

GIBSON DUNN



Appellate and Constitutional Law Update

June 23, 2026

## Supreme Court Holds That Taxpayers Are Not Entitled To Receive The “Hypothetical Fair Market Value” Of Property Sold In A Tax Sale

*Pung v. Isabella County*, No. 25-95 – Decided June 23, 2026

**Today, the Supreme Court unanimously held that the government may foreclose on a tax debtor’s property, sell the property in a fair auction, and compensate the debtor based on the sale price rather than the property’s higher hypothetical “fair market value.”**

*“We hold that the auction price is the proper baseline, at least when the procedure is fair in light of our country’s history of tax sales.”*

**JUSTICE ALITO, WRITING FOR THE COURT**

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### Background:

The Takings Clause of the Fifth Amendment states that “private property [shall not] be taken for public use, without just compensation.” The Excessive Fines Clause of the Eighth Amendment states that “excessive fines [shall not] be imposed.” Both clauses apply to the States through the Fourteenth Amendment.

In 2018, Michael Pung, as representative of his late nephew's estate, sued Isabella County, Michigan, after the County foreclosed on and sold the estate's home to fulfill a tax debt of approximately \$2,000. The County sold the property at auction for approximately \$76,000 and retained all the proceeds. Pung challenged the County's retention of the sale proceeds, arguing that he was entitled to compensation based not on the sale price but on the home's asserted "fair market value" of nearly \$200,000. The district court and the Sixth Circuit held that the Takings Clause entitled the estate only to the sale's surplus proceeds, plus interest. Pung's Excessive Fines claim was denied as moot.

#### **Issue:**

When the government sells a taxpayer's property to satisfy a tax debt, does the Takings Clause or the Excessive Fines Clause entitle the taxpayer to more than the surplus proceeds from the sale?

#### **Court's Holding:**

No. So long as the sale was conducted fairly, neither the Takings Clause nor the Excessive Fines Clause entitles the taxpayer to more than the surplus proceeds of the auction.

#### **What It Means:**

- The Court rejected hypothetical "fair market value" as the measure of compensation required under the Takings Clause, explaining that a "long legal tradition dating back to the Founding embodies [the] principle" that governments are obligated to return to former property owners only the surplus proceeds from tax sales, at least where the tax sale is "fairly conducted."
- The Court also found no "historical evidence" suggesting that a government violates the Excessive Fines Clause when it returns only the surplus proceeds from a tax sale conducted with fair procedures.
- The Court did not resolve what procedures are required to make a tax-sale process "fair," but instead remanded for the Sixth Circuit to consider any procedural challenges that were preserved.
- By declining to require compensation based on fair market value, the Court preserved the ability of federal, state, and local governments to use tax sales as a means of collecting tax debts. The Court explained that, unlike voluntary sales of property, "tax sales are designed to collect unpaid taxes without undue delay and administrative expense." Requiring compensation based on fair market value would place "unprecedented burdens" on taxing authorities seeking to recover debts, according to the Court.
- Justice Thomas authored a separate opinion in which he agreed with the Court that an "auction surplus from a tax foreclosure sale can constitute just compensation if it is consistent with historical practice." He went on to explain his view, joined by Justice Gorsuch, that based on historical practice, the County's actions likely violated the Takings

Clause because the County did not first “try to collect anything less than the entire property—such as the Pungs’ personal goods, their car, or a portion of their land.”

**Gibson Dunn Appellate Honors**

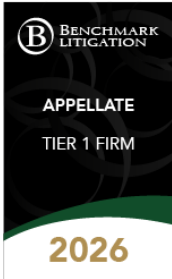


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The Court’s opinion is available [here](#).

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice group leaders:

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