

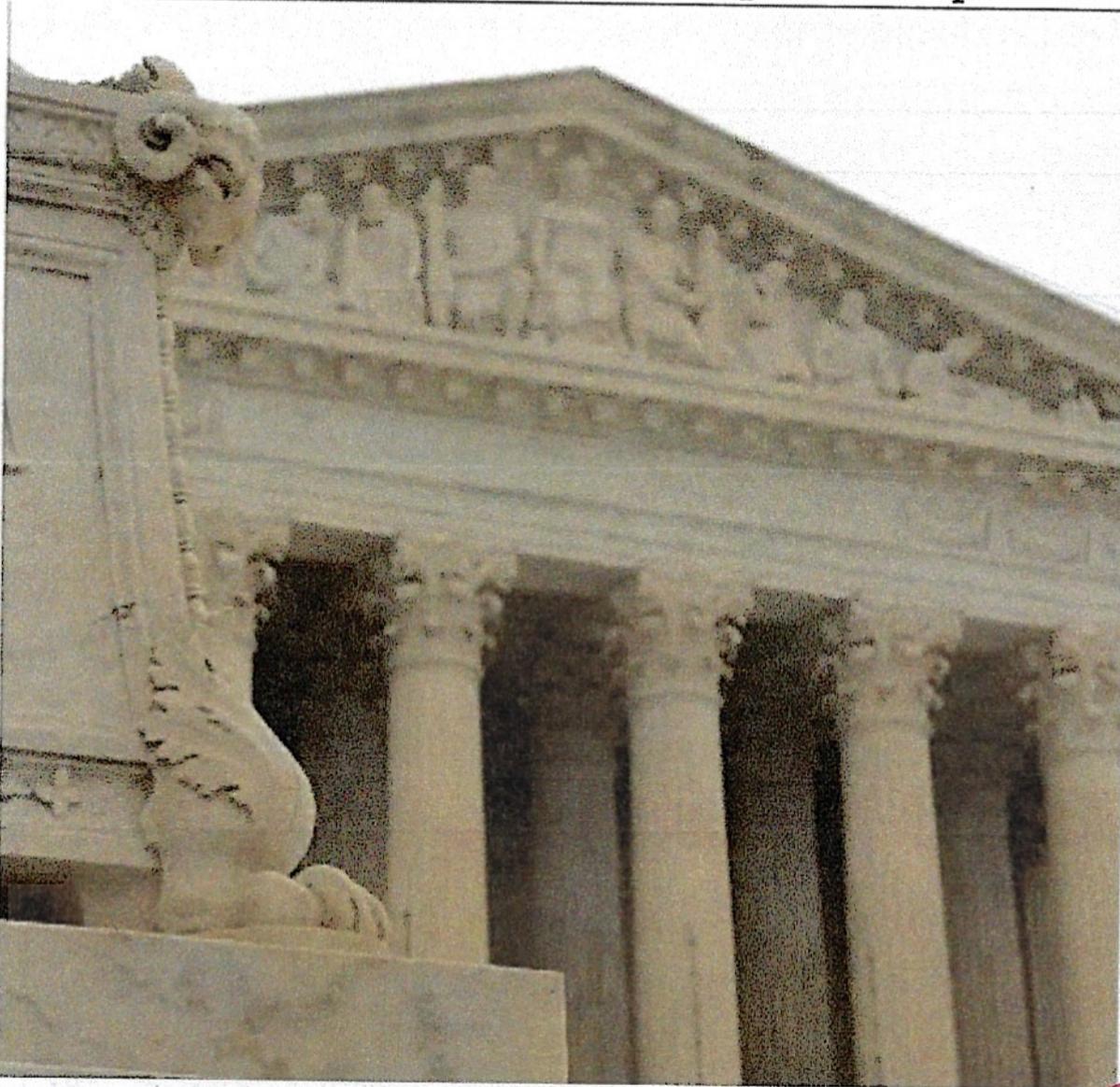
# Supreme Court could decide the fate of foreclosures

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The Supreme Court will soon decide whether a Michigan county violated a family's constitutional rights by selling their property as part of a tax foreclosure for well under its market value, years after the high court ruled counties may not pocket the profits from those kinds of sales.



