No. 25-95

In the Supreme Court of the United States

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

Petitioner,

v.

ISABELLA COUNTY, MICHIGAN,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF AMICI CURIAE MICHIGAN ASSOCIATION OF COUNTIES, MICHIGAN MUNICIPAL LEAGUE, MICHIGAN TOWNSHIPS ASSOCIATION, AND MICHIGAN ASSOCIATION OF COUNTY TREASURERS IN SUPPORT OF RESPONDENT

Chantel L. Febus
DYKEMA GOSSETT PLLC
1301 K Street NW
Suite 1100 West
Washington, DC 20005

James S. Azadian
DYKEMA GOSSETT PLLC
444 South Flower Street
Suite 2200
Los Angeles, CA 90071

Theodore W. Seitz
Counsel of Record
DYKEMA GOSSETT PLLC
201 Townsend Street
Suite 900
Lansing, MI 48933
(517) 374-9149
tseitz@dykema.com

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Counsel for Amici Curiae

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INTEREST OF THE AMICI CURIAE[1]

This brief is submitted on behalf of the MICHIGAN ASSOCIATION OF COUNTIES ("MAC"), the MICHIGAN MUNICIPAL LEAGUE ("MML"), the MICHIGAN TOWNSHIPS ASSOCIATION ("MTA"), and the MICHIGAN ASSOCIATION OF COUNTY TREASURERS ("MACT").

The MAC is a nonprofit association founded in 1898, which consists of 83 member Michigan Counties. It is a statewide organization dedicated to representing the public policy interests of Michigan's counties and their elected commissioners. It also promotes the education of county officials and communication and cooperation between them, and it advocates on their behalf in the Michigan and federal legislatures.

The MML, a nonprofit corporation founded in 1899 and consisting of over 520 member cities and villages, empowers local governments to effectively serve their constituents by developing unified policies on issues of municipal concern, including but not limited to those concerning health and public safety issues, assessing and collecting taxes, and advocating for its members before the Michigan Legislature.

The MTA is a nonprofit corporation founded in 1953 and consists of more than 1,225 member townships. The MTA provides education, information, and guidance to township officials to promote the efficient and knowledgeable administration of township govern-

[1] Pursuant to Supreme Court Rule 37.6, no counsel for any party authored any portion of this brief or made any monetary contribution intended to fund its preparation or submission.

ment services under state law, including the assessing and collecting of taxes.

The MACT is a nonprofit corporation established in 1934. Its members include the elected treasurers of each of Michigan's 83 counties, who are tasked, under Michigan state law, with, among other public finance items, conducting foreclosure auctions and distributing proceeds from the auctions in a manner mandated by Michigan state law.[2]

The amici curiae, collectively, are several associations representing state and local governments that administer property tax systems within the state of Michigan. They have a strong interest in ensuring that federal constitutional doctrine respects the institutional and structural boundaries between state taxing power and federal judicial oversight. Because the Court's decision may reshape the procedures Michigan counties, municipalities, and townships use to enforce property taxes and may impose a nationwide valuation rule on Michigan's local tax sale processes, the amici offer their perspective to highlight the doctrinal, administrative, and federalism concerns raised by Petitioner's proposed expansion of the Takings and Excessive Fines Clauses.

The primary concern is that Petitioner asks this Court to transform *Tyler* v. *Hennepin County*, 598 U.S. 631 (2023)—a narrow decision recognizing a property interest in surplus proceeds—into a sweeping constitutional requirement that a State must always pay a

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[2] *See Garcia* v. *Title Check, LLC*, 2022 U.S. App. LEXIS 981, at *1 (6th Cir. Jan. 12, 2022) (noting the "deluge of litigation" in state and federal courts regarding Michigan's tax foreclosure system).

former owner the fair market value of property minus the tax debt, regardless of the State's statutory procedures or the nature of the tax foreclosure system used. This interpretation would improperly federalize State property tax enforcement, create substantial administrative burdens, and destabilize settled legal frameworks within Michigan and across the country. The amici, therefore, urge the Court to reaffirm *Tyler's* limited scope and decline the invitation to constitutionalize a rigid, one-size-fits-all valuation rule.

INTRODUCTION

Counties, treasurers, municipalities, and townships in Michigan operate within a tightly structured, judicially-supervised tax foreclosure system that must function uniformly across thousands of parcels, under fixed statutory timetables, with predictable consequences for title, revenue flow, and the disposition of proceeds. Michigan's property tax enforcement system is not a discretionary profit-seeking enterprise. It is a core fiscal mechanism that funds schools, public safety, public health, roads, and local services. The system's legitimacy depends on administrability and finality.

Michigan, critically, has already internalized the constitutional premise that underlies *Tyler*: surplus value is not a governmental windfall. Michigan's modern statutory structure expressly recognizes that any proceeds remaining after the satisfaction of tax obligations and statutorily enumerated costs are not simply retained as unclaimed general revenue by default. They are segregated into restricted-use accounts and distributed through a court-supervised mechanism. That approach matters for constitutional doctrine because it separates two questions Petitioner seeks to conflate: whether a surplus interest exists, and how that interest is administered within the parameters of a lawful procedure that must account for other interest holders and priorities.

