

No.

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**In the Supreme Court of the United States**

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CHELSEA KOETTER,

*Petitioner,*

*v.*

MANISTEE COUNTY TREASURER,

*Respondent.*

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*On Petition For A Writ Of Certiorari  
To The Michigan Court of Appeals*

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

The Manistee County Treasurer foreclosed and sold Chelsea Koetter's home for \$106,000 to collect \$3,863.40 in taxes, interest, and fees. The Takings Clause requires the government to return the surplus proceeds—\$102,636—from the sale to avoid an unconstitutional taking. *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023). But the County kept it all pursuant to Mich. Comp. Laws § 211.78t, which gives the proceeds to the County if, weeks before the sale, the property owner fails to properly notify the government of her desire to be paid for her property. Federal and state courts in Michigan allow this end-run around *Tyler* based on *dicta* in *Nelson v. City of New York*, 352 U.S. 103 (1956). As a result, only about 5% of Michigan tax debtors successfully navigate the statute's procedures. The statute violates due process and flouts the government's "constitutional duty" to make "reasonable, certain, and adequate provision for obtaining compensation." *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 658 (1890). The questions presented are:

1. Does the government violate the Due Process or Takings Clause by denying just compensation to property owners who miss a narrow and premature window to preserve their right to just compensation?
2. To the extent it authorizes Michigan's confiscatory claim statute, should the Court overrule *Nelson v. City of New York*?

**PARTIES TO THE PROCEEDING AND  
RULE 29.6 STATEMENT**

Petitioner Chelsea Koetter was defendant-appellant in the proceedings below.

Respondent Manistee County Treasurer was plaintiff-appellee below.

Respondent Ann Culp was defendant-appellant in the proceeding below.

**STATEMENT OF RELATED CASES**

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

*In re Petition of Manistee County Treasurer for Foreclosure*, No. 167367 (Mich. Jan. 31, 2025)

*In re Petition of Manistee County Treasurer for Foreclosure*, No. 363723 (Mich. Ct. App. June 13, 2024)

*In the Matter of the Petition of Manistee County Treasurer for the Foreclosures of Certain Parcels of Property Due to Unpaid 2018 and Prior Years' Taxes, Interest, Penalties, and Fees*, No. 20-17073-CZ (Manistee County Circuit Court Aug. 10, 2021).

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## PETITION FOR A WRIT OF CERTIORARI

*Tyler v. Hennepin County*, 598 U.S. 631, 639 (2023), held that the government violates the Takings Clause when it confiscates more property than necessary to collect delinquent property taxes, penalties, interest, and fees. *Id.* at 647. But five states continue to regularly take more than what is owed by denying compensation to owners who do not successfully navigate the government’s unreasonable procedures to recover the excess value of their property.<sup>1</sup> When owners do not strictly comply with those states’ first step of the claim process—staking their claim to their own money *weeks before the property is even sold*—the government confiscates the whole property. For most owners in these states, *Tyler*’s promise remains unfulfilled as the government continues to withhold just compensation.

Here, Petitioner Chelsea Koetter mistakenly failed to pay part of the 2018 taxes on her home. Although she paid her 2019 and 2020 taxes in full, the Manistee County Treasurer (County) foreclosed to collect approximately \$1,200 in overdue 2018 taxes. App. 42a, 58a. After rejecting Koetter’s tardy attempt to redeem the property, it sold her home for \$106,000. App. 5a. The County kept it all—\$102,636 more than taxes, penalties, interest, and costs—because Koetter was eight days late filing an administrative claim form preserving her statutory right to be paid for her property. Koetter’s compliance with every other

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<sup>1</sup> See Ala. Code § 40-10-197(i)(1)(b), (e)(1)(v); Ariz. Rev. Stat. §§ 42-18204(B), 42-18231-36; MCL § 211.78t; *257-261 20th Ave., Realty, LLC v. Roberto*, 259 N.J. 417, 434 (2025) (describing new process); N.Y. Real Prop. Tax Law §§ 1136(3), 1197(4).

aspect of the claims statute was for nought. The lower court upheld this injustice based on *dicta* in *Nelson v. City of New York*, 352 U.S. 103, 110 (1956). *Nelson* suggested that a brief opportunity during the foreclosure action to preserve a right to be paid for the excess value of foreclosed property defeats a takings claim. The court below upheld the taking of Koetter’s surplus proceeds and rejected her claims under the Takings and Due Process Clauses, based on *Nelson*. App. 11a, 14a (relying on *In re Muskegon Cnty. Treasurer for Foreclosure*, No. 363764, \_\_ N.W.3d \_\_, 2023 WL 7093961 (Mich. Ct. App. Oct. 26, 2023) (construing *Nelson*)), *petition for writ of certiorari pending sub nom. Beeman v. Muskegon County Treasurer*, No. 24-858; accord *Hathon v. Michigan*, 17 N.W.3d 686, 686 n.1 (Mich. 2025) (following *Muskegon* in holding the claim statute is the exclusive remedy for recovering surplus proceeds).

This case asks the Court to reject *Nelson*’s takings analysis as *dicta* or to reconsider and overturn it. Debt collectors who seize property to collect a debt are bound by a fiduciary duty to fairly sell the property and make a good faith effort to return the money to the owner. The claim statute here strays from that traditional duty to give the government a windfall. Moreover, the Takings Clause promises owners “reasonable, certain, and adequate provision for obtaining compensation.” *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 659 (1890). It imposes an affirmative duty on the government to pay owners. *First English Evangelical Lutheran Church of Glendale v. Los Angeles Cnty.*, 482 U.S. 304, 315 (1987).

In conflict with that traditional duty and decades of Takings Clause jurisprudence, the lower court—like

some other jurisdictions—allows the government to avoid its obligation, holding that *Nelson* authorizes *any* procedure to pay compensation, even those that are unreasonable. Very few owners successfully navigate Michigan’s process. Those who do still collect less than the “full monetary equivalent” of the property taken, *United States v. Reynolds*, 397 U.S. 14, 16 (1970), because the government siphons an additional cut to the government that includes interest earned on owners’ money held by the government for approximately one year after the sale. This Court should grant the Petition because *Tyler*’s protection is rendered illusory by *Nelson*’s poorly reasoned *dicta*. The Constitution’s promise of just compensation requires more than procedural gimmicks that deprive virtually all owners of just compensation.

The Court should also grant the Petition because the Due Process Clause “guarantee[s] *fair* procedure in connection with any deprivation of . . . property by a State.” *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992) (emphasis added). Due process requires procedures designed to return property to the rightful owner, not to enrich the government. See *Taylor v. Yee*, 136 S. Ct. 929, 930 (2016) (Alito, J., concurring on denial of cert.); cf. *Jones v. Flowers*, 547 U.S. 220, 229 (2006) (due process requires notice that would be used by one “who actually desired to inform a real property owner of an impending tax sale”). Michigan’s uniquely self-serving statute provides less notice and swifter deadlines than would be adopted if the government weren’t seeking a windfall. Under the circumstances, the procedures violate due process.

