

April 29, 2026

More Changes on the Horizon for Michigan’s Property Tax Foreclosure Process

In a Nutshell

- A decision from the U. S. Supreme Court on what is just compensation when a foreclosed property is sold by a county to recover to delinquent property taxes, interest, and fees is expected in *Pung v. Isabella County* this summer.
- The central question is whether the calculation of just compensation under the Fifth Amendment to the U.S. Constitution should be based on a tax auction sale price, or the fair market value of the foreclosed property.
- Changes to Michigan’s tax foreclosure process should be made to address the issues raised by *Pung v. Isabella County*: expand homeowner education, ease the claims process for surplus proceeds, improve the transparency and competitiveness of tax auctions, and review the impact on property owners and local governments of the existing interest rate and penalty structure for delinquent taxes.

An issue now before the U.S. Supreme Court could disrupt Michigan’s tax foreclosure process and the impact the system has on compelling timely property tax payments. The case concerns Michigan’s tax foreclosure system and how homeowners are compensated when a property is taken and sold to satisfy delinquent property taxes. The Court is expected to issue a decision this summer in *Pung v. Isabella County*, a case that asks what just compensation is owed under the U.S. Constitution in this setting. The outcome could affect how Michigan’s delinquent property tax collection process operates and require changes to the tax-foreclosure framework.

In *Pung v. Isabella County*, the U.S. Supreme Court is asked to define just compensation when the property tax-foreclosure system results in a home being taken and sold to satisfy delinquent property taxes. The central dispute is whether the previous property owner’s compensation should reflect the home’s fair market value (minus the tax debt) or the tax-auction sale price (minus the tax debt). The decision has the potential to upset Michigan’s delinquent property tax collection process, prompting significant changes to the tax foreclosure system.

The Path to Pung

Under Michigan law, unpaid property taxes eventually lead to foreclosure and a county sale of the property. Sale proceeds are applied to the taxes owed, along with interest, fees, and penalties. Under current law, any remaining proceeds (the “surplus”) from the sale are returned to the former owner through a statutory claims process.

That was not always the case. Previously, counties kept the surplus proceeds, using the funds to manage their delinquent property tax revolving funds and to reimburse local units for unpaid taxes. In 2020, in *Rafaeli v. Oakland County* (see the Citizens Research Council’s Brief), the Michigan Supreme Court barred county treasurers from keeping surplus proceeds from tax-foreclosure sales. The state legislature responded by establishing a (complex) process for property owners to claim surplus proceeds in Public Acts 255 and 256 of 2020.

In a similar 2023 case from Minnesota, *Tyler v. Hennepin County*, the U.S. Supreme Court reinforced this basic principle. The Court concluded that when Hennepin County kept more than it was owed for tax debt, it violated the Takings Clause of the Fifth Amendment.

Pung’s Peloton vs. Pung’s Home

The issue now awaiting a decision from the U.S. Supreme Court is how to measure just compensation in Mr. Pung’s case: is it based on the home’s fair market value, or is it based on the tax-auction sale price? Because tax-foreclosure auctions often produce prices below typical market transactions, the choice of valuation method can significantly change the amount returned to the former homeowner after subtracting the tax debt. Here, the Pungs argue the county effectively took \$118,392 in home equity, the difference between the home’s asserted pre-foreclosure fair market value and the tax auction sale price—over a contested tax amount of \$2,242. The home’s pre-foreclosure market value, based on its 2012 assessed value, was \$194,400, and it sold at auction for \$76,008.

The Pungs initially challenged their 2012 tax bill when a previously-applied principal residence exemption was denied. The county proceeded with the tax foreclosure process in 2015, auctioned the property, and retained all the proceeds from the auction sales. In 2018, the Pungs sued Isabella County in federal court. The U.S. District Court for the Eastern District of Michigan ruled that the Pungs were only entitled to the price yielded at auction, less their tax debts. The Pungs appealed to the Sixth Circuit, U.S. Court of Appeals. The Sixth Circuit affirmed the ruling that the surplus to which the Pungs were entitled should be based on the tax auction price, and rejected that the Pungs were subject to an excessive fine under the Eighth Amendment. In October 2025, the Pungs successfully petitioned the U.S. Supreme Court for review of their case.

During oral argument at the U.S. Supreme Court, a line of questioning was whether the government had reasonable alternatives to collecting the tax debt that were less severe than taking and selling the home. Michigan law does not provide a general mechanism for counties to seize personal property to satisfy delinquent property taxes (for example, the homeowner’s Peloton exercise bike). The property owners could also have borrowed funds to pay for the taxes owed. (Unique to this case is that the Pungs did not have financial hardship, but were disputing the revocation of their personal residence exemption, relating to whether the tax was properly imposed.)

From the county’s perspective, if just compensation is defined as something closer to fair market value rather than the auction price, counties may face pressure to change how auctions are conducted (to improve price discovery) or avoid using tax-auctions entirely. Counties argue that requiring local governments—and ultimately other local taxpayers—to “make up” the equity forgone when a property’s auction value is less than an asserted market would be fiscally unsustainable.

