NO. 22-996

IN THE
Supreme Court of the United States

TAWANDA HALL, CURTIS LEE,
CORETHA LEE, and KRISTINA GOVAN,
Cross-Petitioners,

v.

ANDREW MEISNER, Treasurer,
in his official capacity, et al.,
Cross-Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION TO CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Excessive Fines Clause applies to a tax forfeiture for the nonpayment of taxes where such forfeiture serves a remedial, not punitive, purpose.

PARTIES TO THE PROCEEDING

Conditional Cross-Respondents responding here are Andrew Meisner, Oakland County Treasurer, and Oakland County, Michigan. Additional Cross-Respondents are Southfield Neighborhood Revitalization Initiative, LLC; City of Southfield, Michigan; Frederick Zorn; Kenson Siver; Susan P. Ward-Witkowski; Gerald Witkowski; Irv Lowenberg; Mitchell Simon; E'toile Libbett; and Southfield Non-Profit Housing Corporation.

Conditional Cross-Petitioners are Tawanda Hall, Curtis Lee, Coretha Lee, and Kristina Govan.

LIST OF ALL PROCEEDINGS

U.S. Court of Appeals for the Sixth Circuit, No. 21-1700, *Hall, et al.* v. *Meisner, et al.*, judgment entered October 13, 2022, en banc review denied January 4, 2023.

U.S. District Court for the Eastern District of Michigan, No. 2:20-cv-12230-PDB-EAS, judgment entered against Respondents Andrew Meisner and Oakland County on Conditional Cross-Petitioners' Takings Claim issued May 21, 2021, and two opinions and orders on other claims and involving additional plaintiffs and defendants issued October 4, 2021.

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STATEMENT OF JURISDICTION

Conditional Cross-Respondents do not contest the Conditional Cross-Petitioners' statement of jurisdiction.

PERTINENT CONSTITUTIONAL PROVISIONS

The Eighth Amendment to the U.S. Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

INTRODUCTION

As explained in Oakland County's petition for certiorari in Case No. 22-874, the primary issue in this dispute is whether the Sixth Circuit properly applied the federal Takings Clause in declaring that a Michigan property owner has a right to "equitable title," even though Michigan's judicial and legislative branches have never recognized such a right. This Court's review of that decision is warranted. Alternatively, this Court should hold the petition until issuing a decision in *Tyler* v. *Hennepin County*, No. 22-166, then reverse, vacate, and remand for consideration in light of *Tyler*.

Conversely, there is no need for this Court to review the Excessive Fine Clause question presented in the conditional cross-petition. The Sixth Circuit correctly affirmed dismissal of that claim "for substantially the reasons stated by the district court." Pet.App.22a. And the district court correctly deferred to the Michigan Supreme Court in *Rafaeli, LLC* v. *Oakland County*, 952 N.W.2d 434, 447 (Mich. 2020), which held that Michigan's tax-foreclosure regime "is not punitive in nature." Pet.App.59a (quoting *Rafaeli*). Given the Michigan Supreme Court's ruling, federal district courts in Michigan have consistently rejected claims based on the Excessive Fines Clause. Pet.App.59a (collecting cases). The only problem with the Sixth Circuit's ruling here is that its takings analysis did not similarly defer to *Rafaeli*.

Because Michigan property tax forfeiture is remedial, not punitive, the Excessive Fines Clause is not implicated. Accordingly, while the petition in 22-874 should be granted, the cross-petition here should be denied.

STATEMENT OF THE CASE

A. Michigan's tax-foreclosure process and Plaintiffs' tax-delinquent properties

Under the prior version of Michigan's General Property Tax Act (GPTA), the county treasurer acts as the collection agent for the municipality where the property is located when taxpayers become delinquent on their property taxes. After approximately three years of delinquency, multiple notices, and various hearings, a judgment of foreclosure is entered in favor of the county and title is transferred to the county treasurer. Mich. Comp. Laws § 211.78 (2019), *et seq*.

