enshrined in Magna Carta, the English Bill of Rights, and the Northwest Ordinance of 1787 applies with equal force to the equitable determination of what is just as it does to the requirement that compensation be made.

Unlike some constitutional protections, the Fifth Amendment's just compensation requirement is categorical. The just-compensation requirement is "categorical" in the sense that a sovereign's proper authority to take private property exists *only* to the extent that the taking is necessary for a public use and that applying this principle to satisfy a debt requires that the government compensate the property owner for his or her accrued equity in that property. Indeed, the Court emphasized in *Knick* that when the government takes property, it must always pay just compensation. *Knick* v. *Twp. of Scott, Pennsylvania*, 588 U.S. 180, 185 (2019). There is no balancing test or weighing of interests. There is no discount to the government because it chooses to sell quickly. Rather, the Fifth Amendment—and the historical antecedents on which the Framers relied in crafting it—conditions the government's power to take on the payment of just compensation.

James Madison wrote that "[j]ustice is the end of government. It is the end of civil society." The Federalist No. 51, at 297 (James Madison) (Fall River Press ed. 2021). Here, the right to just compensation's firm hold in Anglo-American law say that justice requires local governments to return surplus equity. Any government process that elevates administrative convenience or capturing funds for the local government over this constitutional imperative must fail.

The Court should take this opportunity to complete the work begun in *Tyler* and clarify what is—or at least, what is not—"just compensation" for property seized to pay a tax debt. The Court does not need to articulate a new rule to determine when compensation is just. It needs only to apply the equitable underpinnings of the just compensation requirement and reaffirm that courts will not allow tax seizures where the compensation is manifestly unjust.

ARGUMENT

I. *Tyler* established that the duty to pay surplus proceeds to a landowner is categorical.

In arguing in favor of legislation regulating or curtailing the exercise of a constitutional right, politicians often fall back on the cliché that "no constitutional right is absolute." This holds true in some contexts, but not others. For example, the First Amendment's Free Exercise clause does not prohibit a state from preventing cruelty to animals, so long as it does not target ritual animal sacrifice. See *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 539 (1993). The First Amendment's free speech guarantee does not permit protestors to trespass or block public right-of-ways. See *Adderley* v. *State of Fla.*, 385 U.S. 39, 43 (1966). The exercise of one's right to a trial by jury is subject to the court's local procedural rules. See *Colgrove* v. *Battin*, 413 U.S. 149 (1973).

But the Fifth Amendment's just compensation requirement is different, and the Court has repeatedly recognized that difference. Unlike other rights, "[w]hen the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner." *Arkansas Game & Fish Comm'n* v. *United States*, 568 U.S. 23, 31 (2012) (quoting *Tahoe–Sierra Preservation Council, Inc.* v. *Tahoe Regional Planning Agency*, 535 U.S. 302, 322 (2002)). The just-compensation requirement is "categorical" in the sense that a sovereign's proper authority to physically take private property exists only to the extent that the taking is necessary for a public use, and the government pays just compensation to offset the property owner's loss of the property. Applying this principle to satisfy a debt requires that the government compensate the property owner for his or her accrued equity[2] in that property. Thus, "[t]he just compensation clause may not be evaded or impaired by any form of legislation." *Baltimore & Ohio R.R. Co.* v. *United States*, 298 U.S. 349, 368 (1936). The right to say "what shall be the rule of compensation" does not rest with the legislature. *Id.* at 365. Instead, the Fifth Amendment mandates that just compensation shall be the rule.

II. The categorical nature of the right to just compensation is rooted in history.

The categorical nature of the right arises from the Takings Clause's historical antecedents. The requirement that "just compensation" must accompany any taking of private property predates the U.S. Constitution and has a pedigree stretching back nearly a millennium. The Court has observed that the roots of the Just Compensation Clause extend "back at least 800 years to Magna Carta, which specifically protected agricultural crops from uncompensated takings." *Horne* v. *Dep't of Agric.*, 576 U.S. 350, 358 (2015). Specifically, Clause 28 of Magna

[2] As Petitioner correctly explain, the "actual property at issue is the home and, specifically, the Pungs' equity in it, not a contingent right to the proceeds of a future foreclosure sale." Br. for Pet'r at 15–16.