Petitioner's position would shift the constitutional emphasis away from Michigan's remedial architecture—fair and accessible notice, opportunity, judicial process, and distribution—and toward a new constitutional entitlement that would operate as a price guarantee: the difference between an asserted fair market value and what a lawful, compelled sale may produce. That reorientation would convert Michigan's court-managed foreclosure system into a recurring appraisal dispute system, requiring local governments to litigate valuation as a constitutional matter long after foreclosure judgments and sales are final. Amici have a direct institutional interest in preventing that doctrinal transformation, not because surplus interest lacks protection in Michigan, but because Michigan has chosen a constitutionally sound means of generating and protecting it that does not require nationalizing valuation methodology.

Because Michigan administers thousands of tax foreclosures each year through a uniform, judicially-supervised process, a constitutional rule requiring compensation based on fair market value rather than on sale proceeds would convert routine tax foreclosure sales into appraisal-driven valuation disputes and expose counties statewide to billions of dollars in asserted liability unmoored to the amounts actually realized through sale. The Constitution neither demands nor tolerates that result.

STATEMENT OF THE CASE

I. Michigan's Property Tax Foreclosure System

Michigan administers property tax foreclosure through a comprehensive, judicially-supervised statutory system designed to collect delinquent taxes across a wide range of properties, owners, interest holders, and factual circumstances. Each year, thousands of parcels statewide—nearly 6,000 in 2023[3]—enter some stage of tax foreclosure, with cases litigated across Michigan's fifty-seven circuit courts (the trial courts) in both urban and rural counties.[4] The system is designed to operate uniformly at scale through standardized statutory procedures, rather than by individualized, case-specific determinations.

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[3] *See* Michigan Dep't of Treasury, *Foreclosing Governmental Unit Report of Real Property Foreclosure Sales by This State 2023*, at 1-78 (Sept. 15, 2025) ("2023 Foreclosure Sale Report"), https://www.michigan.gov/taxes/-/media/Project/Websites/taxes/Auctions/2023-Foreclosure-Sales-State-Wide-Reports.pdf (calculating the total number of parcels foreclosed across Michigan with countywide amounts added together) (last visited Jan. 9, 2026).

[4] *See* Michigan Judiciary, *About Michigan's Trial Courts – Circuit Court*, https://www.courts.michigan.gov/courts/trial-courts/ (last visited Jan. 9, 2026).

Foreclosure cases arise from diverse contexts. They involve owner-occupied homes, vacant residential properties, rental properties, commercial parcels, industrial sites, undeveloped land, and properties burdened by environmental, structural, or title complications. Delinquencies may span multiple tax years or involve comparatively modest unpaid amounts that accrue through interest, penalties, and statutory fees. Some owners remain in possession throughout the process; others have long abandoned the property. The foreclosure system is, therefore, structured to function predictably across varied circumstances while preserving consistent rules for notice, redemption, judicial oversight, and—when applicable—the treatment of surplus proceeds.

Property taxation is a foundational source of funding for Michigan's schools, municipalities, counties, townships, and special districts. The foreclosure system exists not to punish, but to preserve the integrity of that revenue mechanism after years of notice and opportunity to cure. Because the system operates at high volume and across all counties, its effectiveness depends on administrability and finality: foreclosure judgments must conclusively resolve title, and outcomes must be capable of consistent application across thousands of routine proceedings each year.

II. The Tax Foreclosure Process and Treatment of Sales Proceeds

Michigan's tax foreclosure process unfolds over multiple stages and extended timeframes.[5] Delinquency

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[5] *See* Mich. Dep't of Treasury, *Real Property Tax Foreclosure Timeline*, at 1-2, https://www.michigan.gov/-/media/Project/Websites

does not result in immediate loss of property. Instead, owners receive repeated statutory notices over multiple years, opportunities to pay, and redemption periods before foreclosure is authorized. *See* Mich. Comp. Laws §§ 211.78a, 211.78b, 211.78c, 211.78f, 211.78i, 211.78k. Only after these steps does a county seek a foreclosure judgment through the courts. *See id.* § 211.78k.

Once foreclosure is judicially ordered, the property is sold pursuant to detailed statutory procedures. *See id.* § 211.78m. These sales are compelled dispositions conducted under legal constraints governing timing, notice, and bidding. They are not private-market listings. Properties sold at auction vary widely in condition, marketability, and risk profile. Some sell quickly and generate proceeds exceeding the delinquent tax obligation. Others sell for modest amounts not exceeding the delinquent tax obligation, reflecting vacancy, deterioration, environmental concerns, title uncertainty, or limited demand. Some do not sell at all.

Following sale, Michigan law distinguishes between the amount necessary to satisfy taxes, interest, penalties, and costs, and any remaining proceeds generated by the sale. *See id.* §§ 211.78m, 211.78t. When surplus proceeds exist, they are segregated into restricted-use accounts and distributed through a post-sale, court-supervised claims process. *See id.* That process resolves competing claims in a single forum, including claims by former owners and others with legally cognizable interests, and distributes funds in accordance with

/taxes/Foreclosure/ForfeitureForeclosureTimelinesChart.pdf (last visited Jan. 9, 2026).

state-law priority rules and constitutional property principles. *See id.* §§ 211.78k, 211.78t.

Since the enactment of Section 78t in 2020, Michigan courts have disbursed more than $19 million in surplus proceeds associated with foreclosures from 2020 to 2022,[6] including approximately $4.6 million in a single year across Kalamazoo, Muskegon, Oakland, and Wayne Counties. In the 2023 foreclosure year, Marquette, Oakland, and Wayne Counties together paid surplus claimants approximately $3.7 million.[7] These figures reflect that surplus does arise in some cases and that Michigan's statutory mechanism functions to identify and distribute it when it does.

