No. 25-95

IN THE

Supreme Court of the United States

MICHAEL PUNG, PERSONAL REPRESENTATIVE OF THE ESTATE OF TIMOTHY SCOTT PUNG,

Petitioner,

v.

ISABELLA COUNTY, MICHIGAN,

Respondent.

On Writ of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF FOR *AMICI CURIAE* NATIONAL ASSOCIATION OF REALTORS®, MICHIGAN REALTORS®, WISCONSIN REALTORS® ASSOCIATION, AND AMERICAN PROPERTY OWNERS ALLIANCE IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[*]

Amicus curiae the National Association of REALTORS® is a national trade association representing over 1.4 million members, including its institutes, societies, and councils involved in all aspects of the residential and commercial real estate industries. Members are residential and commercial brokers, salespeople, property managers, appraisers, counselors, and others engaged in the real estate industry. Members belong to one or more of the approximately 1,200 local and 54 state and territory associations of REALTORS® and support private property rights, including the right to own, use, and transfer real property.

Michigan REALTORS® is Michigan's largest non-profit trade association, comprised of 38 local boards with membership of more than 34,000 brokers and salespersons licensed under Michigan law. It is the recognized public-policy and legal advocate for private property rights and the real estate industry in Michigan, as well as the acknowledged leading resource for professional development, knowledge exchange, and wide-ranging business services.

Wisconsin REALTORS® Association (WRA) is a non-profit, professional trade association of member REALTORS® and affiliate members in the State of Wisconsin. Its membership consists of approximately 18,500 real estate agents, brokers, developers, and other real estate professionals throughout Wisconsin. WRA represents its members before the Wisconsin Legislature, state regulatory agencies, and federal,

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[*] No counsel for any party authored any portion of this brief or made any monetary contribution intended to fund its preparation or submission.

state, and local courts to promote the interests of the real estate industry and property owners throughout Wisconsin, including questions pertaining to the authority of governmental entities to follow fair and just property-tax-foreclosure practices.

Amicus curiae the American Property Owners Alliance is a nonprofit advocacy organization dedicated to representing the rights and interests of property owners throughout the country.

Amici are interested in this case not only because it involves the fair market value of homes—a subject with which *amici* and their members are quite familiar—but also because it represents one of many troubling examples of government encroachment on property rights today. Tax-foreclosure regimes such as the one Michigan uses can result in governments seizing private property without just compensation. The equity that homeowners build in their properties is among the most cherished and important property rights protected by law. Permitting the government to take these vested property rights without providing just compensation undermines a core premise of property ownership. These takings significantly impact the real estate industry because they divest property owners of millions of dollars in equity each year. *Amici* therefore have an interest in seeing that property owners are not stripped of their equity interests without the just compensation required by the Fifth Amendment.

SUMMARY OF ARGUMENT

I. The Takings Clause guarantees that "private property" shall not "be taken for public use, without just compensation." U.S. Const., amend. V. Just three Terms ago, this Court unanimously held that the taking of property through a tax foreclosure is still a taking. *Tyler v. Hennepin County*, 598 U.S. 631 (2023). This case addresses the follow-on question of remedy: When a State takes a property via tax foreclosure, what is "just compensation"—the value of the equitable interest in the home at the time of the taking or some lesser amount from a forced sale thereafter?

Text, history, and precedent confirm that the Takings Clause requires the former. That provision ensures that a property owner receives full compensation for the taken property—traditionally, its fair market value at the time of the taking. For a tax foreclosure, then, the seized property is the owner's home equity—the difference between the property's value and debts owed. Yet after seizing Mr. Pung's home equity of around $192,000, the County gave him only the roughly $74,000 (or 38%) left over from the tax-foreclosure sale, thereby denying him over 60% of what he was owed. That is not just compensation.

II. The County's excuses for this constitutional violation do not hold water.

First, the County has mischaracterized the property interest here as "surplus proceeds" rather than equity in the property. But the surplus proceeds from a later sale is not itself a freestanding property interest under traditional property law. Rather, it is at best a proxy for the actual property interest seized when title is extinguished—the equity in the home.