This Court should grant the Petition to hold that Michigan’s statute violates the Fifth and Fourteenth

Amendments’ guarantees of just compensation and due process.

### **OPINIONS BELOW**

The decision of the Michigan Court of Appeals (App. 1a-16a) is unpublished but available at *In re Petition of Manistee Cnty. Treasurer for Foreclosure*, No. 363723, 2024 WL 2981520 (Mich. Ct. App. June 13, 2024). The trial court’s opinion dismissing the claims raised here (App. 17a-19a) is unpublished. The Michigan Supreme Court’s order denying review is attached at App. 20a. The denial of reconsideration by the Michigan Supreme Court is attached at App. 22a.

### **JURISDICTION**

On June 13, 2024, the Michigan Court of Appeals issued the opinion at issue here. App. 1a. On November 22, 2024, the Michigan Supreme Court denied a timely application seeking leave to appeal the decision. App. 20a. On January 31, 2025, the Michigan Supreme Court denied a timely motion for reconsideration. App. 22a. This Petition raises federal questions under the Fifth and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction under 28 U.S.C. § 1257.

28 U.S.C. § 2403(b), which allows a state to intervene to defend the constitutionality of a state statute, may apply.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fifth Amendment to the U.S. Constitution provides, “nor shall private property be taken for public use, without just compensation.”

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides in part, “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 . . . .”

Relevant portions of the Michigan statutes are reproduced at App. 24a-35a.

## STATEMENT OF THE CASE

### A. Michigan’s claim statute

1. Three years before *Tyler*, the Michigan Supreme Court held in *Rafaeli LLC v. Cnty. of Oakland*, 505 Mich. 429 (2020), that the government violated the Michigan Constitution when it took property to collect a tax debt and kept more than the taxes, penalties, interest, and costs. In response, Michigan amended its tax foreclosure statute. App. 2a. As relevant here, tax foreclosures occur in February or March each year. MCL § 211.78t. If a tax debt is not paid by March 31, the foreclosing government unit (here, the County) obtains fee simple title and extinguishes the owner’s rights in the property. MCL § 211.78k(5)(b). By July 1—while the owner usually retains possession of the property, and weeks before the sale—the owner must submit a notarized Form 5743 by personal service acknowledged by the County or by certified mail, return receipt requested, to notify the County that she wants to be paid any future surplus proceeds from the sale of her property. MCL § 211.78t(2); App. 3a.

If the government declines the right of first refusal to purchase the property, the County sells it at a public auction several months after foreclosure. MCL

§ 211.78m(1), (2). The following January, up to six months after the sale, the government calculates the proceeds remaining after deducting all tax debts, expenses, interest, and penalties, and mails notice to those who filed Form 5743 that they must file a motion in the original foreclosure action to recover the proceeds. MCL § 211.78t(3)(i), (k), (4).

Once owners file a motion, the government approves or disapproves the disbursement. MCL § 211.78t(5); App. 4a. The court hearing on the motion determines the relative priority of all claims (including any lienholders' claims). The statute grants first priority to the government's 5% cut of the purchase price in addition to the debt, interest, and sale costs, MCL §§ 211.78t(12)(b), 211.78m(16)(c); then other liens; and finally the remainder to the former owner who timely filed both Form 5743 and the motion to recover the surplus. MCL § 211.78t(9). The government pays the amounts ordered by the circuit court. MCL § 211.78t(10). Prior to disbursement, the county holds the tax debtors' money for approximately one year, accruing interest that the county keeps for itself. MCL § 211.78k(8).

It all turns on Form 5743. If an owner fails to submit a notarized Form 5743 by the proper delivery method, long before the foreclosure sale, the County cuts off the owner's right to *any* future claim or constitutional challenge and keeps the windfall of the owner's equity.

**B. Pursuant to Michigan's claim statute,  
Manistee County keeps \$102,636 more than  
Chelsea Koetter owed**

Chelsea Koetter owned a two-bedroom home in Bear Lake, Michigan, where she lived with her sons

since 2016. App. 49a.<sup>2</sup> She owned the home free of any mortgages or other liens. App. 53a. When she experienced personal and financial difficulties, her father paid her 2019 and 2020 taxes, but mistakenly did not pay one installment of her 2018 property taxes. App. 58a. Koetter did not realize the error or the consequences until it was too late. App. 56a.

The County foreclosed on her home on February 12, 2021, to collect \$1,199.59 in 2018 property taxes, plus \$831.93 in interest and fees. App. 42a. On March 3, 2021, the County mailed one notice entitled “PAYMENT DEADLINE,” warning that the foreclosure judgment had been entered and that Koetter could redeem the property until March 31, 2021. The bottom of the notice mentioned a potential right to claim remaining proceeds by submitting Form 5743 by July 1, 2021. App. 43a-45a.

When Koetter did not pay her debt by March 31, 2021, the County took fee simple title and extinguished her rights in the property. MCL § 211.78k(5)(b). On April 23, 2021, the County mailed a notice that “[a]ny interest” Koetter had in the property “**has been lost**” and that she must file Form 5743 by July 1, 2021, to claim any remaining proceeds from sale of the property. App. 46a-47a. The County never sent this critical form.

On July 9, 2021—just 8 days after the deadline—Koetter obtained Form 5743 at the Treasurer’s office,

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<sup>2</sup> See Public Land Auction Salebook for August 2, 2021 (hereinafter “2021 Salebook”) at 22, [https://www.tax-sale.info/forms/salebook/auction/663/print/salebook/2021-08-02\\_salebook\\_final.pdf](https://www.tax-sale.info/forms/salebook/auction/663/print/salebook/2021-08-02_salebook_final.pdf) (visited Apr. 14, 2025) (publicly available record on official website advertising her home for the 2021 auction).

filled it out, notarized, and submitted it by personal service at the clerk's office. App. 49a. The County rejected the form as tardy. App. 4a-5a.

The County sold the property at auction on August 2, 2021, to Koetter's father for \$106,500 plus a \$10,650 auction fee to the private company that conducts the County's auctions—a total of \$117,150. App. 5a; *supra* n.2 at 9. The County kept \$102,636 more than Koetter's total debt of \$3,863.40 including all costs, interest, and fees. App. 5a, 53a.

Koetter again attempted to submit a notarized Form 5743 on August 18, 2021—still only 48 days after the July 1 deadline. App. 50a. The County refused it.

Undaunted, one year after foreclosure, on May 10, 2022, Koetter timely filed the required motion to disburse surplus proceeds in the original foreclosure action to claim the \$97,311.60 remaining after the County took its 5% cut. *See* App. 54a. The County opposed her motion *solely* because she submitted Form 5743 eight days late. App. 14a. The trial court allowed supplemental briefing on the constitutional issues presented by the County's implementation of the claim statute. Koetter argued that denial of her claim would violate due process and result in an unconstitutional taking in violation of the United States Constitution. *See* App. 18a-19a.