III. Foreclosure Outcomes, Administrability, and System-Wide Consequences

Surplus proceeds are not a constant or presumed feature of Michigan tax foreclosures. Surplus exists only when the compelled sale of a property generates proceeds exceeding delinquent taxes, interest, penalties, and costs. Michigan's statutory scheme, therefore, treats

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[6] *See* Michigan Dep't of Treasury, *Foreclosing Governmental Unit Report of Real Property Foreclosure Sales by This State 2020*, at 1-76, http://tiny.cc/nslx001 (last visited Jan. 9, 2026); Michigan Dep't of Treasury, *Foreclosing Governmental Unit Report of Real Property Foreclosure Sales by This State 2021*, at 1-78, http://tiny.cc/pslx001 (last visited Jan. 9, 2026); Michigan Dep't of Treasury, *Foreclosing Governmental Unit Report of Real Property Foreclosure Sales by This State 2022*, at 1-78, http://tiny.cc/qslx001 (last visited Jan. 9, 2026) (approximating the total amount of surplus proceeds disbursed across all of the Michigan counties for the years 2020, 2021, and 2022).

[7] *See* Michigan Dep't of Treasury, *supra* note 3, at 48, 58, 77 (2023 Foreclosure Sale Report).

the proceeds actually generated by the sale as the factual anchor for determining whether surplus exists.

As a result, many foreclosure cycles yield no surplus at all. In 2022, Genesee County experienced a net loss of $4,378,731.12, and an additional loss of $582,094.80 in 2023, because total sale proceeds of approximately $2.5 million fell far short of the more than $6.6 million in accumulated taxes, penalties, interest, fees, and costs.[8] Montcalm County similarly recorded a negative remaining net amount of $94,937.37, and Monroe County experienced a loss of $37,674.94 in 2022.[9] These outcomes reflect the reality that properties frequently sell for amounts that barely cover statutory obligations, particularly when they are vacant, distressed, or encumbered by legal, structural, or environmental risks.

In other cases, sales do generate surplus, sometimes modest and sometimes substantial, depending on location, condition, and market dynamics. Macomb County, for example, recorded a remaining net of $1,067,130.09 in 2022 after all expenditures and proceeds paid to claimants, while Cass County netted $7,926.02.[10] But even when surplus exists, amounts are known only after the sale occurs. The system does not presume that compelled sales replicate retail market conditions or that every property has realizable value beyond debt.

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8 *See* Michigan Dep't of Treasury, *supra* note 6, at 24 (2022 Foreclosure Sale Report); Michigan Dep't of Treasury, *supra* note 3, at 24 (2023 Foreclosure Sale Report).

9 *See* Michigan Dep't of Treasury, *supra* note 6, at 54-55 (2022 Foreclosure Sale Report).

10 *See id.* at 47, 14.

Michigan counties administer foreclosure proceedings across large volumes of cases simultaneously, often involving hundreds or thousands of parcels in a single foreclosure cycle. In 2022 alone, Saginaw County administered foreclosures on 167 properties, Oakland County on 424 properties, and Wayne County on 3,734 properties.[11] Local circuit courts manage these matters as part of broader civil dockets, relying on standardized procedures to ensure fairness, consistency, and finality. The system's viability depends on foreclosure judgments that conclusively resolve title and on sale proceeds that define the universe of funds available for post-foreclosure distribution.

A constitutional rule requiring compensation measured by fair market value rather than by proceeds actually generated would fundamentally alter that structure. Such a rule would transform routine foreclosure cases into appraisal-driven valuation disputes, reopen settled judgments, and require counties to defend claims divorced from the amounts realized through sale. When applied across thousands of foreclosures each year, those claims would aggregate into billions of dollars in asserted liability, imposing unmanageable litigation burdens and destabilizing local tax administration in a system that depends on administrability and finality to function lawfully at scale.

Any constitutional rule announced by this Court will apply, at a minimum, across thousands of Michigan foreclosure cases each year, across every type of property and every county. Michigan's system reflects a constitutionally permissible approach that protects

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11 *See id.* at 59, 69, 77.

surplus interests while preserving the administrability and finality necessary for lawful tax collection.

ARGUMENT

The amici present three overarching reasons why the Court should reject Petitioner's proposed constitutional rule. First, Petitioner misreads *Tyler* by collapsing two distinct questions: whether a former owner has a property interest in surplus proceeds and how, if at all, compensation must be calculated when a tax foreclosure sale yields less than a litigant's asserted market value. *Tyler* resolved only the first question, holding that a homeowner possesses a property interest in surplus proceeds; it did not adopt any valuation rule or mandate fair market value compensation in tax foreclosure cases. Second, Petitioner's proposed valuation mandate would displace longstanding and diverse State tax systems, interfering with core State functions, undermining finality, and generating extensive appraisal-driven litigation. Third, the Excessive Fines Clause does not apply to ordinary tax collection processes, and extending it here would convert routine civil enforcement into punitive contexts subject to disproportionality review, with disruptive consequences for State and local governments.