If the tax-delinquent property is not redeemed by March 31st in a given year, title vests in the county treasurer and (1) the state or local municipality has the right to claim the property in exchange for the payment to the county of unpaid taxes, interest, and other costs (the "minimum bid"), or (2) if the state or municipality does not exercise its right of first refusal, the property is put up for sale at a public auction in July and, if not sold, again in October. Mich. Comp. Laws § 211.78m (2019).[1]

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[1] After *Rafaeli*, the Michigan Legislature amended the GPTA to allow the state or municipalities to purchase tax-foreclosed properties "at the greater of the minimum bid or its fair market value[.]" Mich. Comp. Laws § 211.78m(1) (2021). That provision applies going forward, but not here.

All of Plaintiffs' former properties were foreclosed for nonpayment of taxes. After Plaintiffs received all the notices the Michigan Constitution and the GPTA require, they agreed to payment plans with Oakland County to prevent the foreclosure judgments from being finalized. The plans were clear that unless all payments were timely and consistently made, Plaintiffs would "lose their property." Tawanda Hall Payment Plan, *Hall* v. *Meisner*, E.D. Mich., RE.32-2, PageID.353.

Plaintiffs do not contest that they failed to make timely payments. As a result, the foreclosure judgments were recorded and became final. No Plaintiff appealed. And, since Plaintiffs' former properties were in the City of Southfield, the City claimed the properties by paying Oakland County the minimum bid. Title then transferred to Southfield. Compl., ¶¶ 21–27, RE.1, PageID.5, 6. None of the properties were sold at a tax-foreclosure auction, and there was no surplus.

Plaintiffs' primary objection is what the City of Southfield did with the three properties at issue—convey them to a for-profit entity, the Southfield Neighborhood Revitalization Initiative for a nominal amount. Compl., ¶¶ 21, 25, 27, RE.1, PageID.5–7. The Initiative then rehabbed two of the three properties and sold them, one for $308,000 (against a tax delinquency of $30,547), and another for $155,000 (against a tax delinquency of $43,350). *Id.*, ¶¶ 21, 25. The Initiative still holds title to the third property. *Id.*, ¶ 27. Oakland County did not benefit financially from these transactions in any way and had no choice under Michigan law but to convey the properties once the City of Southfield exercised its statutory right of first refusal.

B. District court proceedings

Plaintiffs filed suit in the United States District Court for the Eastern District of Michigan asserting a variety of claims. In addition to claiming a taking of Plaintiffs' "equity" in their property, Plaintiffs claimed a violation of the Eighth Amendment's Excessive Fines Clause.

Oakland County and its Treasurer filed a motion to dismiss, which the district court granted in full in a comprehensive opinion. Pet.App.27a–64a. Regarding Plaintiffs' Excessive Fines claim, the district court began by noting that Oakland County "only received the amount of the delinquent taxes due on the subject properties." Pet.App.59a. Accordingly, Oakland County "cannot be found to have imposed an 'excessive fine.'" *Ibid.*

The court observed that the Eighth Amendment's Excessive Fines Clause was ratified "to limit the government's power to punish." Pet.App.59a (quoting *Austin* v. *United States*, 509 U.S. 602, 609 (1993)). So, "when analyzing government actions under the Excessive Fines Clause, the issue is 'whether it is punishment.'" *Ibid.* (quoting *Austin*, 509 U.S. at 610).

And in *Rafaeli*, the district court explained, "the Michigan Supreme Court [held] that the GPTA 'is not punitive in nature. Its aim is to encourage the timely payment of property taxes and to return tax-delinquent propert[ies] to their tax-generating status, not necessarily to punish property owners for failing to pay their property taxes." Pet.App.59a (quoting *Rafaeli*, 952 N.W.2d at 449)). As a result, the Michigan federal "[d]istrict courts that have considered this same argument – that the forfeiture of proceeds/equity in foreclosed property is punitive in

nature and therefore governed by the Excessive Fines Clause – have unanimously rejected such a claim, finding the Michigan Supreme Court's interpretation of the GPTA controlling." Pet.App.59a–60a (citing *Arkona, LLC* v. *Cnty. of Cheboygan*, No. 19-CV-12372, 2021 WL 148006, at *9 (E.D. Mich. Jan. 15, 2021); *Fox* v. *Cnty. of Saginaw*, No. 19-CV-11887, 2021 WL 120855, at *13–14 (E.D. Mich. Jan. 13, 2021); *Grainger* v. *Cnty. of Ottawa*, No. 1:19-cv-501, 2021 WL 790771, at *12 (W.D. Mich. Mar. 2, 2021)). The district court concluding by holding "that Plaintiffs fail to state an Eighth Amendment claim against the Oakland County Defendants." Pet.App.60a.