Rejecting these arguments, the court denied her motion for surplus proceeds, holding that the claim procedure was the sole mechanism to receive any of the proceeds and because she missed the July 1, 2021, deadline for Form 5743, the County could keep a \$102,636 windfall at Koetter's expense. *Ibid.*



**C. The Michigan Court of Appeals holds the  
County did not violate due process or take  
property without just compensation**

On appeal, Koetter again asserted that the County's confiscation of her surplus proceeds violated her federal right to procedural due process and took her property without just compensation. App. 8a, 12a.

The Court of Appeals ruled against Koetter's takings claim based on a prior panel's decision, *Muskegon County Treasurer*, 2023 WL 7093961. *Muskegon* construed *dicta* in *Nelson*, 352 U.S. 103, to mean that no compensable taking occurs "when there [i]s a statutory path for property owners to recover surplus proceeds, but the property owners failed to avail themselves of that procedure." 2023 WL 7093961, at \*8. Thus, because Koetter failed to timely file the pre-sale claim notice (Form 5743), there was no "compensable taking." App. 13a-14a (citing *Muskegon*).

As to due process, the Court held in circular fashion that Koetter's right to due process was not violated because "[t]he statutory scheme satisfies due process, and [the County] followed the scheme." App. 9a. The court thus deferred entirely to the legislature: "whether such a scheme makes sense or not, or whether a 'better' scheme could be devised, are policy questions for the Legislature, not legal ones for the Judiciary." App. 10a (quoting *Muskegon*).

The Michigan Supreme Court denied review, App. 20a, but subsequently followed *Muskegon* when dismissing takings claims (challenging the confiscation of surplus proceeds) that were filed two years *before* the claim statute was even adopted by the Michigan Legislature. *Hathon*, 17 N.W.3d at 686-87.

The court held owners “must first utilize the statutory process provided by MCL 211.78t for recovery of remaining post-foreclosure sale proceeds before” pursuing their constitutional claims seeking just compensation. *Ibid.*

## **REASONS FOR GRANTING THE PETITION**

### **I. This Case Presents an Important Takings Question Arising Directly from the Court’s Own Conflicting Opinions**

The Fifth Amendment imposes an affirmative duty on the government to pay just compensation when it takes private property for public use. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 152 (2021); *First English*, 482 U.S. at 315. Moreover, “the owner is entitled to reasonable, certain, and adequate provision for obtaining compensation.” *Cherokee Nation*, 135 U.S. at 659. An “adequate” legal remedy “must be as complete, practical and efficient as that which equity could afford.” *Terrace v. Thompson*, 263 U.S. 197, 214 (1923).

This constitutional duty applies with full force when the government seizes private property to pay a tax debt. While it “ha[s] the power” to sell property to recover unpaid property taxes, it cannot “use the toehold of the tax debt to confiscate more property than was due.” *Tyler*, 598 U.S. at 639. When the government takes and keeps more than what is owed, it violates the Takings Clause, forcing the debtor “to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Id.* at 647 (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

Unfortunately, federal and state courts are authorizing an end-run around *Tyler* and the Constitution's requirement that compensation be reasonable, certain, and adequate. These courts construe *Nelson* to allow government to confiscate property without just compensation if it provides a uniquely narrow window for owners to preserve a future, inchoate right to recover their payment for the excess property taken. See, e.g., *Howard v. Cnty. of Macomb*, No. 24-1665, \_\_ F.4th \_\_, 2025 WL 941511, at \*3-4 (6th Cir. Mar. 28, 2025). Alabama, Arizona, Michigan, New Jersey, and New York rely on *Nelson* to continue confiscatory tax foreclosures after *Tyler*, *supra* n.1, devastating thousands of taxpayers each year. In Michigan, the claim statute bars up to 95% of owners from collecting the surplus proceeds from the sale of their foreclosed properties.<sup>3</sup> State records document a widespread problem as counties confiscate millions of dollars.<sup>4</sup> For example, in 2021, Genessee County returned only \$56,171 in surplus proceeds to former owners while it confiscated \$5,399,694.<sup>5</sup>

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<sup>3</sup> Oakland County took tax debtors' surplus proceeds from 187 out of 196 foreclosed properties in 2022. Pacific Legal Foundation, *Confusing Procedures Can Result in Shadow Equity Theft: Michigan*, [homeequitytheft.org/shadow-equity-theft#michigan](https://homeequitytheft.org/shadow-equity-theft#michigan) (visited Apr. 14, 2025).

<sup>4</sup> See Michigan Dep't of Treasury, *Foreclosure Report for 2021*, [www.michigan.gov/taxes/-/media/Project/Websites/taxes/Auctions/2021-Foreclosure-Sales-State-Wide-Reports.pdf?rev=2dabee8d90ed4b488](https://www.michigan.gov/taxes/-/media/Project/Websites/taxes/Auctions/2021-Foreclosure-Sales-State-Wide-Reports.pdf?rev=2dabee8d90ed4b488) (disclosing all counties' surplus proceeds windfalls in column xii and returned proceeds in column xi).

<sup>5</sup> See *supra* n.4, at 24. The Michigan Court of Appeals has denied dozens of claimants in at least eleven cases. See, e.g., *In re State Treasurer for Foreclosure*, No. 365005, 2024 WL

The decision below violates the traditional duty imposed on debt collectors to return surplus proceeds to debtors—a duty that Michigan recognizes in all other debt collection contexts. It contradicts this Court’s takings jurisprudence and allows the government to burden the Takings Clause with a preservation requirement that this Court rejects when applied to other constitutional rights. The Court should grant certiorari to correct the confusion caused by *Nelson’s dicta*. If *Nelson’s* takings discussion is not *dicta*, this Court should overrule it to ensure the right to just compensation is not relegated to second class status.

**A. Michigan’s burdensome claim procedure violates the government’s traditional duty to pay surplus proceeds and just compensation to rightful owners**

1. Traditional Anglo-American law treated seized property to collect a debt as a bailment. 2 Blackstone, *Commentaries on the Laws of England* 453 (1768). The debt collector who seized the property was “bound by an implied contract in law to restore [it] on payment of the debt, duty, and expenses, before the time of sale; or, when sold, to render back the overplus.” *Ibid.*; *Tyler*, 598 U.S. at 639-40. This includes tax debts. *Ibid.* Tax collectors must protect the financial interest of debtors whose properties they seize. *See, e.g., Cocks v. Izard*, 74 U.S. 559, 562 (1868); *Slater v. Maxwell*, 73 U.S. 268, 276 (1867). Thus, the tax collector traditionally had an affirmative duty to pay the taxpayer any overage, or deposit the money for the

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3995365, at \*1 (Mich. Ct. App. Aug. 29, 2024), *review denied*, 16 N.W.3d 729 (Mich. 2025).

taxpayer's benefit until the taxpayer claimed it. *See, e.g., People ex rel. Seaman v. Hammond*, 1 Doug. 276, 280-81 (Mich. 1844) (treasurer "is to place the surplus to the credit of the owner, who shall at all times be entitled to receive it"); *McDuffee v. Collins*, 117 Ala. 487, 492 (1898) (tax collector bore the "duty of seeking the owner and paying him the balance" and if not found, holding it for him); *Bogie v. Town of Barnet*, 129 Vt. 46, 52 (1970) (for the privilege of wielding such tax collection power, the government "must suffer the restraints of fiduciary duty").