For Michigan amici, those reasons converge on a single point: this case should not be used to constitutionalize a valuation method that Michigan did not adopt and that the Fifth Amendment has never required in tax foreclosure. Michigan's system provides a structured, judicially-supervised path for former owners and other claimants to recover surplus proceeds. This system reflects the State's legislative judgment about how to implement recognized surplus interests while preserving finality and orderly tax administration. Petitioner's proposed rule would replace that proceeds-based remedial framework with a constitutionally mandated price guarantee—inviting routine appraisal litigation and exposing counties to large, system-wide liabilities not tied to the economic reality of compelled sale or the amounts actually realized through sale.

Michigan's foreclosure system is a civil debt-collection process, not a punitive sanctions regime. Applying the Excessive Fines doctrine would import proportionality review into ordinary tax enforcement and destabilize civil processes that are not designed—doctrinally or administratively—to operate as punishment adjudications. The Court should keep *Tyler* in its lane—surplus interest recognition—and keep the Excessive Fines doctrine in its lane—punitive sanctions—while respecting Michigan's legislative remedial implementation choices.

I. Petitioner Seeks to Convert *Tyler*'s Narrow Holding Into a Broad Constitutional Valuation Rule That *Tyler* Did Not Adopt.

Tyler addressed entitlement to surplus, not the measure of just compensation. *See Tyler*, 598 U.S. at 639. Petitioner conflates two separate legal concepts—recognition of a property interest and the method of calculating just compensation—into one doctrine. *Tyler* addressed only the first question: whether a former homeowner retains a cognizable property interest in surplus equity that a county may not extinguish by statute. *See id.* at 645-47. *Tyler* did not address the second question: how compensation should be calculated in a takings case arising from a tax foreclosure. The Court explicitly limited its analysis and did not prescribe any valuation formula for surplus equity.

A. Petitioner's Proposed Rule Would Constitutionalize Fair Market Value Compensation and Convert Forced Sales Into Appraisal Lawsuits.

Petitioner argues as though *Tyler* decided the valuation question by implication. He asserts that, because *Tyler* recognized a property interest in equity, the Constitution necessarily requires compensation equal to the fair market value of property minus the tax debt whenever a sale yields less than market value. *See* Brief for Petitioner at 18–19. That is not what *Tyler* said. It did not endorse fair market value compensation, did not examine how forced sale prices relate to market value, and did not adopt any rule governing valuation methodologies. Adopting Petitioner's approach would require the Court to announce a new constitutional valuation mandate that *Tyler* neither stated nor implied.

Tyler's holding is about entitlement to surplus, not about the sale price being constitutionally inadequate. *Tyler* is best understood as resolving an ownership question—whether a former owner retains a property interest in surplus value notwithstanding a statutory scheme that purports to extinguish it. The critical move in that reasoning is conceptual: surplus is not the government's to keep merely because the government has enforced a tax debt. *See Tyler*, 598 U.S. at 645. That proposition does not, by itself, dictate how a court measures "just compensation" in every downstream posture, and it certainly does not dictate that fair market value must be used in the tax foreclosure setting.

Michigan's system illustrates why. Michigan can acknowledge a surplus interest while implementing it through a defined recovery process centered on the proceeds actually generated and held for distribution. In that model, the constitutional wrong would be government retention of surplus without a meaningful way for a former owner or other interest holder to claim it. The constitutional remedy is not a mandated price guarantee; it is the provision of a fair and certain mechanism for claiming whatever surplus exists under the State's lawful process.

Petitioner's proposed rule would recharacterize the constitutional wrong. Under Petitioner's approach, the taking becomes not the retention of surplus, but the asserted gap between an appraisal-based "fair market value" and the proceeds produced by a lawful compelled sale. That shift would convert *Tyler*'s surplus-interest holding into a general condemnation of compelled sale pricing, even though compelled sales exist in many legitimate contexts where market outcomes differ from retail-market hypotheticals. For instance, compelled sales occur in (a) lender-initiated mortgage foreclosure proceedings to force the sale of the property to recover the outstanding debt, (b) partition actions when co-owners of a property (*e.g.*, business partners, divorced spouses, or siblings who inherited a property) cannot agree on how to manage or sell the asset, (c) bankruptcy proceedings when a debtor's assets may be subject to forced liquidation by a court or creditor to pay off outstanding debt, (d) enforcement of judgments when a person loses a civil lawsuit and is ordered to pay damages but fails to do so and the court orders the sale of their non-exempt assets like vehicles and secondary properties to satisfy the judgment, (e) nuisance abatement proceedings if the property owner fails to fix code violations and the government forces the sale of the property to resolve the issue, and (f) forced sales in corporate governance disputes that allow one owner to compel the sale of the company or the other owner's interest in the event of a fundamental deadlock or upon specific trigger events like retirement.[12] In these instances, the property is often sold through a public auction or other court-appointed process, and even when the goal is to recover the most money possible, the actual sale price may be less than the fair market value found in a voluntary, open-market transaction.