C. The Sixth Circuit's decision

On appeal, the Sixth Circuit's primary ruling was to hold that Michigan counties effect a taking the moment they foreclosure on a tax-delinquent property without compensating the owner for so-called "equitable title," a concept foreign to Michigan tax-foreclosure law. As for Plaintiffs' claim under the Excessive Fines Clause, the Sixth Circuit made short shrift of the argument and affirmed dismissal of that claim (Count IV) "for substantially the reasons stated by the district court." Pet.App.22a.

REASONS FOR DENYING THE CROSS-PETITION

Unlike the Sixth Circuit's adventure in real property law, resulting in the creation of an "equitable title" concept that no Michigan statute or common-law decision had recognized, the Sixth Circuit appropriately deferred to the Michigan Supreme Court when it came to Plaintiffs' claim under the Excessive Fines Clause. Recognizing that the Michigan Supreme Court in *Rafaeli* characterized the GPTA's purpose as remedial, not punitive, the courts below both held that Plaintiffs failed to state a claim. Pet.App.59a (quoting *Rafaeli*, 952 N.W.2d at 449, and deferring to the Michigan Supreme Court's conclusion in *Rafaeli* that the GPTA "is not punitive in nature."); Pet.App.22a (affirming dismissal of Plaintiffs' Excessive Fines Clause claim "for substantially the reasons stated by the district court.").

Even a cursory review of history and tradition shows the correctness of the lower courts' conclusion. Although tax forfeitures have been around longer than the United States has existed, there are no historical sources showing that tax forfeitures were considered punishment. That means tax forfeitures cannot constitute a violation of the Excessive Fines Clause. Accordingly, while the petition in 22-874 should be granted, the cross-petition here should be denied.

I. The Sixth Circuit correctly deferred to the Michigan Supreme Court's view that the GPTA is remedial, not punitive.

The Excessive Fines Clause is aimed at punishment, not remediation, preventing government officials from extracting "a payment to a sovereign as punishment for some offense." *Browning-Ferris Indus. of Vermont, Inc.* v. *Kelco Disposal, Inc.*, 492 U.S. 247, 265 (1989). So, while civil forfeitures can qualify as fines "if they constitute punishment for an offense," *United States* v. *Bajakajian*, 524 U.S. 321, 328 (1998), the Excessive Fines Clause does not apply when such a forfeiture serves a "remedial purpose," *id.* at 331, 342. Indeed, this Court does not deem a forfeiture to be a fine unless "it can only be explained as serving in part to punish." *Austin* v. *United States*, 509 U.S. 602, 610 (1993).

In making that determination, federal courts consider two rules of thumb. First, a forfeiture is remedial, not punitive, when it serves the "purpose of reimbursing the Government for [ ] losses." *Bajakajian*, 524 U.S. at 342. In this respect, a forfeiture can "serve[ ] to reimburse the Government for investigation and enforcement expenses" or to "provide[ ] a reasonable form of liquidated damages." *One Lot Emerald Cut Stones & One Ring* v. *United States*, 409 U.S. 232, 237 (1972) (per curiam).

Second, a punitive forfeiture reflects a culpable mental state. For example, in *Austin*, this Court held forfeiture statutes punitive in part when they "focus[ed] . . . on the culpability of the owner," tied "directly to the commission of [criminal] drug offenses." 509 U.S. at 620–22.

Likewise, in *Bajakajian*, the Court held that a forfeiture was a punishment when it was "imposed at the culmination of a criminal proceeding and require[d] conviction of an underlying felony." 524 U.S. at 328. In fact, this Court has only applied the Excessive Fines Clause to a forfeiture related to a crime. See Br. of the United States 26–30, *Tyler* v. *Hennepin County*, No. 22-166 (Mar. 6, 2023).

As measured against these benchmarks, Michigan's tax-foreclosure regime does not impose a "fine" for purposes of the Eighth Amendment's Excessive Fines Clause. Indeed, the Michigan Supreme Court has confirmed that fact.