Carta forbade any "constable or other bailiff" from taking "corn or other provisions from any one without *immediately tendering money therefor*, unless he can have postponement thereof by permission of the seller." *Id.* (emphasis added and citation omitted).

While the colonial right to compensation for a taking of property often relied on a patchwork of purveyance statutes and general reliance on the common law, the Congress of the Confederation of the United States provided what was to be the first national statement on the matter when it enacted the Northwest Ordinance of 1787. In essence, the Northwest Ordinance provided the first national "pre-constitutional codification of the eminent domain power." Joseph J. Lazzarotti, *Public Use or Public Abuse*, 68 UMKC L. Rev. 49, 54 (1999).[3] In language that prefigured the Fifth Amendment, the 1787 Northwest Ordinance provided that "should the public exigencies make it necessary, for the common preservation, to take any person's property, . . . full compensation shall be made for the same." Confederation Cong., An Ordinance for the Government of the Territory of the United States North-West of the River Ohio, art. 2 (1787) .

Significantly, the State of Michigan was carved out of the Northwest Territory. Limiting takings to those

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[3] While the Northwest Ordinance provided the first "national" statement of the Just Compensation requirement, the Vermont Constitution of 1777 and the Massachusetts Constitution of 1780 included similar categorical requirements. William Michael Treanor, *The Origins and Original Significance of the Just Compensation Clause of the Fifth Amendment*, 94 Yale L.J. 694, 701 (1985).

that are necessary and requiring full compensation for them is thus part of the Michigan's origin story. When the men and women who settled what would become the State of Michigan loaded their wagons and lit out for the West, they would have relied—at least in part—on this national policy protecting them from uncompensated government takings.

A. The Framers' writings strongly support robust protection of private property, particularly from government confiscation.

Not long after the Revolutionary War's conclusion, James Madison voiced his concerns over the erosion of property rights that had attended the conflict, writing to Thomas Jefferson that "[t]he necessity of . . . guarding the rights of property was for obvious reasons unattended to in the commencement of the Revolution." Treanor, *supra*, at 709 (quoting James Madison, *Observations on Jefferson's Draft of a Constitution of Virginia*, *reprinted in* 8 The Papers of Thomas Jefferson 308, 310 (J. Boyd ed. 1953)). Madison cited the need for positive steps to secure those rights in the new country. *Id.*

Madison, in particular, saw broad protection for property—both real and intangible—as the proper end of government. James Madison, *Property, reprinted in* 14 The Papers of James Madison 266 (University Press of Va., 1977), https://tinyurl.com/34cz994u. Indeed, Madison considered the protection of property as a government responsibility commensurate with the protection of individuals. The Federalist No. 54, at 311 (James Madison) (Fall River Press ed. 2021) ("Government is instituted no less for protection of the property, than of the persons of individuals."). The Just Compensation Clause—although intended to have relatively narrow legal consequences—was such a safeguard. And although Madison viewed the Fifth Amendment as a restatement of what was already unquestionably the law, he believed that the codification of these pre-existing guarantees into the Bill of Rights would serve the hortatory purpose of encouraging respect for private property. " 'Paper barriers,' he declared, have a tendency to impress some degree of respect for them, to establish the public opinion in their favor, and rouse the attention of the whole community.' " Treanor, *supra*, at 710 (quoting James Madison, *Speech Proposing the Bill of Rights*, *in* 12 The Papers of James Madison 204–05 (C. Hobson & R. Rutland eds. 1979)). Of course, the paper barriers that Madison spoke of were intended to preserve rights. By contrast, Michigan's "paperwork barriers" serve as means to stealthily divest citizens of their property rights.