Recognizing a property interest does not transform valuation into fair market value as a constitutional command. Takings law has long distinguished between identifying the relevant property interest and measuring compensation for its taking. That distinction is essential for administrability and doctrinal coherence. Courts often recognize interests without prescribing a

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[12] *See, e.g.*, *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 537–38 (1994) (holding that property at a forced foreclosure sale or auction is not subject to fair market conditions of negotiation and mutual agreement and therefore cannot be expected to sell for fair market value); *In re Webster*, 2017 Bankr. LEXIS 4100, at *5 (Bankr. E.D. Mich. Dec. 1, 2017) ("But a Chapter 7 trustee must also close cases as quickly as is practicable, and obtaining a less than fair market value price for a going concern liquidation is often a reasonable—if not expected—outcome."); *Winn* v. *Winn Enterprises, Ltd. Partnership*, 100 Ark. App. 134, 139-140 (2007) (explaining that while the interest paid to a withdrawing partner or a corporation's dissenting shareholders must be a fair value, it is not necessarily fair market value).

single valuation approach because valuation is context-dependent and because the Constitution does not constitutionalize every detail of compensation mechanics in every governmental process. *See United States* v. *Commodities Trading Corp.*, 339 U.S. 121, 123 (1950) ("This Court has never attempted to prescribe a rigid rule for determining what is 'just compensation' under all circumstances and in all cases.").

Petitioner's proposed rule would effectively constitutionalize a market-outcome guarantee in compelled sales. Forced sale settings involve legal constraints that affect price formation: limited time for marketing, bidder risk assessments, title uncertainty, occupancy issues, code compliance, and other factors that rational buyers discount. Those constraints are features of a lawful process designed to liquidate property interests when debts remain unpaid. If the Constitution is read to require the government to pay the difference between an asserted retail-market value and a forced-sale price, local governments become insurers against the predictable economic consequences of compelled liquidation. That result would attach whenever an appraisal expert can plausibly argue that different assumptions or timing could have produced a higher price. At statewide scale, that novel rule would convert routine foreclosures into individualized and subjective constitutional appraisal disputes—an administratively unworkable bonus stage of litigation after judgments and sales are final.

B. Michigan's Integrated Foreclosure Sale Distribution Structure Would Be Displaced By a Nationwide Valuation Mandate.

Michigan's system depends on integrating foreclosure, sale, and distribution into one coherent process. Michigan's statutes are designed to do several things at once: collect delinquent taxes, return property to productive use, protect owners through notice and judicial oversight, and distribute any surplus proceeds through a court-supervised mechanism to claimants with verified legal entitlement. This integration is the State's reasonable solution to balancing fiscal and administrability needs with constitutional property protections.

In practice, counties manage large foreclosure dockets and must address wide variation in property condition and marketability within a single foreclosure cycle—precisely why Michigan's statutory choice is to resolve entitlement to finite proceeds through a unified, court-supervised proceeding rather than through individualized, *post hoc* valuation trials.

Petitioner's proposed rule would fragment this structure. It would encourage litigants to bypass the State's integrated distribution process and instead demand a constitutional damages award measured by appraisal value. And that would undermine the purpose of a court-supervised distribution proceeding—to resolve competing claims in a single, managed process—and invite inconsistent outcomes between court distribution proceedings and later valuation litigation.

C. *Tyler*'s Limited Scope Should Be Maintained to Preserve Doctrinal Stability and Avoid Constitutional Overreach.

The Court should resist invitations to treat a narrow holding as a broad constitutional mandate. *Tyler* did not purport to decide valuation methodology in tax foreclosure. The Court should not, in the name of implementing *Tyler*, announce a rule that requires states and local governments to recalibrate the economics of forced sales nationwide.

Tyler's logic does not support a nationwide appraisal mandate. Its core logic is rooted in the common-law and constitutional understanding that the government is not automatically entitled to value beyond what it is owed. *See Tyler*, 598 U.S. at 639 (noting that, since at least the year 1215, it has been recognized that a government may not take more from a taxpayer than she owes). But it is categorical error to treat that logic as if it constitutionalizes the premise that every compelled sale must be evaluated against an appraisal baseline. The government's obligation under the Takings Clause is not to replicate the most favorable private-market outcome; it is to avoid taking recognized property interests without providing just compensation through a fair and meaningful mechanism.

A nationwide appraisal mandate would require courts to decide that a compelled-sale price is constitutionally wrong whenever it diverges from an asserted retail-market estimate. That specious conclusion would treat lawful auction pricing as presumptively illegitimate, even when sales are conducted pursuant to lawful procedures and judicially-supervised foreclosure. The Constitution has never required that premise. It would also make takings liability turn on the hindsight judgment of hired guns rather than on the presence or absence of a meaningful remedy for surplus recovery.

In Michigan, the post-sale mechanism is designed precisely to protect any surplus value that exists in the proceeds actually generated and held for distribution. Under that structure, the Constitution's role is to ensure that surplus is not retained as a windfall without recourse—not to require that the sovereign pay hypothetical market values divorced from the proceeds actually realized. That is a key reason why *Tyler* should not be read as a valuation case. It is not a decision about the price-setting adequacy of auctions; it is a decision about property entitlement and governmental retention.

Petitioner's approach would retroactively treat lawful compelled sales as constitutionally deficient whenever their economic outputs do not match a litigant's preferred valuation metric—inviting instability, undermining finality, and multiplying litigation at scale. The Court should reject that reading and preserve *Tyler*'s express scope.

II. The Constitution Does Not Mandate Fair Market Value Compensation For Tax Foreclosure Takings, and a Contrary Rule Would Be Unadministrable.

A. A Nationwide Fair Market Value Mandate Would Displace Tax Collection Systems and Generate Extensive Litigation.

States rely on diverse tax collection systems involving strict foreclosure, judicial foreclosure, redemption periods, post-sale surplus procedures, forfeiture systems, and various hybrid approaches. None of these systems was designed with a *constitutionally mandated* federal fair market value requirement in mind. If the Court constitutionalizes Petitioner's proposed valuation standard, every State would be compelled to redesign its tax laws to comply.

