Surplus Proceeds, Not Fair Market Value: Supreme Court Sets the Just Compensation Baseline for Tax Sales

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***Pung v. Isabella County, Mich.*, 609 U.S. ___ (June 23, 2026)**

Is "just compensation" always fair market value? The Takings Clause requires compensation when private property is taken for public use, and in ordinary eminent-domain cases, fair market value remains the default measure. But in *Pung v. Isabella County*, the U.S. Supreme Court recognized a tax-sale-specific rule: when property is seized and sold to collect unpaid taxes, the Constitution generally requires the government to return the surplus sale proceeds — not pay the property's hypothetical fair market value — at least when the sale is fairly conducted.

For local governments, *Pung* offers important guidance for tax-sale programs. For utilities and other condemnors, it confirms that ordinary eminent-domain takings remain governed by fair-market-value principles.

A Home Sold for a Fraction of Its Value

The Pung family owed $2,241.93 in delinquent real-property taxes on their home in Isabella County, Michigan. After the family failed to pay, the county foreclosed and sold the home at a public auction for $76,008. The property carried a tax-assessed value of $194,400. Under Michigan's then-existing procedures, the Isabella County initially retained all of the sale proceeds — keeping not only the delinquent taxes owed, but also the substantial surplus.

After the Supreme Court's 2023 decision in *Tyler v. Hennepin County* — which established that retaining surplus tax-sale proceeds constitutes a taking — the Pungs sought compensation. The lower courts awarded the surplus sale proceeds (the difference between the $76,008 auction price and the taxes owed) but rejected the argument that compensation should instead be

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measured by the property's fair market value. The Supreme Court granted certiorari to decide the correct measure of just compensation after a tax sale.

The Tax-Sale Rule the Court Recognized

The Supreme Court held that the baseline measure of just compensation following a tax sale is the auction sale price, not the property's hypothetical fair market value — at least when the sale is fairly conducted. The property owner is entitled to surplus sale proceeds: nothing less, and nothing more.

The Supreme Court also held that the Excessive Fines Clause of the Eighth Amendment does not independently require more than the return of surplus proceeds in this context.

Why Tax Sales Are Different

The Supreme Court's analysis rested on two principal pillars. First, it relied on the longstanding historical tradition of tax sales as a legitimate tax-collection method — provided that the government returns surplus proceeds to the former owner. This tradition supports using the auction price as the relevant benchmark rather than imposing a fair-market-value requirement with no historical roots in the tax-sale context.

Second, the Supreme Court noted the practical consequences of requiring jurisdictions to pay fair market value after tax sales: it could impose unprecedented burdens on local governments, potentially making tax sales impractical or net-loss transactions. If the government were required to pay the difference between fair market value and the auction price, many jurisdictions might abandon tax sales altogether — undermining the very mechanism that enforces the obligation to pay property taxes.

The Supreme Court expressly distinguished eminent-domain cases and reaffirmed that fair market value remains the default measure of just compensation in the ordinary condemnation setting. The tax-sale rule is rooted in the unique history and function of tax sales; it does not broadly displace fair-market-value principles.

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Key Takeaways

- The decision confirms that the measure of just compensation depends on history, precedent, and practical consequences — not a one-size-fits-all formula. Both local governments and utilities should assess compensation questions with attention to the specific taking mechanism at issue.
- For local governments: *Pung* validates fairly conducted tax-sale programs that return surplus proceeds rather than hypothetical fair market value. Jurisdictions can continue to use tax sales as a practical enforcement tool without exposure to fair-market-value claims — so long as the sale process is fair.
- For utilities and condemnors: *Pung* does not replace fair market value with auction value or forced-sale value in ordinary eminent-domain proceedings. The decision's utility lies in its boundary-setting: just compensation is context-specific, and the tax-sale rule is tied to the unique history and function of tax sales — not condemnation generally.
- The Supreme Court did not define the procedures required for a tax sale to be "fairly conducted" and left preserved procedural challenges for remand. Future tax-sale disputes are likely to focus on whether the sale process was sufficiently fair.

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