Second, there is no reason to conclude that the post-taking foreclosure-sale price represents the fair market value of the taken property (home equity). While a sale price can *sometimes* provide evidence of fair market value, it is not *always* dispositive. To the contrary, the price secured at a forced sale such as the one here is the opposite of fair market value.

Finally, policy concerns do not warrant the creation of a tax-foreclosure exception to the rule that fair market value represents "just compensation." This Court has declined to adopt such a consequentialist approach before, and it should not embrace one now. Adhering to the traditional meaning of "just compensation" here would not render tax-foreclosure schemes unworkable. And regardless, purported administrative convenience does not absolve the States of their constitutional obligation to refrain from taking property without just compensation.

ARGUMENT

I. SEIZING HOME EQUITY WITHOUT JUST COMPENSATION VIOLATES THE TAKINGS CLAUSE.

In applying the Takings Clause, this Court has long adhered to a straightforward rule for determining just compensation—the owner is due the fair market value of the seized property at the time it was taken. In the context of tax foreclosures, that is the fair market value of the debtor's equity in the taken home—the value of the dwelling beyond its encumbrances. The County ignored this framework in taking Mr. Pung's home, selling it at a bargain-basement price, and depriving him of over 60% of the value of his equity.

A. Traditionally, "just compensation" is the property's fair market value at the time of the taking.

The Takings Clause commands that "private property" shall not "be taken for public use, without just compensation." U.S. Const., amend. V. In doing so, it forbids governments "'from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" *Tyler*, 598 U.S. at 647.

Key to this framework is the requirement of "just compensation." If the government could seize private property for pennies on the dollar, it would have little reason to refrain from taking what it wanted. This Court has therefore long read the Takings Clause to forbid governments from requisitioning private property for public use "unless a full and exact equivalent for it be returned to the owner." *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893). This not only deters state actors from taking property on the cheap, it also flows naturally from the Clause's text. As this Court has observed, the combination of "[t]he noun 'compensation'" and "the adjective 'just'" leave "no doubt" that the price "must be a full and perfect equivalent for the property taken." *Id.* And to find that equivalent, this Court has long adhered to "a clear and administrable rule"—"just compensation normally is to be measured by the market value of the property at the time of the taking." *Horne v. Dep't of Agric.*, 576 U.S. 350, 368-69 (2015) (cleaned up); *see, e.g.*, *Mississippi & Rum River Boom Co. v. Patterson*, 98 U.S. 403, 408 (1878) ("The inquiry … must be what is the property worth in the market").

Indeed, this approach stretches back to before the Takings Clause. For example, Massachusetts's Body of Liberties from 1641 forbade the seizure of private property "without such reasonable prices and hire as the ordinarie rates of the Countrie do afford." *Horne*, 576 U.S. at 358 (quoting Massachusetts Body of Liberties ¶ 8, in Perry, Sources of Our Liberties 149 (1978)). South Carolina likewise required that any seizure of "necessaries" "be paid for agreeable to the prices such and the like articles sold for on the ninth day of October last." *Id.* at 359 (quoting 1779 S.C. Acts § 4). And Virginia allowed the taking of surplus food for the military only upon "tendering to the owner the price so estimated by the appraisers." *Id.* at 358-59 (quoting 1777 Va. Acts ch. XII). In doing so, it followed the mill acts of many colonies, which required payment of "the appraised value when land was taken for a mill site." Ely, *"That Due Satisfaction May Be Made": The Fifth Amendment and the Origins of the Compensation Principle*, 36 Am. J. Legal Hist. 1, 12 (1992).

B. This rule applies to tax foreclosures.

That basic framework does not vanish when tax foreclosures are involved. A tax foreclosure occurs when a government takes "'absolute title'" to "homes as payment for tax delinquencies." *Hall v. Meisner*, 51 F.4th 185, 189 (6th Cir. 2022). When those debts dwarf a home's worth, the Takings Clause demands no compensation. *See Tyler*, 598 U.S. at 637-38. But as Judge Kethledge has explained, when tax delinquencies amount "to a mere fraction" of the "homes' values," the government has taken "a vested property right in what is ordinarily called the equity in one's home—meaning the property's value beyond any liens or other encumbrances upon it." *Hall*, 51 F.4th at 189.