This Court followed that tradition in *United States v. Taylor*, 104 U.S. 216, 221-22 (1881). There, the federal government denied an Arkansas taxpayer's claim for surplus proceeds from a tax sale, arguing in part that a six-year catch-all statute of limitations barred the taxpayer's claim. *Id.* at 221. Since the statute did not specify the deadline for claims for surplus proceeds, the government had a duty to hold surplus proceeds "indefinite[ly]" as "trustee" for the taxpayer. *Id.* at 221-22. Imposing a statutory "construction consistent with good faith on the part of the United States," the government acts as "trustee" for the taxpayer and the claim was timely because the statute of limitations only began to run when the taxpayer demanded his money. *Id.* at 222.

Michigan's other debt collection statutes follow this same tradition, imposing a fiduciary duty on debt collectors to pay any surplus to the former owner. MCL § 600.3252 (surplus money "shall be paid over . . . on demand, to the mortgagor"); MCL § 600.6044 (when property is sold via execution on judgment, "the officer shall pay over such surplus to the judgment debtor . . . on demand"); MCL § 324.8905c (surplus "proceeds of the foreclosure sale shall be distributed

... [t]o the owner of the vehicle”). When former owners can’t be found or fail to demand the money, the State holds it “indefinitely” for them. See *O’Connor v. Eubanks*, 83 F.4th 1018, 1021 (6th Cir. 2023); MCL §§ 567.233, 567.234.

Michigan departs dramatically from this tradition when it takes real estate to pay property taxes. Rather than hold surplus property or money in trust for the owner, the statute requires owners to quickly navigate a complicated process to recover *their own money*. When up to 95% of the owners fail to strictly comply with even one element<sup>6</sup> of the multiple requirements, the counties keep the money as a windfall and bar owners from pursuing their constitutional rights in court. Government cannot “make[] an exception only for itself” to avoid paying just compensation. *Tyler*, 598 U.S. at 645.

2. The government must provide a process for obtaining compensation that is “reasonable, certain, and adequate.” *Cherokee Nation*, 135 U.S. at 659; *Sage v. Brooklyn*, 89 N.Y. 189, 194 (1882) (process must be “sure, sufficient and convenient”); *State Hwy. Comm’r v. Kreger*, 128 Va. 203, 212-13 (1920) (valid statute pays just compensation “with reasonable certainty and without unnecessary or unreasonable delay”). The Fifth Amendment imposes on the government an “implied” “promise to pay” whenever the government takes property for a public use. *First*

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<sup>6</sup> See, e.g., *In re Alger Cnty. Treasurer for Foreclosure*, Nos. 363803, 363804, 2024 WL 4174925, at \*4 (Mich. Ct. App. Sept. 12, 2024) (owner’s claim denied for sending Form 5743 via trackable Priority Mail Express instead of return receipt requested), *rev. denied*, Nos. 167712, 167713, 2025 WL 945725 (Mar. 28, 2025).

*English*, 482 U.S. at 315. And when the government effects a taking, “no subsequent action by the government can relieve it of the duty to provide compensation.” *Id.* at 321.

Michigan’s process for paying just compensation in the usual eminent domain context complies with that traditional duty: the government deposits an estimated amount of just compensation in escrow, “held for the benefit of the owners,” MCL § 213.55(5), until the court orders payment. MCL § 213.58. When government takes property without invoking eminent domain, property owners have six years to bring an inverse condemnation claim seeking just compensation under the Michigan Constitution’s Takings Clause and three years under the federal Takings Clause. *Hart v. City of Detroit*, 416 Mich. 488, 503 (1982); *Grainger v. Ottawa Cnty.*, 90 F.4th 507, 510 (6th Cir. 2024). By contrast, tax debtors like Koetter must act within 92 days of foreclosure to preserve their inchoate, future right to collect any just compensation.

Moreover, the statute in *all cases* fails to provide an “adequate” remedy of just compensation, because it awards claimants less than they are constitutionally due. The statute gives counties interest earned on the principal for the year the county holds the money, plus 5% of the sale price, on top of all taxes, penalties, interest, fees, and expenses, even if the county purchased the property. MCL §§ 211.78t(12)(b), 211.78m(16)(c). The statute calls this 5% deduction a “commission,” but the realtor’s fee is already deducted pursuant to MCL § 211.78m(16)(c). Moreover, Manistee County, like most Michigan counties, contract with a private company to administer the statute; the company charges buyers a 10% commis-

sion. See *Garcia v. Title Check, LLC*, No. 22-1574, 2023 WL 2787298, at \*1 (6th Cir. Apr. 5, 2023). Hence, owners who successfully navigate the statute recover at most only 95% of surplus proceeds and are deprived of the accrued interest. This cannot be squared with the constitutional requirements. “[J]ust compensation’ means the full monetary equivalent of the property taken.” *Reynolds*, 397 U.S. at 16; *Phillips v. Washington Legal Found.*, 524 U.S. 156, 165 (1998) (“The rule that ‘interest follows principal’ has been established under English common law since at least the mid-1700’s.”).

3. Michigan’s statute also conflicts with this Court’s holdings that burdening a constitutional right with an opt-in process to preserve the right works the same harm as violating the right directly. See, e.g., *Janus v. Am. Fed’n of State, Cnty., and Municipal Employees*, 585 U.S. 878, 939 (2018) (statute that requires workers to affirmatively reject garnishment of wages to subsidize union speech violates workers’ free speech rights); *Lamont v. Postmaster General*, 381 U.S. 301, 305 (1965) (impermissible burden on First Amendment right where post office withheld “communist political propaganda” unless addressee affirmatively requested delivery). The same rule applies to notice in the due process context. See, e.g., *Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883, 884 (5th Cir. 1989) (government cannot “shift the entire burden of ensuring adequate notice” onto property owners); *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1158-59 (9th Cir. 2016) (statute violates due process by requiring lienholders to “opt-in” to notice). The right to just compensation similarly cannot be burdened. Cf. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 607 (2013)



(“Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they *impermissibly burden* the right not to have property taken without just compensation.”) (emphasis added); *Felder v. Casey*, 487 U.S. 131, 141 (1988) (120-day notice of claim requirement would impermissibly “burden” rights protected by 42 U.S.C. § 1983).

In direct conflict with these precedents, Michigan courts and other courts construe *Nelson* to allow the government to burden constitutional rights with accidental waivers. *Muskegon*, 2023 WL 7093961; *Clement v. U.S. Att’y Gen.*, 75 F.4th 1193, 1202-03 (11th Cir. 2023) (immigration case construing *Tyler*’s citation of *Nelson* to mean that “a mere lack of diligence is sufficient to forfeit a constitutional or statutory right”).