B. Following ratification, Madison's broader vision took hold in American jurisprudence.

Professor Treanor explains that "[i]n addition to limiting the national government's freedom of action, the just compensation clause served an educative role: It inculcated the belief that an uncompensated taking was a violation of a fundamental right. . . . [T]he Fifth Amendment was a national declaration of respect for property rights." *Id.* at 714. "By the 1820s, the principle of just compensation had won general acceptance." *Id.*

In the landmark case of *Gardner* v. *Village of Newburgh*, Chancellor Kent articulated the broad Madisonian view that had emerged from the field of Runnymede, crossed the ocean, survived a war, and firmly established its place as the fundamental law of the new nation:

> [T]his inviolability of private property, even as it respects the acts and the wants of the state, *unless a just indemnity be afforded,* has excited so much interest, and been deemed of such importance, that it has frequently been made the subject of an express and fundamental article of right in the [United States] constitution of government.

Gardner v. *Village of Newburgh*, 2 Johns. Ch. 162, 167 (N.Y.Ch. 1816).

In *Tiernan* v. *Wilson*, 6 Johns. Ch. 411 (N.Y.Ch. 1822), the court interpreted the just compensation requirement to impose a duty on the government to manage property sales to satisfy a tax debt in a reasonable manner to obtain a just value for the landowner. The court held that the sheriff's decision to sell two properties as one lot, to a single bidder for a price well under its actual value, not only failed to provide just compensation but "such a gross act of negligence and abuse of trust [that it] must be attended with the payment of costs." *Id.* at 415–416.

The Fifth Amendment's Just Compensation Clause is short and unadorned, yet freighted with history and purpose. At its simplest, it places the requirement to compensate the landowner for his loss squarely on the government. In fact, it is just compensation that distinguishes a government's legitimate taking of property for public use from plain theft. The question is not *if* the local government must provide just compensation to the dispossessed homeowner, but *how and when* it must do so.

Importantly, the ideology reflected in the historical record admits to no exception where a quick sale at an artificially low price serves the government's convenience. A government entity may have a legitimate interest in a quick sale to recapture a tax debt, but that interest has never trumped the just compensation requirement. And, as shown below, to the extent that the government has an interest in a quick sale, equity does not prohibit such a practice, so long as the government provides just compensation. But equity will step in to correct a manifestly unjust result.

III. Determining when compensation is constitutionally "just" requires a weighing of equitable principles.

While the government's obligation to pay just compensation when it takes real property to satisfy a tax debt is categorical, this Court, and the historical precedents on which it has relied, teach that the amount of the compensation—the "justness"—is a matter of equity. See *Chicago, B. & Q.R. Co.* v. *City of Chicago*, 166 U.S. 226, 236 (1897) (citing 1 William Blackstone, *Commentaries* 138–39; Thomas Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 559 (Boston, Little, Brown & Co. 1868); 2 Joseph Story, *Commentaries on the*

Constitution of the United States § 1790 (Boston, Hilliard, Gray & Co. 1833)).

This flexible approach jibes with the Just Compensation Clause's historical roots in English common law. The first Justice Harlan described the just compensation requirement as "but 'an affirmance of a great doctrine established by the common law for the protection of private property [ ] founded in natural equity, and [ ] laid down by jurists as a principle of universal law.'" *Id.* at 236 (citations omitted).

Half a century later, in *United States* v. *Cors*, Justice Douglas recognized that the equitable nature of the inquiry and the Fifth Amendment's sparse language weigh against the adoption of a black-letter rule:

> [The Fifth] Amendment does not contain any definite standards of fairness by which the measure of "just compensation" is to be determined. The Court in an endeavor to find working rules that will do substantial justice has adopted practical standards, including that of market value. But it has refused to make a fetish even of market value, since it may not be the best measure of value in some cases.

U.S. v. *Cors*, 337 U.S. 325, 334 (1949) (internal citations omitted).

The following year, Justice Black, writing for the Court, highlighted that just compensation required an equitable determination based on the facts of the case.

U.S. v. *Commodities Trading Corp.*, 339 U.S. 121, 123–24 (1950). The Court determined that "the dominant consideration always remains the same: What compensation is 'just' both to an owner whose property is taken and to the public that must pay the bill?" *Id.* at 123. The Court further noted that "[t]he word 'just' in the Fifth Amendment evokes ideas of 'fairness' and 'equity' . . . ." *Id.* at 124 While "market value" might often serve as a standard yardstick for just compensation, the Court saw no reason to use market value in circumstances where it is "too difficult to find" or—importantly for the case here—"its application would result in manifest injustice to the owner or public . . . ." *Id.* at 123.