In *Rafaeli*, former Michigan property owners (represented by the same counsel as in this matter) sued Oakland County and its Treasurer alleging constitutional violations resulting from the County's foreclosure of property for the nonpayment of taxes, sale of that property, and retention of the surplus proceeds from the sale. The Michigan Supreme Court ultimately held that the County's keeping of the surplus proceeds was a taking under Michigan law, though the Court made clear that such a taking did not occur "until" the County sold the plaintiffs' properties "for an amount in excess of their tax debts." 952 N.W.2d at 462. (In contrast here, the County only received proceeds in the amount of the debt plus interest and fees, no surplus. Because "property rights protected by the [federal] Takings Clause are creatures of state law," *Cedar Point Nursery* v. *Hassid*, 141 S. Ct. 2063, 2076 (2021), it was error for the Sixth Circuit to say that Plaintiffs here asserted a federal Takings claim based on the loss of "equitable title" in the absence of any surplus retained by Oakland County.)

The *Rafaeli* plaintiffs did not bring an Excessive Fines Clause claim. But as a predicate to its takings analysis, the Michigan Supreme Court addressed the Michigan Court of Appeals' decision below, which relied on *Bennis* v. *Michigan*, 516 U.S. 442 (1996), "a case involving civil-asset forfeiture, to conclude that no taking occurred" in *Rafaeli*. 952 N.W.2d at 449. As the Michigan Supreme Court explained, "*Bennis* recognized that civil-asset forfeiture 'serves, at least in part, to punish the owner' of property." *Id.* & n.39 (quoting *Bennis*, 516 U.S. at 451–53). But "the GPTA is not punitive in nature. Its aim is to encourage the timely payment of property taxes and to return tax-delinquent properties to their tax-generating status, not necessarily to punish property owners for failing to pay their property taxes." *Id.* & n.40 (citing Mich. Comp. Laws § 211.78(1)).

Continuing, the Michigan Supreme Court explained that *Bennis* "recognized that civil-asset forfeiture works as a deterrent, preventing property tainted with criminality from being further used for illicit purposes." 952 N.W.2d at 447 & n.41 (citing *Bennis*, 516 U.S. at 452). The court therefore found *Bennis* distinguishable. Whereas "*Bennis* focused narrowly on forfeited property that was used as an instrumentality for criminal activity and the government's interest in deterring illegal activity," in *Rafaeli*, "plaintiffs did not use their properties for illicit purposes. They simply failed to pay their property taxes, which is not a criminal offense." *Id.* at 447. (Notably, plaintiff Bennis was the innocent wife of her wrongdoer husband, yet the Michigan Supreme Court and this Court allowed her car to be forfeited because due process was provided. The same is true of a tax foreclosure.)

The Michigan Supreme Court then quoted a 19th century Virginia Supreme Court case to emphasize the distinction between the remedial nature of a government tax foreclosure and the punitive nature of a fine connected to criminality:

> This [tax] forfeiture cannot be sustained as a forfeiture for crime . . . . In such cases, the thing forfeited is the instrument by which the offence was committed, or was the fruit of the offence, and is treated as being itself, in some sort, the offender. But the land of a delinquent tax-payer cannot be brought within the principle of this class of cases; it is neither the instrument nor the fruit of any offence. Nor can we suppose that Congress intended to make it a criminal, or even a *quasi* criminal offence, for a man not to pay his taxes . . . .

Rafaeli, 449 N.W.2d at 447 n.44 (quoting *Martin* v. *Snowden*, 59 Va. (18 Gratt.) 100, 142–43 (1868), *aff'd sub nom*, *Bennett* v. *Hunter*, 76 U.S. (9 Wall.) 326 (1869)).

In sum, forfeiture of real property for the non-payment of taxes in Michigan has no connection to a crime or criminal activity nor even to the taxpayer's state of mind. It is a strict liability regime resulting in forfeiture of the property, an outcome that can be avoided merely by paying the taxes owed. This forfeiture (and subsequent sale) recoups the foreclosing governmental unit's damages in the form of lost tax revenue, and it returns the property to the tax rolls and productive use. Neither the process nor the result shows any of the hallmarks of a punitive fine. Accordingly, it is not possible for Plaintiffs to assert a claim under the Excessive Fines Clause.