That "equitable interest" has been recognized by "English and American courts for centuries" under the term "'equitable title.'" *Id.* at 187. Specifically, the Anglo-American "rules governing equitable interests in real property arose primarily in the context of what we now call mortgages." *Id.* at 190. The original practice was severe: a mortgagor who failed to make full payment by the "law day" had no recourse; the land was, in Lord Coke's words, "taken from him forever, and so dead to him." *Id.* at 191 (quoting 1 Coke, Institutes of the Laws of England, 205a (1628)). Hence the term "'mort gage'"—literally, "a 'dead pledge.'" *Id.* at 190.

Before long, however, this practice was deemed "intolerably harsh." *Id.* at 191. And so courts of equity recognized that "[t]he mortgagor 'had an equitable estate in the land'"—an "Equity of Redemption." *Id.* (quoting 6 Holdsworth, A History of English Law 663 (1924), and *Dutchess of Hamilton v. Countess of Dirlton and Lord Cranborne*, 21 Eng. Rep. 539 (1654)). As those courts explained, a mortgage was "in substance 'but a Security,'" which was considered personal property. *Id.* (quoting *Emanuel College v. Evans*, 21 Eng. Rep. 494, 494-95 (1625)). The "mortgagee's right" was therefore reconceived "as a right to money rather than land." *Id.* (quoting Sugarman & Warrington, *Land Law, Citizenship, and the Invention of "Englishness"*, in Early Modern Conceptions of Property 111, 120 (1995)). The mortgagor's interest, by contrast, was, as Lord Hale put it, "a title in equity." *Id.* (quoting *Pawlett v. Attorney General*, 145 Eng. Rep. 550, 551 (1678)). "And this equitable estate" possessed by the mortgagor "could be devised or conveyed like any other interest." *Id.* at 192 (citing *Casborne v. Scarfe*, 26 Eng. Rep. 377, 379 (1737)); *see* Lloyd, *Mortgages-the Genesis of the Lien Theory*, 32 Yale L.J. 233, 236 (1923) (noting that chancery "treats the equity of redemption not as a mere right but as an estate which the mortgagor may deal with in any way consistent with the rights of the mortgagee in his security."). Thus, as early as 1843, this Court could say that under "the long-settled rules of law and equity in all of the states" that drew upon "the common law," a defaulting mortgagor still held "equitable title" to the property, even if the creditor had "legal title" to it. *Bronson v. Kinzie*, 42 U.S. 311, 318 (1843).

The upshot of this history is that one's equitable estate—*i.e.*, "equitable title" or what is now just called "equity"—has long been considered a protected property interest in its own right. *Hall*, 51 F.4th at 187; *see Rafaeli, LLC v. Oakland County*, 952 N.W.2d 434, 478 & n.50 (Mich. 2020) (Viviano, J., concurring) (collecting sources). Thus, when the government takes that property interest, the homeowner can invoke the Taking Clause's protection. *See United States v. Gen. Motors Corp.*, 323 U.S. 373, 378 (1945) (Takings Clause covers "every sort of interest"). Courts have therefore recognized that the taking of a homeowner's equity in a tax foreclosure is a taking requiring just compensation. *See, e.g.*, *Hall*, 51 F.4th at 194 ("By taking absolute title to the plaintiffs' property, the County took their equitable titles;" and did so "without paying for them" in violation of "'the Takings Clause'"); *Grady v. Wood County*, 786 F. Supp. 3d 984, 992 (S.D. W. Va. 2025) ("[T]raditional property principles establish a protected interest in Plaintiffs' equity in excess of their tax debt."); *Cont'l Res. v. Fair*, 10 N.W.3d 510, 520 (Neb. 2024) (similar).

The measure of just compensation here remains the same as it is elsewhere—the fair market value of the equity in the home at the time of the taking. Yet in this case, the County foreclosed on—and later sold—Mr. Pung's property due to a $2,241.93 unpaid tax bill, representing 1.15% of the home's fair market value. Pet. App. 7a. That action extinguished his equitable interest in the home, thereby constituting a taking. *Tyler*, 598 U.S. at 639. In seeking just compensation, Mr. Pung presented undisputed evidence that the home was worth at least $194,400. Pet. App. 29a. But rather than compensating him with his now-extinguished equity interest (about $192,000), the County only provided Mr. Pung with about $74,000 (the surplus proceeds from the $76,008 tax-foreclosure sale). *Id.* at 7a, 10a. In other words, the County gave Mr. Pung around only 38.5% of his home equity's fair market value. In no world can that be described as the "full and perfect equivalent for the property taken." *Monongahela Navigation Co.*, 148 U.S. at 326.