4. The procedure used here cannot be justified under any traditional government power. “[A] statute providing for the lapse, escheat, or abandonment of private property” must provide owners with a “reasonable opportunity” to avoid accidental loss. *Hodel v. Irving*, 481 U.S. 704, 728 n.11, 729-30 (1987) (Stevens, J., concurring in the judgment) (government ordinarily provides “a grace period and bears an affirmative responsibility to prevent escheat”). A statute that “bar[s] the existing rights of claimants without affording” a “reasonable time” to assert those rights amounts to an “unlawful attempt to extinguish” those rights. *Wilson v. Iseminger*, 185 U.S. 55, 62 (1902). In short, Michigan’s claim process is unreasonable, uncertain, and inadequate, and thus violates the government’s duty to provide just compensation for a taking. *Cherokee Nation*, 135 U.S. at 659.

**B. The Court should grant certiorari to resolve the confusion and widespread deprivations of property caused by *dicta* in *Nelson v. City of New York***

Michigan courts and some federal courts construe *Nelson* to mean that foreclosing governments comply with the constitutional duty to remit surplus proceeds if there is *any* process to recover the surplus—even an unreasonably short and complicated one. *See, e.g.*, App. 10a; *Howard*, 2025 WL 941511, at \*3. And *Nelson* is now infecting broader takings jurisprudence. The D.C. Circuit recently held that a statutorily “known and costless option” to avoid an uncompensated taking is sufficient to avoid the Takings Clause. *Valancourt Books, LLC v. Garland*, 82 F.4th 1222, 1235 (D.C. Cir. 2023) (citing *Nelson* and *Tyler*).

*Tyler* did not address *Nelson*’s inconsistency with the Court’s takings decisions because it was “readily distinguished.” *Tyler*, 598 U.S. at 643. But *Nelson* is hopelessly out of step with modern takings precedent and immunizes confiscatory processes from constitutional challenge.

In *Nelson*, because of a bookkeeper’s misconduct, the property owners failed to pay their water bills on two properties. *Nelson*, 352 U.S. at 105, 108. To satisfy the debts, the City of New York foreclosed, kept one property and sold the other, retaining a windfall for the public. *Id.* at 105-06. The bookkeeper “concealed” the debt and foreclosure action from the owners. *Id.* at 107. When the owners learned of their loss, they filed a motion to set aside the foreclosure judgment based on violations of procedural due process and equal protection. *Id.* at 106, 109. The

New York courts denied relief, *City of New York v. Nelson*, 309 N.Y. 801 (1955), and the owners petitioned this Court, again arguing denial of equal protection and violation of due process based on insufficient notice. *See Nelson*, 352 U.S. at 107; Brief for Appellants, *Nelson*, No. 30, 1956 WL 89027, at \*3 (Sept. 14, 1956). *Nelson* held the lack of actual notice did not violate due process because “the City cannot be charged with responsibility for the misconduct of the bookkeeper in whom appellants misplaced their confidence nor for the carelessness of the managing trustee in over-looking notices of arrearages.” 352 U.S. at 108.

In the reply brief on the merits in this Court, the owners suggested for the first time that the City took property without just compensation. *Id.* at 109. Although it was not raised, argued, or decided below, the Court stated that there was no taking because the owner missed the window to request payment for the excess. *Id.* at 110. This window closed *before foreclosure and before there was any money to claim. Ibid.*

Claims “not brought forward” in the lower court “cannot be made” in the Supreme Court. *Magruder v. Drury*, 235 U.S. 106, 113 (1914); *United States v. Williams*, 504 U.S. 36, 41 (1992) (“Our traditional rule, as the dissent correctly notes, precludes a grant of certiorari only when the question presented was not pressed or passed upon below.”) (internal quote omitted); *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 548 (2013) (court’s “rebuttal to a counter-argument” that went outside the issue before the court was *dicta*). Courts cannot rely on judicial remarks that have “no bearing” on the questions actually before the Court. *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 42 (2025). Resolution of the

takings argument in *Nelson* was unnecessary to the case and thus *dicta*.

Despite *Nelson*'s posture, nearly all courts assume *Nelson*'s rejection of the takings argument is binding and requires them to rubber stamp confiscatory tax foreclosures. “[D]icta, when repeatedly used as the point of departure for analysis, have a regrettable tendency to acquire the practical status of legal rules.” *Tafflin v. Levitt*, 493 U.S. 455, 469 (1990) (Scalia, J., concurring). This “regrettable tendency” is evident here. Courts construe *Nelson* to mean there is no taking or due process violation so long as the government provides *any* opportunity to recover the surplus—no matter how fleeting or complicated. *See, e.g., Howard*, 2025 WL 941511, at \*3 (“The Supreme Court stood by *Nelson* in *Tyler*, explaining that the Takings Clause permits each State to ‘define the process through which an owner can claim the surplus’ and to keep the surplus if the owners do not comply.”) (cleaned up); *Hathon*, 17 N.W.3d at 687 n.1; *Wright v. Rollyson*, No. 2:24-CV-00474, 2025 WL 835040, at \*3 (S.D.W.V. Mar. 17, 2025) (*Tyler* and *Nelson* mean “[t]here is no Takings Clause violation when a sovereign’s statutory scheme provides an opportunity for the taxpayer to recover the excess value.”) (cleaned up); *In re Franco v. Real Portfolio 13, LLC*, No. 24-21084-ABA, 2025 WL 884067, at \*7 (Bankr. D.N.J. Mar. 17, 2025) (statute “complies with both *Tyler* and *Nelson*” even though it gives tax-lienholders a windfall from the owner because she failed to request a judicial sale before the foreclosure judgment was final); *Biesemeyer v. Municipality of Anchorage*, No. 3:23-CV-00185, 2024 WL 1480564, at \*7 (D. Alaska Mar. 13, 2024) (Alaska’s six-month claim process “meets the low threshold implied by

*Tyler* and *Nelson*,” and therefore takings and due process claims seeking \$243,235 in excess proceeds must be dismissed).

*Nelson* results in confused takings decisions. For example, when deciding whether Michigan’s claim statute violates the Takings Clause, the Sixth Circuit cited historical examples of claim processes in early America; yet all opportunities for debtors to claim the surplus proceeds *followed* the sale and most gave owners *years* to do so.<sup>7</sup> *Howard*, 2025 WL 941511, at \*3-4. By contrast, Michigan’s claim statute requires owners to make their first claim at least a month *before the sale* and then requires the owner to make the same claim again later in court. Yet because the Sixth Circuit construed *Nelson* as meaning simply “that States may require owners to follow a statutory process,” it upheld Michigan’s statute as compliant with the Takings Clause.

This Court should grant the Petition to resolve this confusion and hold that *Nelson*’s takings discussion is nonbinding and unpersuasive.

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<sup>7</sup> The Sixth Circuit’s citations of processes that supposedly comport with *Nelson* are inaccurate: An 1867 Minnesota statute that ostensibly gave owners only three months to claim their money, refers to a section of code that does not exist. The 1881 Washington statute did require owners to “file with the [state court] clerk a waiver of all objections’ to the sale” in order to obtain the surplus proceeds, but the next sentence says that, even if the owner didn’t file the waiver, once the court certifies the regularity of the sale, “such proceeds shall be paid to [the judgment debtor] *of course*.” Code of Washington § 367.5 (1881) (emphasis added). The waiver only accelerated recovery of the surplus.