The characteristics of Michigan's tax-foreclosure regime distinguish it from the other cases that this Court has decided and to which the conditional cross-petition points as being in "conflict" with the Sixth Circuit's Excessive Fines Clause ruling below. *Austin* involved the forfeiture of a mobile home "used in an illicit drug sale." Cross-Pet.13 (citing *Austin*, 509 U.S. at 604–06). *Timbs* v. *Indiana*, 139 S. Ct. 683 (2019), was an *in rem* forfeiture action involving a vehicle owned by a criminal defendant who pled guilty to felony theft and dealing in a controlled substance. Cross-Pet.12. *Kokesh* v. *S.E.C.*, 581 U.S. 455 (2017), was an action "seeking disgorgement of money as a remedy for the violation of securities laws." Cross-Pet.15 (citing *Kokesh*, 581 U.S. at 457–59). *Harmelin* v. *Michigan*, 501 U.S. 957 (1991), did not even involve a forfeiture; it was a case litigated under the Cruel and Unusual Punishment Clause involving a mandatory life sentence for possession of a large quantity of cocaine. Cross-Pet.17. And in *Bajakajian*, discussed above, the forfeiture followed defendant's guilty plea for the crime of failing to report exported currency, a plea which then exposed that currency to forfeiture. Cross-Pet.17 n.10.

Similarly, criminal conduct or culpable, quasi-criminal intent pervade the lower court rulings the cross petition cites. Cross-Pet.18–21. See *Yates* v. *Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288 (11th Cir. 2021) (False Claims Act case); *Wright* v. *Riveland*, 219 F.3d 905 (9th Cir. 2000) (garnishment statute for funds received while in prison); *Towers* v. *City of Chicago*, 173 F.3d 619 (7th Cir. 1999) (fine on owners of vehicles containing illegal drugs or guns); *People ex rel. Lockyer* v. *R.J. Reynolds Tobacco Co.*, 37 Cal.4th 707 (2005) (non-sale distribution of cigarettes

on property where minors could be present); *Colo. Dep't of Labor & Emp't* v. *Dami Hospitality, LLC*, 442 P.3d 94 (Colo. 2019) (fine for employers who disregard the law requiring them to maintain workers' compensation insurance); *Wilson* v. *Comm'r of Revenue*, 656 N.W.2d 547 (Minn. 2003) (fine for employers who disregard wage levy notices).

Cross-petitioners also cite *United States* v. *Toth*, 33 F.4th 1 (1st Cir. 2022), as an Excessive Fines Clause case that allies with the Sixth Circuit's decision below. That's because *Toth* used the criminal conduct/culpable intent axis that this Court applied in cases like *Bajakajian*: the civil penalty at issue there "was not a fine subject to the Excessive Fines Clause because it was 'not tied to any criminal sanction,' and served a remedial purpose." Cross-Pet.21 (quoting *Toth*, 33 F.4th at 16).

Cross-petitioners do *not* cite a case where a court considered an Excessive Fines Clause challenge to a tax foreclosure. That's because such cases hold that the Clause is not applicable. In *Continental Resources* v. *Fair*, 971 N.W.2d 313 (Neb. 2022), the Nebraska Supreme Court, relying on *Bajakajian*, rejected an Excessive Fines Clause claim because "there is no suggestion that a property or its owner must be involved in criminal behavior in order for the property to be transferred via the tax certificate sale process." *Id.* at 326. And in *Tyler* v. *Hennepin County*, 505 F. Supp. 3d 879 (D. Minn. 2020), *aff'd* 26 F.4th 789 (8th Cir. 2022), cert. pending, Case No.22-166, the court similarly relied on *Bajakajian* in holding that "[t]he fact that the operation of Minnesota's tax-forfeiture system may result in a windfall to the government therefore does not compel the conclusion that the system is punitive." *Id.* at 896. There is no conflict.

II. History and tradition do not suggest that tax foreclosures are punitive.

In our country's earliest days, states already had in place tax-foreclosure proceedings for the nonpayment of taxes. For example, in 1790, Virginia's statutes declared that if "the tax on any tract of land" was not "paid for the space of three years, the right to such lands shall be lost, forfeited and vested in the Commonwealth." 1790 Va. Acts 5. And the law did not specify that the land to be forfeited was limited to that necessary to pay the taxes owed; the entire "tract of land" was forfeited. *Ibid.* And Virginia law did not contemplate a refund of any surplus. See *ibid.*