II. THE TAKINGS CLAUSE DOES NOT ALLOW AN EXCEPTION FOR TAX FORECLOSURES.

In an attempt to defend that constitutional violation, the County has (1) recharacterized the relevant property interest as "surplus proceeds," (2) treated the foreclosure-sale price as dispositive of the property's value, and (3) urged the adoption of a tax-foreclosure exception to the ordinary measure of "just compensation" for supposed policy reasons. All these maneuvers fail.

A. Surplus proceeds are not the property interest taken in a tax foreclosure.

Invoking the Michigan Supreme Court's decision in *Rafaeli*, the County has claimed that "the property" taken in a "tax-foreclosure" case is "'the surplus proceeds, not plaintiff's real properties.'" BIO 7 (quoting 952 N.W.2d at 465). That theory suffers from three independent flaws.

1. To start, it replaces a traditional property interest recognized for centuries (equity) with a new one spun from whole cloth (surplus proceeds). While "numerous courts, parties, and commentators" have understood the relevant property right as "the homeowner's equity," "none"—apart from the Michigan Supreme Court in *Rafaeli*—have directly identified "surplus proceeds" as "a freestanding property interest independent of the underlying equity interest." *Rafaeli*, 952 N.W.2d at 482 (Viviano, J., concurring).

For good reason—no such freestanding interest exists. A homeowner's "right to the surplus … does not arise in manner akin to quantum mechanics, materializing suddenly without any apparent connection to anything that existed before." *Hall*, 51 F.4th at 195. Rather, the surplus proceeds are just a possible "embodiment of the value of the equitable title" seized "before the sale." *Id.* In other words, the surplus proceeds can sometimes capture the amount of the homeowner's equity (when the property sells for fair market value), and therefore can serve as a *proxy* for the property interest taken in a tax foreclosure. But that happenstance does not transform the *underlying property interest* into something else.

2. Traditional property principles aside, treating the surplus proceeds as the taken property interest makes no sense for purposes of the constitutional inquiry. That is because "'the act of taking' is the 'event which gives rise to the claim for compensation.'" *Knick v. Twp. of Scott*, 588 U.S. 180, 190 (2019). Accordingly, a property owner's "right to full compensation" under the Takings Clause "arises at the time of the taking, regardless of post-taking remedies that may be available." *Id.*

Here, the critical "event was the County's taking of 'absolute title'" to Mr. Pung's home. *Hall*, 51 F.4th at 196. "Before that event," he "held equitable title; after it, [he] held no title at all." *Id.* The County's *subsequent* sale of the home and return of the surplus proceeds to Mr. Pung goes only to *remedy*; it does not define the property interest he lost.

The County's approach, by contrast, replaces "the act of taking" (divestiture of Mr. Pung's equitable title) with post-taking activity (the distribution of sale proceeds) as "the event" that "gives rise to the claim for compensation." *Knick*, 588 U.S. at 190. But that misstates the constitutional inquiry. *Id.* And this "sales proceeds" interest never existed independent of the taking—rather, it is contingent on the foreclosure sale and thus cannot manifest until *after* the taking. Otherwise, a State could divest an owner of property, hold onto that property for years before selling it, and then assert that the relevant interest arose from the years-later *sale* rather than the earlier *taking*. In fact, if "no constitutional issues occur until the surplus proceeds are retained," it is unclear what would stop the government from simply keeping the premises itself. *Rafaeli*, 952 N.W.2d at 486 (Viviano, J., concurring).