**C. If *Nelson*'s commentary on takings is not  
*dicta*, the Court should grant review to  
overturn it**

*Nelson*'s discussion of the Takings Clause cannot be reconciled with this Court's takings jurisprudence; if it is binding, the Court should overrule it. *Stare decisis* is weakest in the realm of constitutional interpretation. See *Knick v. Twp. of Scott*, 588 U.S. 180, 202 (2019). The factors relevant to deciding whether to overturn precedent include "the quality of [its] reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *Janus*, 585 U.S. at 917-18. Every factor weighs in favor of rejecting the takings analysis in *Nelson*:

1. *Nelson*'s scant reasoning was inconsistent with this Court's takings decisions, *see supra* at 12-17, because the issue was scarcely briefed and there were no relevant holdings below. Cf. *FDA v. Wages and White Lion Inv., LLC*, 145 S. Ct. 898, 916 (2025) ("We did not grant certiorari on that question, and without adequate briefing, it would not be prudent to decide it here.").

2. Developments since *Nelson* support reconsideration. In 1985, mirroring the reasoning in *Nelson*, this Court held in *Williamson County Regional Planning Commission v. Hamilton Bank* that a plaintiff does not have a ripe federal takings claim if a claimant failed to "seek compensation through the procedures the State has provided for doing so." 473 U.S. 172, 194 (1985). Unless the claimant sought and was denied such compensation in a state court action, federal courts would not even consider a takings

claim. *Id.* at 194-96. That decision proved unworkable, closing the federal courthouse doors to most federal claims seeking just compensation, and led to injustice. See *Knick*, 588 U.S. at 185 (procedural “trap” foreclosed adjudication of takings claims in both federal and state courts).

*Knick* overruled *Williamson County*, holding that “a property owner has a [ripe federal] claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it.” *Id.* at 189. When “government takes private property without paying for it, that government has violated the Fifth Amendment—just as the Takings Clause says—without regard to subsequent state court proceedings.” *Ibid.* *Knick* reopened the federal courthouse doors and restored the traditional understanding that offering a process is not the same thing as timely paying just compensation.

“[T]he availability of state-law compensation remedies cannot delay or undo the accrual of a takings claim.” *Wilson v. Hawaii*, 145 S. Ct. 18, 20 (2024) (Thomas, J., statement on denial of cert.) (citing *Knick*, 588 U.S. at 193-94). Yet contrary to *Knick*, Michigan courts and the Sixth Circuit construe *Nelson* to mean that an owner’s failure to strictly comply with the state administrative and court process described in MCL § 211.78t defeats a claim for just compensation. App. 15a; *Howard*, 2025 WL 941511, at \*4. These courts do not hold that they lack jurisdiction to decide the question because claimants missed the deadline; they hold that missing the notice of claim deadline means there was no taking. *Ibid.* (“Michigan’s procedures for collecting the surplus do not compensate the property owner for a taking. They

*prevent* a taking from happening in the first place.”). Indeed, the Michigan Supreme Court’s *Hathon* decision dismissed as *unripe* takings claims that concededly were ripe when filed seven years ago—before Michigan enacted its claim statute. *Hathon*, 17 N.W.3d at 686-87. The Court held that the owners have no takings claims unless they first comply with the claim statute, and gave owners 11 days to submit Form 5743. *Ibid.* Just like the overturned decision in *Williamson*, the court held that the owners’ claim is *unripe* until they comply with the statute. *Ibid.* This holding mimics the rationale of *Williamson* that this Court rejected in *Knick*. See also *Schafer v. Kent Cnty.*, No. 164975, \_\_ Mich. \_\_, 2024 WL 3573500, at \*6, \*16 n.94, \*17 (July 29, 2024) (explaining the background in *Hathon*, holding that the claim statute in MCL § 211.78t is fully retroactive, and noting that its holding might “*help* government entities in Michigan”).

This Court similarly rejected the rationale underlying *Nelson* in *Felder*, 487 U.S. at 142.<sup>8</sup> There, a Wisconsin statute required plaintiffs to file an administrative notice of claim within 120 days of the government’s violation of their rights. *Id.* at 136. The claim requirement was designed to protect the government and stood out “rather starkly, from rules uniformly applicable to all suits.” *Id.* at 145. Thus the Court held failure to follow the claim statute could not bar relief in federal court. *Ibid.* Like *Felder*, the claim statute here requires a series of unnecessary proce-

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<sup>8</sup> *Cf. Williams v. Reed*, 145 S. Ct. 465, 468-69 (2025) (states may not employ an “exclusive” statutory process requirement that effectively immunizes state officials from lawsuits brought under 42 U.S.C. § 1983).



dures that “minimize governmental liability” and burden the right to just compensation. *See id.* at 141. While victims of other uncompensated takings have three to six years to bring their constitutional claims in Michigan, owners of tax-foreclosed property have only 92 days to preserve their inchoate future right to collect surplus proceeds as just compensation, and still only get paid if they properly file a motion in court in another 104-day window.

These legal developments support overturning *Nelson*.

3. *Nelson*’s rule is not workable in practice. Here, the lower court construed *Nelson* to immunize claims procedures from the judicial scrutiny typically applied to constitutional challenges to state laws. App. 20a. As a result, the vast majority of owners cannot recover their own money, the government keeps the windfalls, and owners are barred from pursuing any constitutional challenge. *See supra* at 11.

4. The government has no legitimate reliance interest in obtaining tax debtors’ property beyond the amount owed. *Tyler*, 598 U.S. at 639-40. Worse, that improper reliance exploits owners’ ignorance, illness, and incapacity. *Cf. Covey v. Town of Somers*, 351 U.S. 141, 146 (1956) (government cannot take advantage of incompetent property owner’s inability to comprehend notice of foreclosure). Most states comply with *Tyler* by automatically remitting surplus proceeds to owners<sup>9</sup> or giving them years after sale to recover

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<sup>9</sup> *See, e.g.*, Idaho Code § 31-808(2)(c); Kan. Stat. Ann. § 79-2803; Me. Stat. tit. 36, § 943-C; Mont. Code Ann. § 15-18-221; S.D. Codified Laws § 10-25-39; Wis. Stat. § 75.36(2m)(b).

their money.<sup>10</sup> Five states, however, amended their statutes to take advantage of the loophole left by *Nelson* to make it difficult, if not impossible, for tax debtors to recover their own money so that government (or other tax lienholders) would continue to enjoy the windfalls of others' misfortune.

## II. The Lower Court's Decision Conflicts with This Court's Due Process Decisions

The Due Process Clause “provide[s] a guarantee of fair procedure in connection with any deprivation of life, liberty, or property by a State.” *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). “Fairness” is the watchword for due process. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *see also Lassiter v. Dep’t of Social Servs. of Durham Cnty.*, 452 U.S. 18, 24 (1981) (due process requires “fundamental fairness”); *Breithaupt v. Abram*, 352 U.S. 432, 436 (1957) (due process reflects the “whole community sense of ‘decency and fairness’”). Due process therefore requires procedures “appropriate to the case, and just to the parties to be affected . . . it must be adapted to the end to be attained.” *Hagar v. Reclamation Dist. No. 108*, 111 U.S. 701, 708 (1884).