Similarly, Kentucky law in 1801 held that any adult who owned real property in the State and failed "to list the same for taxation" "shall for, and in consequence of such failure, forfeit his or her claim to" Kentucky. 2 William Littell, *Statute Law of Kentucky* 463–64 (1810). Again, Kentucky did not provide for post-foreclosure recovery of any surplus. See *ibid.*

Significantly, the Founders did not see a constitutional problem with such regimes. St. George Tucker authored one of "the most important early American edition[s] of Blackstone's Commentaries;" he is an individual to whom this Court has turned for reliable historical analysis. *District of Columbia* v. *Heller*, 554 U.S. 570, 594 (2008); *e.g.*, *Dobbs* v. *Jackson Women's Health Org.*, 142 S. Ct. 2228, 2251 (2022). Tucker noted that while Virginia abolished property forfeiture "upon conviction of any felony," the State provided that when a property owner fails to pay taxes for three years, "this operates as a forfeiture." 2 *Blackstone's Commentaries* 154 n.3 (St. George Tucker ed., 1803).

As Tucker described it, a state's authority to forfeit tax-delinquent properties was founded on "the principle implied in every government, that those who enjoy property under it, shall contribute to support it." *Ibid.* And although the Bill of Rights had been ratified more than a decade before Tucker's writing, he did not suggest that Virginia's law violated the Eighth Amendment as an excessive fine.

Quite the opposite, sitting as a judge on the Virginia Supreme Court of Appeals, Tucker upheld Virginia's tax-foreclosure regime. In an 1808 case, he held that the 1790 statute required a "legal proceeding" before an entire tract of land could be forfeited. *Kinney* v. *Beverley*, 12 Va. (2 Hen. & M.) 318, 334, 336 (1808) (Tucker, J.). But Tucker and the rest of the court held that Virginia had the power to treat the property owner's entire interest in the tract as forfeited for the non-payment of taxes, just like the King could if "quit-rent was not paid." *Id.* at 333; accord, *e.g.*, *id.* at 344 (Roane, J.) ("I cannot for a moment doubt the power of the Legislature to pass the law in question.").

Kentucky courts likewise ensured procedural protections for property owners before the government could foreclose for the nonpayment of taxes, never even hinting that the forfeiture itself somehow violated the Excessive Fines Clause (or, for that matter, any other constitutional provision). *E.g.*, *Barbour* v. *Nelson*, 11 Ky. (1 Litt.) 59, 62 (1822) (per curiam). If Virginia and Kentucky could enact and enforce tax-foreclosure regimes in the early days of our country without running afoul of the Excessive Fines Clause, then surely Michigan can do so today.

To put an exclamation point on it, the Framers modeled the Eighth Amendment's Excessive Fines Clause on a similar provision in Virginia's Declaration of Rights. *Browning-Ferris Indus. of Vermont, Inc.* v. *Kelco Disposal, Inc.*, 492 U.S. 257, 266 (1989). Yet Virginia's excessive-fines provision peacefully coexisted with the 1790 Virginia law, described above, that allowed the government to foreclose on tax-delinquent property without regard to the amount owed. And Cross-Petitioners cite no authority suggesting that Virginia courts had even a fleeting concern about the 1790 law's constitutionality under Virginia's version of the Excessive Fines Clause. The same is true of Kentucky, which had a similar provision in its own state constitution. Ky. Const. of 1792, art. XII, § 15.

In sum, with respect to the Excessive Fines Clause issue presented in the cross-petition, there is no extant conflict of lower-court authority, no inconsistency between the Sixth Circuit's ruling and this Court's precedents, and no basis in history or tradition to overturn the result below. The Sixth Circuit correctly deferred to the Michigan Supreme Court's view that Michigan's tax-foreclosure regime is remedial not punitive. The Sixth Circuit's mistake was failing to defer to the Michigan Supreme Court's view that a taking does not arise until a foreclosing governmental unit receives and refuses to refund to the property owner a surplus following the sale of a tax-foreclosed property—a view that necessarily excludes any right to "equitable title" under Michigan law. That mistake warrants this Court's review.

CONCLUSION

The petition for a writ of certiorari in No. 22-874 should be granted or the petition held, then granted, vacated, and remanded when this Court issues its opinion in *Tyler* v. *Hennepin County*, No. 22-166. The cross-petition should be denied.

Respectfully submitted,

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