This Court's decision in *Horne* provides a helpful analogy. There, farmers challenged a raisin-requisition scheme in which the federal government would commandeer some of a farmer's crop, sell the raisins, and then give the farmer any net proceeds from the sale (after deductions for administrative expenses). 576 U.S. at 355-56. This Court recognized that scheme for the constitutional violation that it was, rejecting the argument that because the farmers "are entitled to these net proceeds, they retain the most important property interest in the reserve raisins, so there is no taking in the first place." *Id.* at 363. As the Court explained, the fact that the farmers had a "contingent interest" in the proceeds did "not mean there ha[d] been no physical taking" of the raisins to begin with. *Id.* Rather, "once there is a taking, … any payment from the Government in connection with that action goes, at most, to the question of just compensation." *Id.* at 364. And on that subject, the "just compensation" owed to the farmers was "the fair market value of the raisins" themselves. *Id.* at 370. While this case involves home equity rather than raisins, the constitutional analysis remains the same.

3. The County's emphasis on (BIO 6-7) the Michigan Supreme Court's view of the relevant property interest also misses the point. To be sure, that court's "opinion in *Rafaeli* … arguably said" that a homeowner "has a property right only to any surplus proceeds … after a foreclosure sale"—"albeit in dictum." *Hall*, 51 F.4th at 189 (citing *Rafaeli*, 952 N.W.2d at 454). But the federal constitutional question here cannot be "answered solely by reference to Michigan law." *Id.*

Rather, while state property law is "one important source" for determining the property rights protected by the Takings Clause, courts must "also look to 'traditional property law principles,' plus historical practice and this Court's precedent." *Tyler*, 598 U.S. at 638. Otherwise, "the Takings Clause would be a dead letter," *Hall*, 51 F.4th at 190, as a State could "'sidestep'" that constitutional guarantee simply "'by disavowing traditional property interests' in assets it wishes to appropriate," *Tyler*, 598 U.S. at 638. And here, homeowners' "entitlement to the equity in their homes" ranks among the "traditional property interests" that neither Michigan nor any other state can discard. *Hall*, 51 F.4th at 190; *see supra* Pt. I.B. The Michigan Supreme Court's refusal to recognize the relevant property interest taken—equity—therefore does not make it so.

B. Foreclosure-sale prices are not dispositive evidence of the value of home equity.

The County has also contended that even if surplus proceeds are not the relevant property interest, they are still the best measure of "'the value of the landowner's equitable interest.'" BIO 6. In this, the County echoes the Sixth Circuit's flawed reasoning below, which deemed a home's "foreclosure sale price" as "the best evidence" of the property's "value." Pet. App. 11a (quoting *Freed v. Thomas*, 81 F.4th 655, 659 (6th Cir. 2023)); *see* BIO 6 (describing "the price obtained at public sale of the foreclosed property" as "'the truest test of the value'"). While this is a more sophisticated form of the surplus-proceeds-as-property theory, it is equally flawed.

As any real estate professional could attest, a home's sale price is not always the "best evidence" of its fair market value. If it were, many an appraiser would be out of work. Granted, a home's sale price—at least in the typical voluntary transaction—may *often* reflect its fair market value. Indeed, this Court has defined "fair market value" as "'what a willing buyer would pay in cash to a willing seller' at the time of the taking," and that is no less true when homes are involved. *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979). But that description does not apply to *foreclosure* sales, which by definition do not involve "a willing seller." The sale here illustrates the point: After a speculator snapped up Mr. Pung's home for a little north of $76,000, it then resold the property for $195,000. Pet. Br. 8. That *latter* transaction between a willing buyer and willing seller reflected the home's fair market value of around $195,000. The former one did not.

The Sixth Circuit's only support for its puzzling assumption that a forced-sale price was the touchstone of fair market value was this Court's decision in *BFP v. Resolution Trust Corp.*, 511 U.S. 531 (1994). Pet. App. 11a; *accord Freed*, 81 F.4th at 659. But *BFP* said the opposite. As Justice Scalia put it for the Court, "fair market value … is the very *antithesis* of forced-sale value." 511 U.S. at 537. That is because "'fair market value' presumes market conditions that, by definition, simply do not obtain in the context of a forced sale"—namely, a "'willing'" seller. *Id.* at 538; *see also Gelfert v. Nat'l City Bank of N.Y.*, 313 U.S. 221, 233 (1941) ("[T]he price which property commands at a forced sale may be hardly even a rough measure of its value.").