The government’s function is to protect private property, not confiscate it. When the government has a legitimate reason to deprive someone of real property, such as tax foreclosure or to manage abandoned or nuisance property that burdens the

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<sup>10</sup> Ark. Code Ann. § 26-37-205(b); Fla. Stat. § 197.582; Ind. Code § 6-1.1-24-7(c), (e)(2); Mo. Rev. Stat. § 140.230(2); N.M. Stat. Ann. § 7-38-71(A)-(C); Ohio Rev. Code Ann. § 5721.20; 72 Pa. Cons. Stat. § 5860.205(f); Tenn. Code Ann. § 67-5-2702; Tex. Tax Code § 34.03(a)(2); Va. Code Ann. §§ 58.1-3967, -3970; Wash. Rev. Code § 84.64.080.

community, the government must notify the owner of procedures available to protect her property and provide “a reasonable opportunity” to comply with those requirements. *Texaco, Inc. v. Short*, 454 U.S. 516, 532 (1982). Moreover, the government must use reasonable procedures that would be used by one who actually wanted to return seized property to its rightful owner. *See Jones*, 547 U.S. at 229.

Michigan’s process is unreasonable, depriving up to 95% of owners of their surplus proceeds. Its unduly complicated procedures are designed to give the government a windfall, not to remit payment to rightful owners. As the 95% failure rate attests, the claim statute fails to provide owners adequate notice or time to protect their interests. *Cf. Minnesota v. Barber*, 136 U.S. 313, 323 (1890) (noting this Court’s “duty to maintain the constitution will not permit us to shut our eyes to these obvious and necessary results of the Minnesota statute”); *Ross v. Blake*, 578 U.S. 632, 643 (2016) (“an administrative scheme might be so opaque that it becomes, practically speaking, incapable of use”); *Nelson v. Colorado*, 581 U.S. 128, 137 (2017); *id.* at 143 (Alito, J., concurring in the judgment) (“harsh, inflexible” procedure that “prevents most defendants whose convictions are reversed from demonstrating entitlement to a refund” violates due process).

**A. The Court should grant certiorari to hold that Michigan’s notice is inadequate under the circumstances**

“[W]hen notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S.

306, 314-15 (1950). Notice must be reasonable under the circumstances. *Id.*; *Brody v. Village of Port Chester*, 434 F.3d 121, 132 (2d Cir. 2005) (inadequate notice where “[un]likely that the average landowner would have appreciated that [the] notice . . . began the exclusive period in which to initiate a challenge to the condemnor’s determination.”). Here, Michigan’s procedures are apparently designed to fail at high rates.

Although the government may often satisfy its duty to provide notice through simply mailing a letter, under some circumstances this Court requires more. *See, e.g., Covey*, 351 U.S. at 146-47 (foreclosure by mailing, posting, and publication was inadequate when town officials knew the owner was incompetent and without a guardian’s protection); *Robinson v. Hanrahan*, 409 U.S. 38, 40 (1972) (forfeiture notice sent to a vehicle owner’s home was inadequate when government knew the property owner was in prison). A permanent deprivation requires more notice. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982). Moreover, “a party’s ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation.” *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799 (1983).

Ordinarily, owners of “tangible property” are notified about potential loss of their property with conventional notice *and* through physical seizure of movable property or entry onto real estate. *See Mullane*, 339 U.S. at 316. Indeed, traditionally a former owner would face eviction before being subjected to time limits on her ability to dispute her rights relating to the property. *Cf. Groesbeck v. Seeley*, 13 Mich. 329, 343 (1865) (“A person who has a lawful right, and is actually or constructively in possession,

can never be required to take active steps against opposing claims.”). An owner whose property is seized and sold to pay a tax debt is “generally ignorant” of his peril “until it is too late to prevent it.” *Slater v. Maxwell*, 73 U.S. 268, 276 (1867). All the struggles that led to tax foreclosure in the first place are typically still present after foreclosure: poverty, age, disability, and physical and mental medical conditions are especially common. See, e.g., *Cherokee Equities, L.L.C. v. Garaventa*, 382 N.J. Super. 201, 211 (Ch. Div. 2005) (Tax foreclosure defendants are often “among society’s most unfortunate.”); *Vargas v. Trainor*, 508 F.2d 485, 489 (7th Cir. 1974) (due process requires additional notice when addressed to people who may be suffering physical or mental handicaps, particularly the elderly). When a statute confiscates the savings built up in a person’s home, due process requires clear and weighty notice.

Here, the County’s two notices obfuscated the critical point that Koetter must protect her right to just compensation before losing possession of her home by filing an unenclosed form. The first notice, titled “**PAYMENT DEADLINE**” warns of impending foreclosure, then states that foreclosed property “may be sold” and the former owner “has a right to file a claim for remaining excess money, if any” by “**SUBMIT[TING] A NOTICE OF INTENTION FORM . . . NO LATER THAN July 1, 2021.**” App. 44a-45a (emphasis in original). The second notice, also prior to any sale, is labeled “**NOTICE OF FORECLOSURE**” and states the property is “now owned by the **Manistee County Treasurer. Any interest that you possessed in this property prior to foreclosure, including any equity associated with your interest, has been lost.**” App. 46a. Only after

this hopeless and emphatic message does the notice state—in seeming contradiction—that the owner may claim “remaining proceeds” by submitting “FORM 5743 TO THE MANISTEE COUNTY TREASURER **NO LATER THAN JULY 1, 2021.**” App. 47a. Both notices omit a copy of Form 5743.<sup>11</sup>

The County’s notices also necessarily omit the amount of surplus proceeds, since this notice is sent before the property is sold and while owners still enjoy possession of the property. There’s no neon sticker attached to the owner’s door or sheriff’s visit warning that property worth tens of thousands of dollars will soon be forfeited. Without properly submitting the notarized Form 5743, the statute provides *no* post-sale opportunity for owners to recover their money. With such grave consequences, the government must provide a simple process for remittance. *See Niz-Chavez v. Garland*, 593 U.S. 155, 172 (2021) (“If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.”); *Gates v. City of Chicago*, 623 F.3d 389, 404 (7th Cir. 2010) (owners are not “willingly abandoning millions of dollars” where government “has made the process obtuse and unreasonably difficult”).

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<sup>11</sup> The notices include a url for the Form. But many elderly and indigent tax debtors do not have internet and printer access. *See* U.S. Census Bureau, *Computer and Internet Use in the United States: 2021* (June 18, 2024), <https://www.census.gov/newsroom/press-releases/2024/computer-internet-use-2021.html>.

**B. The lower court’s opinion conflicts with this Court’s decisions rejecting unreasonably short deadlines to protect constitutional rights**

Laws that bar civil rights lawsuits based on the passage of time must give “a reasonable time” for the claimant to enforce her rights before eliminating her ability to do so. *Terry v. Anderson*, 95 U.S. 628, 632-33 (1877) (“[S]tatutes of limitation affecting existing rights are” constitutional only “if a reasonable time is given for the commencement of an action before the bar takes effect.”); *Wilson*, 185 U.S. at 63.