A key practical question, therefore, is whether the Constitution requires a different process to achieve a fair sale price, a different measure of value, or a monetary remedy beyond returning surplus proceeds given that a tax auction will likely not yield the full market value of the property at the sale.

Today, the proceeds of a tax-auction sale are usually below true market value. Because counties cannot retain the surplus proceeds of an auction sale, they lack the incentive to maximize the property's sale price. In addition, because tax auctions are not generally as transparent and competitive as sales in the general market, tax auctions often lack participants willing to bid market prices. Finally, for dilapidated properties at the tax auction, real estate investors may be the only interested parties in bidding, given rehabilitation costs may well exceed the property's market price.

Key Questions for the Court to Resolve

Predicting the approach the U.S. Supreme Court justices will take in *Pung* is difficult. However, because the outcome could impact how Michigan conducts tax foreclosures, it is important to focus on the questions the Court appears to be weighing—and what those questions imply for Michigan's foreclosure process and potential reforms.

1. What was taken?

It remains to be clarified what, exactly, was "taken" in this case. The Pacific Legal Foundation argues that the home equity the Pungs built was effectively "taken" when the home was sold through a tax-foreclosure auction. The "takings" refers to the monetary loss because the auction price was below the appreciated, or market, value of the home. Others frame the "taking" as the foreclosure of the property itself (i.e., whether the government's method of collection is constitutionally permissible). They argue that being delinquent on the taxes owed does not justify the loss of ownership. On the other hand, counties argue that the failure to pay property taxes triggers a lawful enforcement process and that any loss in value is a consequence of that process rather than a separate unconstitutional taking.

2. What is the home's value?

Clarifying how to identify the home's value—and when to determine it—also matters. In Michigan, foreclosure generally occurs only after multiple years of delinquency, and a home's market value (true cash value as defined under Michigan Property Tax Act) can change between (a) when taxes first become delinquent, (b) when the judgment of foreclosure enters, and (c) when the property is sold at a tax auction. A decision that points toward "fair market value" raises many process-specific follow-up questions, such as about the appropriate valuation date, acceptable appraisal methods, and how to handle properties that are damaged, vacant, or otherwise difficult to value.

3. Was the sale process fair?

If auction price is used as the measure of value, then the fairness and competitiveness of the tax auction process become a central issue. The process must be transparent and structured to secure the best obtainable price—through adequate notice, accessible bidding, clear rules, and strong documentation. If counties lack incentives (or face constraints) that depress prices, former owners may receive less compensation than they would under a more competitive sale. In the Pungs' case, for example, the tax auction winner later sold the Pung home for about \$194,000, raising questions about whether the initial auction price reflected the property's market potential.

Potential Next Steps

When the U.S. Supreme Court releases its decision in *Pung v. Isabella County*, the issues at hand are unlikely to be fully resolved. Court-watchers have suggested the Court could address "just compensation" under the Fifth Amendment and then return the case to lower courts to apply that standard

to Michigan's foreclosure process and tax auction practices. The second aspect presented to the Court was that the loss of equity to the Pungs was an "excessive fine" under the Eighth Amendment to the U.S. Constitution. This aspect was hardly discussed during oral argument. A broad ruling from the Court on whether the loss of equity to the Pungs violated the Eighth Amendment appears less likely.

If the Court's decision leads to new requirements for compensation or sale procedures, Michigan may need to adjust aspects of its tax-foreclosure process. Potential areas for improvement include the following:

- Expand homeowner education and early-intervention options – Improve existing pre-foreclosure education/counseling to increase accessibility to programs and offer payment options that help prevent small tax delinquencies from escalating to foreclosure.
- Simplify and publicize the surplus-proceeds claims process – Make it easier for former homeowners to understand deadlines, complete required forms, and successfully claim surplus proceeds after a foreclosure sale.
- Strengthen tax auction transparency and competition – Set clear guidelines for tax auctions that ensure adequate notice, accessible publications, and sale procedures that promote competitive bidding and reliable price discovery.
- Review Michigan's existing interest and penalty structure on delinquent taxes – Evaluate how current interest rates and fees affect homeowners, foreclosure risk, and local government revenues.

The specific changes Michigan's property tax foreclosure process will require depend on how the U.S. Supreme Court defines just compensation in a tax delinquency circumstance, and the process by which that standard will be determined. Pung highlights how collection methods, tax auction design, and post-sale remedies affect Michigan's overall property tax foreclosure process. It is clear the state's process needs transformation, especially as state and local policymakers grapple with improving both homeownership affordability and local government finances.

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Madhu held several leadership positions in state government and the non-profit sector prior to joining the Citizens Research Council in 2024. Her expertise is in local and state taxation, government finance, and regulatory policy. In addition to working on landmark tax, school finance, and pension reforms, she helped Michigan earn a AAA bond rating as Chief Deputy State Treasurer. Under her directorship of CEPI, Michigan became one of the first states to offer web-based performance metrics for school districts. Madhu also served as a Deputy Director at the Department of Environmental Quality and at the Michigan Agency for Energy. Her non-profit experience includes Director of Government Relations for the Michigan chapter of The Nature Conservancy, and Treasurer for a local ceramics cooperative.

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