Such a new federal valuation rule would invite extensive litigation. Fair market value is difficult to fix with precision and often requires expert appraisal, comparative market analysis, and extensive factual inquiry—even then, the valuation remains subject to reasonable contest.[13] That indeterminacy is manageable in discrete condemnation cases; it is untenable as a routine post-foreclosure constitutional claim. Every homeowner who lost property in a tax sale at less than appraised value could bring a federal or state lawsuit seeking compensation based on an alternative valuation. This would intolerably burden state and federal courts, undermine the finality of tax sales, and interfere with local tax administration.

This Court has consistently declined to constitutionalize rigid valuation methods because such approaches restrict the flexibility necessary for government operations. *See e.g.*, *Commodities Trading Corp.*, 339 U.S. at 123; *Georgia R. & P. Co.* v. *Railroad Com. of Georgia*,

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[13] *See* Anthony J. Casey & Julia Simon-Kerr, *A Simple Theory of Complex Valuation*, 113 MICH. L. REV. 1175, 1185 (2015) ("Chief among such disclaimers is one often repeated in the tax courts: The determination of the fair market value of property is a matter of judgment, rather than of mathematics . . . as courts have treated valuation (either explicitly or through some sleight of hand) as a unique type of inquiry that must be conducted outside the normal bounds of reasoned judicial fact-finding." (internal citations and quotations omitted)).

262 U.S. 625, 630 (1923) ("The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts." (citations omitted)). Petitioner's proposed rule would require federal courts to second-guess the mechanics of state tax systems while effectively mandating a single valuation approach for all jurisdictions. That is a substantial expansion of federal judicial involvement in state taxation.

B. Michigan's System Cannot Function as an Appraisal-Based Damages Regime, and Finality Would Collapse.

Michigan's statutory design is premised on administrability, finality, and judicial supervision. Foreclosure culminates in a judicial judgment and a compelled sale, followed by a structured proceeds-based mechanism that segregates and distributes any surplus through a court-supervised claims process. That integrated design protects surplus interests while allowing counties and courts to administer thousands of cases under uniform rules.

A fair market value mandate would invert the post-sale stage. Instead of distributing a finite fund generated by sale proceeds, counties would face demands to create additional money to fill an asserted appraisal gap. That shift would convert routine foreclosures into damages litigation driven by experts hired for the purpose of litigation—disputes over property condition, comparable selection, adjustment methodology, highest and best use, and timing—after judgments and sales are final.

That litigation deluge is not theoretical. Tax foreclosure sales are compelled dispositions with constraints that affect price formation: limited marketing time, bidder risk assessments, title uncertainty, occupancy issues, code compliance, and transaction costs. Those constraints are features of a lawful liquidation process. If the Constitution requires governments to pay the difference between an asserted retail market value and a forced sale price, local governments become insurers against the economic consequences of compelled liquidation.

Finality would erode. Tax enforcement works only if sales clear title and allow properties to reenter productive use.[14] If every sale becomes a potential constitutional valuation claim—including potentially dual or multiple valuations made by claimants other than the former owner (*e.g.*, competing valuation objectives as between a mortgagee, lienholder, and heir)—bidders will discount more heavily to account for litigation risk, lowering sale proceeds and increasing the frequency and stakes of disputes. Counties would face long-tail liabilities and budgeting instability—precisely the opposite of an administrable, final system of tax collection.

And Petitioner's metric would generate claims even *when no surplus exists as a matter of sale*

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[14] *See* James J. Kelly Jr., *Bringing Clarity to Title Clearing: Tax Foreclosure and Due Process in the Internet Age*, 77 U. CIN. L. REV. 63, 65 (2008) ("The foreclosure of property tax liens performs an essential economic function by reconnecting underutilized properties to the real estate market. To clear title in an efficient and just manner, local jurisdictions foreclosing on tax liens require clear, balanced procedures for the provision of notice to affected parties.").

proceeds because the asserted constitutional injury becomes "fair market value minus debt," not the retention of surplus. That would bypass Michigan's fund-based distribution model, reorder priority among competing claimants, and require counties to make payouts untethered to the proceeds actually realized. Takings doctrine has never required that transformation, and *Tyler* does not.

III. Petitioner's Historical Account Incorrectly Imports Mortgage-Foreclosure and Bailment Concepts Into the Tax Realm.

A. Petitioner's Historical Analogies Do Not Translate Into Modern Constitutional Valuation Requirements.

Bailment and mortgage analogies misdescribe sovereign tax enforcement. Petitioner argues that colonial and 19th-century practices treated tax collectors as "bailees" or trustees who owed fiduciary duties to protect a debtor's equity. *See* Brief for Petitioner at 21. This description is historically inaccurate. *See Smythe* v. *United States*, 188 U.S. 156, 170 (1903) (stating that "the obligations of a public officer, who received public moneys under a bond . . . are not to be determined by the principles of the law of bailment, but by the special contract evidenced by his bond conditioned"); *see also United States* v. *Johnston*, 268 U.S. 220, 226-27 (1925) (stating that an individual required to pay tax to the IRS is "a debtor and not a bailee"). In private law, bailment refers to the transfer of possession of personal property to another for safekeeping. *See Carpenter* v. *United States*, 585 U.S. 296, 399 (2018) (Kennedy, J., dissenting) ("A bailment is the 'delivery of personal property by one person (the bailor) to another (the bailee) who holds the property for a certain purpose.'") (citing *Black's Law Dictionary* 169 (10th ed. 2014)). It has no direct analogue in governmental tax enforcement, which is an exercise of sovereign authority and not a private custodial relationship. *See e.g.*, *Mansfield* v. *Hanaford*, 250 Mass. 559, 562 (1925); *New Providence* v. *McEachron*, 33 N.J.L. 339, 340 (1869).