To be sure, *BFP* went on to say that "the foreclosure-sale price"—as opposed to "fair market value"—was "the only legitimate evidence of the property's value" under a provision in the Bankruptcy Code. 511 U.S. at 549. But that law—which went "out of its way to avoid th[e] standard term" "'fair market value'" and instead used the "novel phrase 'reasonably equivalent value'"—did not guarantee just compensation for seized property. *Id.* at 537. Put differently, what may be a "reasonably equivalent value" for purposes of bankruptcy is not "full and perfect equivalent for the property taken." *Monongahela Navigation Co.*, 148 U.S. at 326. In fact, *BFP* cautioned that its analysis, which addressed "only mortgage foreclosures of real estate," may not bear on "other foreclosures and forced sales (to satisfy tax liens, for example)." 511 U.S. at 537 n.3. The portion of *BFP* treating the mortgage-foreclosure sale price as dispositive therefore has nothing to say on the question presented here.

That is especially so given that the "inquiry" in *BFP* concerned the property's value "at the time of sale." *Id.* at 539. The Takings Clause, by contrast, is concerned about its worth "'at the time of the taking'"—which, here, occurred well before Mr. Pung's home was put on the auction block. *Horne*, 576 U.S. at 368-69. *BFP*'s discussion of any "price-affecting characteristics" of a "forced sale" therefore has no bearing on the analysis. 511 U.S. at 539.

None of this is to deny that the surplus proceeds from a foreclosure sale *can* be used as evidence of the fair market value of home equity taken by the government. In fact, in many cases, it may be the *only* evidence of fair market available, which helps explain the tradition of awarding homeowners the surplus proceeds from a foreclosure sale. *See Tyler*, 598 U.S. at 639-42; *Hall*, 51 F.4th at 193-94; *see, e.g.*, *Rafaeli*, 952 N.W.2d at 487 (Viviano, J., concurring) ("[A]lthough plaintiffs nominally distinguish equity and surplus, they have offered no argument suggesting that the tax foreclosures here failed to obtain a fair price for their properties."). But where, as here, it is uncontested that a home's fair market value dwarfs the surplus proceeds by almost three times, the latter sum cannot be dispositive under the Takings Clause. Pet. App. 29a.

C. This Court should not manufacture a tax-foreclosure exception for policy reasons.

Ultimately, the County's position reduces to a request for an exception to the usual measurement of just compensation for "the specific context of tax foreclosure," lest that tool "become nonviable as a means of tax collection." BIO 5-8. This Court should decline the invitation.

1. To start, this Court is not in the business of crafting the sort of "generally applicable exception to the usual compensation rule" the County angles for here. *Horne*, 576 U.S. at 369 (rejecting invitation to reduce compensation by value of "regulatory benefits"). Instead, to the extent this Court has recognized any exceptions in this area, it has typically been when "peculiar circumstances may make it impossible to determine a 'market value.'" *United States v. Toronto, Hamilton & Buffalo Navigation Co.*, 338 U.S. 396, 402 (1949) (particular vessel). But that plainly cannot be said about the value of a home, given the longstanding existence of the appraisal industry. *See* Uniform Standards of Professional Appraisal Practice (2024).

Indeed, anyone with an internet connection can easily obtain an estimate of a home's value from a quick perusal of various websites such as Realtor.com, Redfin, or Zillow. The usual rule therefore obtains: "Where … there is a market price prevailing at the time and place of the taking, that price is just compensation." *United States v. New River Collieries Co.*, 262 U.S. 341, 344 (1923).

2. With no ascertainability problems as a hook, the County has grounded its proffered exception in policy concerns. Specifically, it warns that any possibility of a homeowner obtaining compensation above the "surplus proceeds" would render tax foreclosures a "nonviable" "money-losing proposition." BIO 8. But the County has offered no authority for this freewheeling approach to the meaning of "just compensation," and in any event, its fears of adverse consequences from adhering to the usual rule are overblown.