And, in *Fuller*, Chief Justice Rehnquist, building on Justice Black's foundation, noted that "[t]he constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness as it does from technical concepts of property law." *U.S.* v. *Fuller*, 409 U.S. 488, 490 (1973) (internal citation omitted). Later still, in discussing another enumerated right, the Court hearkened back to *Chicago, B. Q.R Co.*, to describe the right to just compensation as "a principle of natural equity, recognized by all temperate and civilized governments, from a deep and universal sense of its justice." *McDonald* v. *City of Chicago, Ill.*, 561 U.S. 742, 760 (2010) (quoting *Chicago, B. & Q.R. Co.*, 166 U.S. at 238).

The Court should look to that "deep and universal sense of justice" here. That equitable inquiry does not require a sweeping new rule dictating the precise terms of a sale required for just compensation. Rather, it merely requires this Court to direct lower courts to apply their equitable judgment to the facts and reject foreclosure sales or other processes when they fail to produce a just result. Our systems entrust and reserve to the judiciary the right to decide just compensation." See Wanling Su, *What Is Just Compensation?*, 105 Va. L. Rev. 1483, 1505–06 (2019) (citing *Isom* v. *Miss. Cent. R.R. Co.*, 36 Miss. 300, 314–15 (1858)). Like Justice Stewart's test for obscenity, while manifest injustice in compensation may be difficult to define, one knows it when one sees it. *Jacobellis* v. *Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). And here, Isabella County's actions border on the fiscally obscene. The numbers tell the story:

- County's valuation: $194,400
- Purchaser's subsequent sale: $195,000
- Foreclosure sale price: $76,008
- Pung's "just compensation": $73,766.07

Pet. at 9, figure 1. The county's valuation of the Pung property exceeded the sheriff's sale price by 60%. Over the 30 years that Mr. Pung owned the property, he diligently paid, and the County happily accepted, property taxes based on that valuation. Indeed, the final $2,241.93 in property taxes, which formed the basis for the county's foreclosure action, resulted from the $194,400 valuation the county had placed on the property. Principles of equity, particularly equitable estoppel, should bar the county from effectively wiping out Mr. Pung's equity based on a low auction value while it collects 100% of its taxes based on a fair market appraisal. Yet after forcing the foreclosure sale, the county cries poor.

Undoubtedly, some houses forced to tax sale have fallen into disrepair and cannot command the price they did when they were appraised for tax purposes. Further, events like the foreclosure crisis of the 2010s, where foreclosures hit entire neighborhoods, can depress the value of properties throughout a region. See generally Daniel Hartley, *The Effect of Foreclosures on Nearby Housing Prices: Supply or Disamenity?* (Federal Reserve Bank of Cleveland, Working Paper No. 10-11R, 2014), https://tinyurl.com/33fsh56d. But looking to the facts here, the subsequent sale of the property by the successful bidder, who sold it for $195,000, undermines the county's claim that the auction sale provided just compensation.

Respondent may argue that it would be inequitable to require a county to pay more than it received at the foreclosure sale because that would reward a delinquent taxpayer. Failure to pay taxes does not justify the government stealing the equity. If the government engages in a foreclosure process that is designed to give the homeowner just compensation, the theoretical "reward to a delinquent taxpayer" would be a rare or nonexistent event. And in the event it did occur, courts are able to consider the equities of the situation.

And when considering the equities, courts should remember the rest of the story. Foreclosures impact more than the financial well-being of the homeowner. Courts have long recognized that "[t]he individual or family home is one of the evidences of modern civilization," and the home is "among the earliest institutions of the common law." *Riggs* v. *Sterling*, 60

Mich. 643, 647 (1886). Because the "home is where the heart is," families develop an emotional tie to their homes and their neighborhoods. See Amul Thapar, *The People's Justice* 2–21 (Regnery Gateway 2023) (discussing Susette Kelo and her emotional connection to her little pink house and neighborhood).