Moreover, historical cases involving irregular or unfair foreclosure practices often resulted in the sale being set aside, not in an award of fair market value damages. *See Ballentyne* v. *Smith*, 205 U.S. 285, 290 (1907) (citing *Graffam* v. *Burgess*, 117 U.S. 180, 191-92 (1886)). Equitable principles governing private mortgage debt enforcement cannot be transposed wholesale into sovereign tax collection procedures. Petitioner's historical narrative conflates distinct legal doctrines and overstates the existence of any fiduciary standard binding tax officials.

B. Historical Remedies Were Process-Based, Not Valuation-Based.

Historical remedies for defective sales do not imply a constitutional damages formula. Even when historical practice policed "sacrificial" sales, the remedy typically aimed at the sale process—setting aside an irregular sale, ordering a new sale, or correcting procedural defects—was not to award a monetary difference between an asserted market value and the sale price. That distinction matters. Process-focused remedies do not establish that governments must guarantee market-equivalent proceeds as a constitutional matter.

Michigan's modern system embeds process protection through notice and judicial supervision before foreclosure and through a court-managed distribution mechanism after sale. That is the appropriate conceptual analogue: lawful process and fair opportunity, not a fiduciary obligation to maximize price.

The bailment analogy mischaracterizes Michigan's governmental role. County treasurers act under statute to collect taxes; they do not assume custody of property for the owner's benefit. Tax foreclosure is not a consensual transfer for safekeeping. It is enforcement of a public obligation. Treating treasurers as fiduciaries would invert the relationship and distort Michigan's statutory duties. *See United States* v. *Morgan*, 52 U.S. (11 How.) 154, 161-62 (1851).

Private mortgage foreclosure principles do not map onto Michigan's tax foreclosure system. Mortgage foreclosure enforces private bargains. *See Johnson* v. *Home State Bank*, 501 U.S. 78, 82 (1991). Tax foreclosure enforces a public obligation foundational to local governance. *See Petersen Financial LLC* v. *City of Kentwood*, 337 Mich. App. 460, 485 (2021). Michigan's statutory regime reflects that public character. Importing mortgage-style fiduciary valuation obligations would improperly constitutionalize incongruent private-law analogies.

Petitioner's history is aimed at a novel nationwide valuation rule that history does not support. *See BFP*, 511 U.S. at 537 (stating that "market value, as it is commonly understood, has no applicability in the forced-sale context; indeed, it is the very antithesis of forced-sale value"). History does not establish a uniform, judicially enforceable market-value guarantee. *See Ballentyne*, 205 U.S. at 290; *see also BFP*, 511 U.S. at 538 ("Market value cannot be the criterion of equivalence in the foreclosure-sale context."); *Yono* v. *County of Ingham*, 2025 Mich. LEXIS 1288, at *8-9 (July 16,

2025) (explaining that the best evidence of a foreclosed property's value is the property's sale price). Michigan's modern approach—surplus recognition plus a structured recovery mechanism—is far closer to the historical emphasis on fairness of procedure and opportunity to reclaim remaining value than Petitioner's attempt to constitutionalize appraisal-driven damages.

IV. Extending the Excessive Fines Clause to Routine Tax Assessment and Collection Would Undermine Civil Regulatory Systems.

A. The Excessive Fines Doctrine Is Limited to Punitive Sanctions.

Petitioner attempts to characterize the foreclosure's consequences as a punitive fine subject to the Eighth Amendment's Excessive Fines Clause. This reframing conflicts with the traditional understanding that tax collection is a civil, regulatory process designed to secure due revenue, not a punitive measure designed to punish wrongdoing. *See United States* v. *Toth*, 33 F.4th 1, 16 (1st Cir. 2022); *see also United States* v. *Ursery*, 518 U.S. 267, 283–84 (1996). If the Court accepts Petitioner's argument, States and local governments could face Eighth Amendment challenges whenever the value of property used to satisfy a civil obligation exceeds the amount of the debt.

Such an extension of the Excessive Fines Clause would destabilize areas far beyond property tax enforcement, including code enforcement liens, nuisance properties, demolition cost recovery, and environmental remediation liens. Civil enforcement tools would become subject to constitutional proportionality review typically reserved for criminal punishment. *See Ingraham* v. *Wright*, 430 U.S. 651, 664 (1977); *Proctor* v. *Saginaw*

County Bd. of Comm'rs, 340 Mich. App. 1, 35 (2022). This is not a modest extension of existing doctrine but a major reconfiguration of constitutional law. *See Southwestern Oil Co.* v. *Texas*, 217 U.S. 114, 119 (1910).

Michigan's tax-foreclosure system is civil and remedial in purpose, structure, and operation. It is triggered by nonpayment, not wrongdoing. Its procedures—notice, redemption, judicial foreclosure—are characteristic of civil process, not punitive sanction adjudications.

