

# Anticipating The Justices' Potential Ruling On Tax Takings

By **Alexander Lycoyannis and Jennifer Karpchuk** (April 20, 2026)

On Feb. 25, the U.S. Supreme Court heard oral argument in *Pung v. Isabella County, Michigan*, a case poised to clarify a major unanswered question in the real property tax world: When a local government seizes real property to satisfy a small tax debt and sells it at a tax foreclosure auction, how should courts measure "just compensation"?

Is the property owner entitled only to the surplus generated by the auction without further inquiry, even if the sale price is far below fair market value? Or, must compensation reflect that FMV? The answer, expected by June, will have far-reaching impacts on tax foreclosure practices across the country.

## Path to the Supreme Court

In 2023, in *Tyler v. Hennepin County, Minnesota*, the Supreme Court unanimously held that the government violates the Fifth Amendment's takings clause when it keeps the surplus proceeds of a tax foreclosure sale beyond the amount of taxes owed, and must instead return those proceeds to the property owner.[1] The *Tyler* decision, however, did not address whether those returned proceeds constitute just compensation under the takings clause.

*Pung* — best understood as *Tyler 2.0* due to the similarity of the underlying fact patterns — squarely presents that issue for determination.

Timothy Scott Pung owned a home in Isabella County, Michigan. After his death, a dispute arose over the continued applicability of Michigan's principal residence exemption, and the assessor treated the property as delinquent over roughly \$2,200 in taxes.

After the estate did not pay, the county initiated tax foreclosure proceedings in 2014. In 2019, after the redemption period expired, the property — assessed by the county at \$194,000 — sold at public auction for about \$76,000. The purchaser soon resold the home for \$195,000.

In 2018, the estate sued various local officials in the U.S. District Court for the Western District of Michigan, asserting: (1) a Fifth Amendment taking without just compensation; and (2) an excessive fine under the Eighth Amendment. The case was later transferred, and in 2022, the U.S. District Court for the Eastern District of Michigan held that a taking occurred but measured compensation as the auction proceeds minus the tax debt, not FMV.

In January 2025, the U.S. Court of Appeals for the Sixth Circuit affirmed the lower court's decision and rejected the excessive fines claim. The Supreme Court granted certiorari on Oct. 3, 2025.

## The Heart of the Dispute: FMV vs. Auction Price

*Pung* presents the following fundamental valuation question: Is auction price a



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constitutionally adequate measure of just compensation in a tax foreclosure, or does the Fifth Amendment require FMV?

### ***The Estate's Position***

The Pung estate argues that just compensation must reflect the value of what was taken: FMV at the time the government acquired title less the tax debt.

Concluding, as the Sixth Circuit did, that auction surplus alone is constitutionally sufficient enshrines distressed auction pricing as the proper measure of compensation — which, the estate asserts, conflicts with Supreme Court precedent establishing FMV as the appropriate measure in analogous circumstances.

Indeed, while the home sold at auction for less than 40% of the county's own assessed FMV, the auction purchaser immediately flipped the home for that full FMV — driving home that the auction process denied the estate six figures worth of equity.

### ***The Government's Position***

Isabella County counters that the auction price is the appropriate measure of value because that price reflects what the property is worth under the sale conditions created by statute, and that local governments around the country typically use similar procedures to satisfy tax debts.

The county emphasizes that while auctions typically generate lower sales proceeds than market transactions due to their structure, insisting on FMV as the valuation measure in tax foreclosure sales would effectively end such sales — and local governments' means of collecting unpaid property taxes — by introducing valuation uncertainty and post-sale litigation, and render the tax foreclosure process cost-prohibitive for local governments.

The county relies heavily on the Supreme Court's 1994 *BFP v. Resolution Trust Corp.* decision, which in the bankruptcy context held that a foreclosure sale conducted in compliance with state law yields "reasonably equivalent value," even when the sale price is below FMV.[2]

While the *BFP* case involved fraudulent-transfer analysis and not the Fifth Amendment, the county argues that the underlying principle — that a forced sale is not comparable to an arm's-length market transaction — should guide takings valuation as well.

### **Themes From Oral Argument**

The oral argument focused on valuation, timing and administrability.

#### ***When the Taking Occurs***

One of the justices' primary lines of questioning concerned timing — specifically, whether the taking occurs when (1) the redemption period expires and the government acquires full title; (2) the government later sells the property; or (3) when it retains surplus proceeds.

The answer matters enormously. Justices across the ideological spectrum pressed counsel to define the moment of the constitutional injury — signaling that a clear rule on timing may become a centerpiece of the court's opinion.