> While it is difficult to quantify the psychological damage caused by [ ] foreclosure, we have a partial window into this harm's magnitude through studies examining the health effects of foreclosures on communities. Marriages rupture. Both physical and mental health hospitalizations increase, particularly in minority communities. Violent crime increases. Individuals are stigmatized and socially isolated. Foreclosure may force individuals out of communities and away from their established support networks. Because the loss of a primary residence is an event that causes irreparable harm, values of fairness are of utmost importance to homeowners.

Daniel Bahls & Katherine Hunt, *Abhorring A Forfeiture: The Importance of Equitable Jurisdiction in a Foreclosure Crisis*, 41 Stetson L. Rev. 779, 788–89 (2012). Equity should consider the irreparable harm wrapped up in this process and require governments to strictly comply with the Takings Clause.

IV. The Court should kill the tax equity theft monster—once and for all—by ensuring that just compensation is paid in all tax lien foreclosures.

Michigan's equity-sucking attack on the Pung estate is repeated throughout the country via many procedural methods.

Tax lien sales and foreclosure equity theft are a nationwide problem. "While some states have recently passed new laws to protect home owners from this process, there are still many states where original property owners lose all their equity for a single missed property tax payment." Michael Taddonio, *The Common Law Remedy to the Tax Deed and Tax Lien's Disparate Impact on Communities*, 46 Vt. L. Rev. 642, 652 (2022). Not all states allow this type of tax lien sale and foreclosure process, but "twenty-eight states currently have laws that allow municipalities to sell tax liens to private purchasers." Caroline Enright, *Someone to Lien on: Privatization of Delinquent Property Tax Liens and Tax Sale Surplus in Massachusetts*, 61 B.C. L. Rev. 667, 669 (2020).

The problems with tax lien sales begin before the lien purchaser forecloses and sells the property. The purchaser of the lien "collects interest, costs, and fees from the taxpayer and may ultimately acquire the property through the tax foreclosure process." *Id.* And, at least in Massachusetts, the purchaser of the lien can charge the property owner as much as sixteen percent on the amount of the lien. *Id.* at 667. The fees can include the purchaser's attorney's fees as well. See, *e.g.*, Michael Sallah et al., *Left With Nothing*, Wash. Post (Sept. 8, 2013), https://perma.cc/W6FV-

V2FB (noting hourly attorney's fees of $450 charged in a tax lien sale case for small tax delinquencies). Washington, D.C., for example, sold past due liens to investors, and the program became "a predatory system of debt collection for well-financed, out-of-town companies that turned $500 delinquencies into $5,000 debts — then foreclosed on homes when families couldn't pay . . . ." *Id.* For example, Bennie Coleman, a retired Marine sergeant, "struggling with dementia . . . lost [his] home. His debt had snowballed to $4,999 — 37 times the original tax bill"—$134. *Id.* "Not only did he lose his $197,000 house, but he also was stripped of the equity because tax lien purchasers are entitled to everything, trumping even mortgage companies." *Id.*

While property liens typically result from unpaid property taxes, governments "may impose a lien for unpaid water and sewer charges or for charges connected with the repair of a building after building code violations were found. The enforcement process of these liens in many states is similar or identical to the enforcement of regular ad valorem property taxes." John Rao, *The Other Foreclosure Crisis, Property Tax Lien Sales* 12 (July 2012), https://tinyurl.com/ezumawm7.

The Michigan statute is but one example of tax foreclosure procedures that rob homeowners of their equity. There are several typical ways governments take someone's property for delinquent property taxes. First, governments use auctions to sell either the property deed itself, or they sell a tax lien certificate. The former transfers the actual property, hence a "tax deed sale." The purchaser then owns the property and can immediately resell the property and keep the profit. When the government sells a tax certificate, it transfers the tax lien itself to the purchaser, typically through an auction sale.