For starters, the County's fears are unlikely to arise in the majority of tax foreclosures. "[T]he empirical studies on mortgage foreclosure have shown that public sales of property at auction usually generate sale prices that do not exceed the amount of debt secured by the mortgage," and there is "no reason to believe that a tax foreclosure process that employs a public sale of the property would have a different result." Bartell, *Tax Foreclosures As Fraudulent Transfers—Are Auctions Really Necessary?*, 93 Am. Bankr. L.J. 681, 707 (2019); *see id.* at 704 n.134 (citing one study "finding that in 92% of sales to the mortgagee, the sale price was for less than the amount of the debt"). This case is unusual because the County seized a home worth over $194,000 to satisfy a $2,242 debt—a mere 1.15% of the property's value.

And even in the smaller universe of cases like Mr. Pung's, the homeowner will still bear the "burden of establishing the value" of the equity taken. *United States ex rel. TVA v. Powelson*, 319 U.S. 266, 273 (1943). A homeowner would therefore have to provide evidence that the fair market value of the equity at the time of the taking exceeded the surplus proceeds, which the government could rebut through evidence of its own. *See* Fed. R. Civ. P. 56; Fed. R. Evid. 301; *see, e.g.*, *Toronto, Hamilton & Buffalo Navigation Co.*, 338 U.S. at 398-402. This case is unusual because the County did "not challenge[]" Mr. Pung's calculation of the home's fair market value. Pet. App. 29a.

Governments also have many tools to ensure that tax foreclosures do not result in fire sales. For example, they could use private real estate brokers to get the best sale price, as Wisconsin has permitted. Wis. Stat. § 75.35(2)(d); *see* Bartell, *supra*, at 706 ("private sales are far superior to public auctions as a way to maximize the sale price"). Or they could follow Ohio's lead and set the minimum bid at the appraised market value of the property. Ohio Rev. Code § 5721.19.

Governments could also simply refrain from rushing to auction to recover tax debts. As this Court noted long ago, an officer selling a debtor's property can "postpone the sale" if "the time selected, or other attending circumstances, will be likely to produce great sacrifice" in value. *Blossom v. Milwaukee & C.R.R. Co.*, 70 U.S. 196, 209 (1865). At the same time, governments have other ways to recoup the costs of these procedures, such as by imposing penalties and fees for handling property before sale. *See, e.g.*, Mich. Comp. Laws § 211.78m(8)(b); Fla. Stat. § 197.502(6)(a).

Finally, the County's concerns are nothing new. The county in *Tyler* warned that applying the Takings Clause to tax foreclosures would lead to homeowners demanding "*more* than the government will be able to recover from the property," as the "forced" nature of "tax sales" means they "typically do *not* garner fair market value." Resp. Br. at 42, *Tyler*, 598 U.S. 631 (No. 22-166). The only way around this, that county warned, would be to create "a special rule" for "this circumstance only," which is why it urged the Court to simply hold that "the Takings Clause does not fit" the tax-foreclosure context. *Id.* at 43. This Court nevertheless ruled for the taxpayer, and it gave no indication that a unique measure of just compensation would apply in this area going forward.

3. In any event, the County's rule comes with risks of its own—namely, "depriving taxpayers of 'just compensation.'" *Rafaeli*, 952 N.W.2d at 486 (Viviano, J., concurring). In Michigan, for instance, government actors "have numerous opportunities to purchase the property for" only "the debt (and costs)," thereby ensuring that "no surplus" is available. *Id.* at 485. They also have every "incentiv[e]" to do so, or "take other steps to limit or eliminate surpluses," such as running "a sale that earns" nothing beyond "the delinquent tax sum." *Id.* at 486. To "rule out the possibility that 'just compensation' might require something greater than the surplus" only invites such abuse. *Id.* at 487.

That is no small matter. Home equity is often the biggest investment in people's lives. Nationwide, the typical homeowner has gained about $143,000 in equity over the past five years and nearly $238,000 over the past decade. In Michigan, the figures are around $124,000 and $202,000, respectively.

That is the sort of long-term wealth accumulation that supports retirement, education, small-business formation, and basic financial security. Yet the County's rule would encourage governments to seize such investments—even when they are "worth vastly more than the debts … owed" (in this case, nearly 90 times as much)—and leave homeowners with a pittance in exchange. *Hall*, 51 F.4th at 196. Whether or not "that sort of behavior" can be "'called theft,'" it at least confirms that the County's invocation of "the equities" is severely misplaced. *Id.*

CONCLUSION

The Court should reverse the judgment below.

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