If the taking occurs at the transfer of title, fair market value at that moment may be the proper measure. If, however, the taking concerns only the surplus, the auction price might suffice.

### ***Auction Price as Proxy***

Another major theme was whether auction price is an adequate proxy for just compensation.

The estate argued that constitutional compensation cannot turn on distressed-sale dynamics. The county argued that an FMV requirement would be unworkable and would invite valuation litigation. Some amici, however, noted that various jurisdictions already use FMV-linked minimum bids or nonauction sales mechanisms for foreclosed property.

### ***Due Process vs. Takings Clause***

A handful of questions, most notably from Justice Ketanji Brown Jackson, explored whether concerns about unfairness in the process — such as lack of notice, limited bidding or confusion caused by the primary residence exemption dispute — implicated due process and not takings.

The estate responded that even where the process is adequate, a property owner suffers constitutional injury where the government takes more than what is owed and compensates the property owner using a depressed valuation method that bears no relationship to the true value of what was taken.

### ***The Underlying Facts Troubled the Court***

Several justices — Justice Neil Gorsuch most emphatically — expressed discomfort with the underlying facts. A legally dubious \$2,200 tax debt led to the forced sale of a \$194,000 home for only \$76,000, which the auction purchaser then flipped for FMV.

These sympathetic facts may push the court toward a rule that mitigates extreme disparities between auction price and FMV, at least in cases involving minimal or disputed debts.

### ***Potential Impacts of Possible Outcomes***

Whichever rule the court adopts, the decision will have significant nationwide consequences for tax collection, homeowners' equity and the secondary market for tax-foreclosed property.

### ***Auction Surplus Only***

The court could affirm the Sixth Circuit and hold that auction price minus debt is constitutionally sufficient so long as the sale complied with state law.

This would align tax foreclosure valuation with the BFP decision and preserve existing foreclosure practices. But the harsh facts of this case seem to militate against such a categorical rule.

State and local governments would largely maintain existing foreclosure practices, with clearer incentives to ensure auctions are procedurally compliant and competitive.

Owners would generally be limited to whatever surplus the auction generates, meaning equity recovery would continue to depend heavily on the structure of the forced-sale process.

Litigation would likely shift toward procedural challenges — notice, bidding constraints, redemption mechanics — and, where available, state-law remedies.

### ***FMV as the Baseline***

The court could hold that when government takes full title to satisfy a tax debt, just compensation must reflect FMV at the time of the taking, not the discounted auction price. This approach aligns with traditional takings doctrine but would significantly alter tax foreclosure administration nationwide.

Tax-foreclosure regimes could face substantial restructuring. Governments may respond by adopting FMV-linked minimum bids, using brokered and multiple-listing-service-style sales, or creating post-sale true-up payments when auction pricing materially under-shoots FMV.

Localities could also change front-end collection practices — earlier payment plans, increased preforeclosure outreach, stricter verification of the underlying debt — to avoid large FMV-based exposure on small delinquencies.

Increased valuation disputes and expert-driven litigation could follow, at least until clearer standards develop.

### ***A Rebuttable Presumption***

A possible middle-ground compromise would be the adoption of rebuttable presumption that a properly conducted, competitive public auction yields adequate compensation, unless the owner establishes (1) a substantial disparity between the auction price and the FMV that is unrelated to the ordinary auction process, or (2) that other factors — such as, for example, the dubious nature of the alleged tax debt owed by the Pung estate — require the court to revisit the sale.

The practical effect could be to preserve finality in most cases while creating a litigation pathway for outlier fact patterns — particularly where the sale price diverges dramatically from FMV or the debt is minimal, disputed or infected by administrative error.

If the court adopts this approach, expect more post-sale challenges focused on what qualifies as a "substantial disparity," what evidence rebuts the presumption and how courts should treat quick post-auction resales as evidence of FMV.

### ***Vacate and Remand***

If the court announces a new rule or finds the record insufficiently developed, it may vacate the Sixth Circuit's decision and remand for application of the clarified standard.

Even without a definitive valuation rule, the court could clarify timing — when the taking occurs — or other threshold issues that shape how future claims are pleaded and proven.

In the near term, uncertainty could encourage protective litigation and legislative experimentation while lower courts apply the new framework on remand.

## **Conclusion**

In short, Pung is poised to influence not only how governments calculate compensation, but also how they structure tax enforcement; how bidders price auction risk; and how quickly owners and their heirs can recover home equity after a tax delinquency.

In the months following the decision, practitioners should watch for impacts on state legislation, local foreclosure procedures and an uptick in valuation-focused pleadings.

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[1] Tyler v. Hennepin County, 598 US 631 (2023).

[2] BFP v. Resolution Trust Corp., 511 US 531 (1994).