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Justices will hear oral arguments on Wednesday in Pung v. Isabella County. In this case, Isabella County seized the Pung family's home to pay \$2,242 in unpaid taxes, penalties, and interest. The county then sold the property at auction for \$76,008 despite its fair market value of \$194,400. After the Supreme Court's 2023 ruling in Tyler v. Hennepin County, in which the justices unanimously agreed that local governments cannot pocket more than the amount of unpaid taxes in a foreclosure sale, a federal court ruled the family was entitled to the profit of the sale after the unpaid taxes were covered, but not to the surplus based on the value of the property. ← Note

The family's lawyers argued to the high court that they are entitled to roughly \$192,000 in surplus rather than the \$73,000 surplus they received, in a case which could transform the standard for tax foreclosure sales.

"When government takes more than it is owed, it crosses constitutional lines. The Fifth Amendment mandates just compensation; the Eighth Amendment forbids excessive fines as punishment. Both clauses converge in this case," Pung's lawyers argue in their brief.

The lawyers for the family argue the heart of the case is how much people are owed when the government seizes property after it is sold off for unpaid taxes, arguing it should be about the property's value and not the amount it is sold for at an "inadequate" auction.

"Historically, this has always been based on the property's 'fair market value,' not the residue of an inferior distressed auction. The lower courts erred by measuring compensation from the County's auction, rather than from the property's known fair market value. The Constitution requires compensation measured by the owner's loss—not by the government's chosen disposal method," the brief said. Lawyers for Isabella County argued to the high court in their brief that they should reject Pung's arguments that the Fifth and Eighth amendments require them to rely on the property value, rather than the auction sale amount, to calculate how much the family is owed.

"English and American governments have seized and sold property to collect debts for centuries. And, for centuries, the majority rule has required the government to return surplus proceeds, if any, to the property's former owner. Petitioner's fair-market-value theory has no foothold in history or precedent," the brief said.

"The robust tradition of requiring foreclosing governments to pay surplus proceeds (and no more) to property owners shows that neither the Takings Clause nor the Excessive Fines Clause requires a greater amount," the county's brief continued.

Lawyers for the county also warned that if the Supreme Court sides with the Pung family, they will "effectively eliminate foreclosure as an option to collect government debts, and cripple state property-tax collection systems."

"Doing so would benefit those who do not pay their taxes while increasing the burden on those who do," the brief said.

The Justice Department also filed a brief to the Supreme Court in the case and will have time to argue on Wednesday, arguing that the Eighth Amendment's excessive fines clause should not apply because there is no "fine" in this case.

"When a government sells a taxpayer's property and refunds the surplus proceeds, the only money that the government keeps is what the taxpayer owes. That is payment for unpaid taxes, not punishment for some offense," the DOJ's brief said.

While the DOJ claims the Eighth Amendment is not involved in this case, it argues that, under the Fifth Amendment, a person is entitled to the surplus of a sale conducted "fairly."

"The taxpayer may therefore challenge the procedural fairness of the sale by arguing, for example, that it was conducted with insufficient notice or opportunity for bidding. But if the sale was conducted fairly, the Takings Clause entitles the taxpayer to no more than the surplus proceeds," the brief said.

"Requiring governments to pay the difference between the foreclosure-sale price and the value at a hypothetical unrestricted sale would effectively deprive them of an age-old tool of tax collection," the DOJ added.

The Supreme Court will hear arguments in Pung v. Isabella County at 10 a.m. Wednesday, shortly after justices are expected to release at least one ruling in a case they heard earlier this term.

A decision in the Pung case is expected by the end of June, when the high court's final opinions are likely to be released.