In a tax deed sale, "[u]nlike traditional auction sales and mortgage foreclosure sales, potential buyers at a tax sale in many states do not bid based on the value of the property because the property is sold for the amount of unpaid taxes, interest, fees, penalties, and related costs." *Id.* at 14. Indeed, at least in some cases, "when local governments sell tax liens they are accepting monetary value below the face value of the liens." Georgette C. Poindexter et. al., *Selling Municipal Property Tax Receivables: Economics, Privatization, and Public Policy in an Era of Urban Distress*, 30 Conn. L. Rev. 157, 162 (1997). And that discount is "sometimes as much as 25% to 30% . . . ." *Id.* And where states do permit bidding above the unpaid tax debt, the process is often complex and "there is generally little or no competitive bidding." Rao, *supra*, at 13; see generally *id.* at 14–15.

When the government sells a tax certificate, it transfers the tax lien itself to the purchaser. The certificate holder can then foreclose on the property. And in those situations, there may well not be any significant required minimum bid. For example, in Maryland, the minimum bid is the amount of the past due taxes, plus interest and fees. Md. Code Ann., Tax-Prop. § 14-817(b)(1) (West). Any surplus over the amount due would go to the property owner, but the state has no incentive to obtain the highest bid or even a bid approximating the value of the property. The certificate holder then can charge the property owner for interest on the unpaid taxes—as much as 24%—plus certain costs, and limited attorney's fees. Md. Code Ann., Tax-Prop. § 14-843 (West); see generally Rao, *supra*, at Appendix A. The Maryland tax certificate holder can demand that the property owner pay the inflated amount and then, if not paid, obtain title by foreclosing the property owner's right of redemption. Hence, any purchaser at the tax certificate foreclosure auction could well buy the property for the minimal amount of taxes due and then resell the property at the fair market value, pocket the original owner's equity. Just as in Michigan, those property owners would never get the "just compensation" for the property which the government took from them via the sale of the tax certificate and foreclosure laws.

Taxing authorities also use negotiated bulk sales to bundle and sell delinquent tax liens to private investors. See Rao, *supra*, at 16. "In exchange, the purchaser of the lien steps into the shoes of the city and enforces the city's rights as against the delinquent taxpayer." Poindexter, *supra*, at 157. The investor determines the amount of the late fees and the interest rate charged. See Rao, *supra*, at 16. If the investor is not paid timely, it "would be entitled to use either the judicial foreclosure remedy or the nonjudicial foreclosure remedy to enforce its tax claim. . . . [I]t seems likely that the nonjudicial foreclosure procedure would be favored for its relative speed and simplicity." Poindexter, *supra*, at 182–83. Again, depending on the particular state involved, the foreclosure process on those bundled tax liens may or may not result in the property owner receiving just compensation.

The purchase of tax liens and subsequent foreclosure and resale has become lucrative and has attracted institutional investors. See Roa, *supra* at 17; see generally Poindexter, *supra*. "Tax liens provide the individual investor with an 'above average yield, secured by an eventual right to foreclose upon the underlying property that in most cases is senior to other claims . . . .' However, since the late 1980s, an institutional tax lien market has developed." Poindexter, *supra*, at 172. Indeed, the Bank of America and Fortress Investment Group, a hedge fund, marketed a tax lien bond fund. Fred Schulte, *Wall Street Sees New Profits in Homeowner Distress*, HuffPost (Dec. 9, 2010), https://tinyurl.com/y3bf3hja.

The market has grown so large and profitable that it merited a new trade association—the National Tax Lien Association—which advances the interests of the tax lien and deed industry in the United States. See *About NTLA*, National Tax Lien Association, https://www.ntla.org/about-ntla/ (last visited Dec. 3, 2025). Lamentably, there is no trade association to protect homeowners—only the Constitution. And that is where the Court comes in.

* * *

The amici ask that the Court provide clear direction applicable to all types of tax lien foreclosures. While the Court cannot eliminate the social and emotional harm from just and proper tax foreclosures, it can finally state with clarity that governments must provide tax foreclosure procedures that result in just compensation for property owners who lose their property via a tax lien foreclosure.

CONCLUSION

For the above reasons, the court of appeals decision should be reversed.

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