A process that is civil in design does not become a "fine" simply because it has serious consequences. The Excessive Fines Clause is anchored in punishment. *See Austin* v. *United States*, 509 U.S. 602, 610 (1993). Treating civil tax enforcement as punishment would blur a foundational constitutional line, as does Petitioner's attempt to expand *Tyler*'s Takings Clause language—"The taxpayer must render unto Caesar what is Caesar's, but no more"—into the Eighth Amendment. *See Tyler*, 598 U.S. at 647-48.

B. Michigan's Surplus Recovery Remedy Confirms Takings Clause Analysis.

The proper constitutional inquiry remains within Takings doctrine's remedial principles, not Eighth Amendment punishment doctrine.

When a government collects taxes through foreclosure and sale, the key constitutional question is whether it retains surplus value that belongs to the former owner without a meaningful path to recover it. Michigan has a meaningful path. That is the correct doctrinal category. Moving the dispute into the Excessive Fines Clause would produce sweeping consequences disproportionate to the narrow surplus-interest principle *Tyler* recognized.

Michigan's post-sale process includes statutory definitions, deadlines, and priority rules designed to ensure orderly administration and fair distribution. Under an Excessive Fines regime, these design features could be attacked as "punitive" or "disproportionate," improperly turning statutory administration into constitutional liability.

The Court should decline the invitation to transform routine civil tax enforcement into punitive constitutional litigation. The Excessive Fines doctrine should not be transplanted into Michigan tax foreclosure. For the same reason the Takings Clause should not be converted into a valuation guarantee, the Eighth Amendment should not be repurposed to constitutionalize proportionality review of ordinary *State* tax collection machinery.

V. Federalizing the Valuation of Tax Liens Threatens State Sovereignty and Policy Flexibility.

A. A Nationwide Mandate Intrudes on Core State Fiscal Administration.

Taxation is a core function of state and local government. *See McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 428 (1819). States possess discretion to design property tax statutes according to local priorities, administrative capabilities, and fiscal needs. *See Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522, 526 (1959). Petitioner's proposed rule would impose a single national valuation standard on all States regardless of their chosen foreclosure frameworks.

This intrusion into state tax administration would have profound federalism consequences. Property taxes fund essential governmental functions ranging from schools to public safety. States must retain flexibility to modify enforcement mechanisms without federal valuation mandates not compelled by the Constitution. Post-*Tyler* reforms in Michigan illustrate the ability of States to address concerns through legislation rather than through constitutionalization. The Court should preserve this space for democratic experimentation.

B. Michigan's Legislative Choices Demonstrate Why Valuation Should Not Be Constitutionalized.

Michigan's Legislature has exercised its sovereign authority to implement surplus protection through statute. Michigan's system reflects a policy judgment about how to protect surplus interests while maintaining an administrable tax foreclosure regime. The Legislature's approach uses notice, deadlines, segregation of proceeds, restricted-use accounts and judicial distribution to ensure that surplus is recoverable and disputes are resolved coherently.

Petitioner's proposed nationwide valuation rule would override those choices and impose a burdening appraisal regime. A fair market value mandate would require courts to supervise valuation methodology and award damages based on appraisal disputes. That would displace Michigan's choice to protect surplus through structured distribution of actual proceeds and force counties to unworkably budget for appraisal costs and litigation risk as a routine feature of tax enforcement.

Michigan local governments rely on stable tax administration to fund essential services. Property taxes are foundational. Foreclosure is a last-resort mechanism that ensures the system's integrity. If enforcement becomes constitutionally exposed to recurring damages claims keyed to contested valuations, administration costs rise and predictability plummets—harming the public services the tax system funds.

Federalism concerns are heightened when the Court is asked to constitutionalize the mechanics of state fiscal operations. *See Dows* v. *Chicago*, 78 U.S. (11 Wall.) 108, 110 (1870) ("It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible."). Imposing a nationwide valuation mandate would entangle federal and state courts in routine tax enforcement and compel states to restructure statutory regimes in response to constitutional valuation oversight.

Michigan has shown it can respond to constitutional developments through legislation. That capacity for democratic experimentation is a strength. Constitutionalizing a rigid valuation mandate would restrict States' ability to balance fairness and administrability.

CONCLUSION

For these reasons, the amici urge the Court to reaffirm the narrow holding of *Tyler* and resist Petitioner's effort to transform that decision into a constitutional mandate requiring fair market value compensation in tax foreclosure cases. *Tyler* recognized a Fifth Amendment property interest; it did not establish a valuation rule. A nationwide fair market value requirement would federalize core aspects of State taxation, expand Takings Clause doctrine beyond its established bounds, and disrupt civil regulatory systems through inappropriate Eighth Amendment scrutiny. The amici, therefore, respectfully urge the Court to reject Petitioner's proposed constitutional rule and affirm the judgment below.

Respectfully submitted,

Theodore W. Seitz
Counsel of Record
DYKEMA GOSSETT PLLC
201 Townsend Street
Suite 900
Lansing, MI 48933
(517) 374-9149
tseitz@dykema.com

Chantel L. Febus
DYKEMA GOSSETT PLLC
1301 K Street NW
Suite 1100 West
Washington, DC 20005

James S. Azadian
DYKEMA GOSSETT PLLC
444 South Flower Street
Suite 2200
Los Angeles, CA 90071

Counsel for Amici Curiae

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