In *Burnett v. Grattan*, 468 U.S. 42, 55 (1984), a six-month statute of limitations for raising constitutional claims from administrative proceedings was too short and violated the intent of 42 U.S.C. § 1983, which was enacted to allow individuals to enforce their federal constitutional rights. *See also Taylor*, 104 U.S. at 221-22 (refusing to interpret federal statute of limitations to bar former owner’s right to claim surplus proceeds, because “[a] construction consistent with good faith on the part of the United States should be given to these statutes”).

The deadline here is a mere 92 days, while owners still possess their property and often don’t realize they’ve lost title. Contrast this short window with the six-year deadline for a state inverse condemnation action or three-year deadline for a federal takings claim under 42 U.S.C. § 1983. *Hart*, 416 Mich. at 503; *Grainger*, 90 F.4th at 510. Michigan’s Uniform Unclaimed Property Act requires the government to hold unclaimed money in trust *indefinitely* until the owners file a single (unnotarized) document to claim their property. MCL § 567.245(1). The claim statute

here overrides otherwise standard deadlines by requiring owners to stake their claim within 92 days of foreclosure—long before the sale generates surplus proceeds—or be forever barred from recovering their constitutionally-protected money. This is not reasonable. *See Todman v. Mayor & City Council of Baltimore*, 104 F.4th 479, 484-86, 490 (4th Cir. 2024) (failure to provide post-deprivation opportunity to recover personal property violates due process); *Felder*, 487 U.S. at 141-42; *Garcia-Rubiera v. Fortuno*, 727 F.3d 102, 110-11 (1st Cir. 2013) (120-day claim period is not a “reasonable opportunity” to avoid escheat).

**C. The Court should grant certiorari to determine whether the pre-claim notice form meets the standards of fairness required by the Due Process Clause**

When determining whether procedures satisfy due process, courts consider the private interest affected by the official action; the risk of erroneous deprivation under the challenged procedures and the probable value of additional or substitute safeguards; and the government’s interest, including the fiscal and administrative burdens that additional or substitute procedures would entail. *Mathews v. Eldridge*, 424 U.S. 319, 332, 335 (1976); *Smith v. Berryhill*, 587 U.S. 471, 478 n.7 (2019) (confirming *Mathews* as the appropriate test for constitutional claims). The court below refused to apply *any* judicial scrutiny to the statute, instead deferring to Michigan’s Legislature. App. 9a.

1. A debtor’s right to be paid the surplus proceeds left over from the sale of foreclosed property is deeply rooted in history and required by the Constitution. *Tyler*, 598 U.S. at 647; *see also United States v. James*



*Daniel Good Real Prop.*, 510 U.S. 43, 54-55 (1993) (the “economic value” of a home “weigh[s] heavily”).

2. The risk of erroneous deprivation is demonstrably high. As few as 5% of Michiganders successfully navigate the complicated process to recover their own money. *See supra* at 11; *cf. Howard v. City of Detroit*, 40 F.4th 417, 424 (6th Cir. 2022) (“The fact that around one percent of homeowners navigated the murky modified appeal process does not demonstrate the adequacy of the process or cure the uncertainty of the remedy.”).

This risk would be substantially mitigated if proceeds were disbursed via Michigan’s unclaimed property statute. *See* MCL §§ 567.241, 567.245 (state administrator holds unclaimed property in trust for the rightful owner indefinitely until owner files required form). The lower court refused to consider such alternative procedures otherwise available in Michigan. App. 10a. Although the government would not be able to confiscate as much just compensation for the public purse, that cannot outweigh property owners’ interest in a fair process. *See Felder*, 487 U.S. at 141-42 (rejecting short notice of claim requirement “to minimize governmental liability”).

3. The government’s direct “pecuniary interest in the outcome” of a seizure increases the risk of erroneous deprivation, and weighs in favor of a more protective process. *James Daniel Good*, 510 U.S. at 55-56. *Cf. Marshall v. Jerrico, Inc.*, 446 U.S. 238, 250 (1980); *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9 (1991) (opinion of Scalia, J.) (“[I]t makes sense to scrutinize governmental action more closely when the State stands to benefit.”). As several members of this Court acknowledge, “financial incentives to pursue

forfeitures” raise serious due process concerns. *Culley v. Marshall*, 601 U.S. 377, 396 (2024) (Gorsuch, J., concurring, joined by Thomas, J.). Due process requires heightened protection in cases where “cash incentives . . . encourage counties to create labyrinthine processes for retrieving property.” *Id.* at 405 (Sotomayor, J., dissenting, joined by Kagan and Jackson, JJ.).

Rather than consider the heightened risk caused by the government’s pecuniary interest, or the practical consequences of the claim statute, the Michigan court joins the Nebraska Supreme Court and New York Court of Appeals in refusing to do so. *See HBI, LLC v. Barnette*, 305 Neb. 457, 474, 479 (2020) (faulting owner’s failure to pick up unclaimed certified mail rather than scrutinizing the tax collector’s pecuniary interest in taking the owner’s property); *Hetelekides v. Cnty. of Ontario*, 39 N.Y.3d 222, 240 (2023) (rather than weighing government’s pecuniary interest in confiscating the windfall from a foreclosure, the court faulted a recent widow for not acting faster than three days after receiving notice and for not setting up probate sooner). This cannot comport with the “fundamental fairness” demanded by the Due Process Clause. This case identifies pressing national problems left unresolved by *Tyler* and an excellent vehicle to address them.

**CONCLUSION**

This Court should grant the Petition.

Respectfully submitted,

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APRIL 2025

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Appendix 1a

*If this opinion indicates that it is “FOR PUBLICATION,” it is subject to revision until final publication in the Michigan Appeals Reports.*

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STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* PETITION OF  
MANISTEE COUNTY  
TREASURER FOR  
FORECLOSURE.

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MANISTEE COUNTY  
TREASURER,

Petitioner-Appellee,

v

ANN CULP and CHELSEA  
KOETTER,

Respondents-Appellants.

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UNPUBLISHED

June 13, 2024

No. 363723

Manistee Circuit  
Court LC No. 20-  
017073-CZ

Before: MALDONADO, P.J., and K. F. KELLY and  
REDFORD, JJ.

PER CURIAM.

This case involves the proceeds that remained after the tax-foreclosure sales of property formerly owned by respondents, Ann Culp and Chelsea Koetter, and the payment of their delinquent taxes, interest, penalties, and fees. Respondents moved the trial

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court to distribute the remaining proceeds, and petitioner, Manistee County Treasurer, opposed their motions because respondents had not satisfied the statutory requirement to give timely notice of their intent to claim the proceeds. The trial court denied respondents' motions, and respondents now appeal by delayed leave granted.<sup>1</sup> We affirm.

### I. BACKGROUND

#### A. STATUTORY FRAMEWORK

The Michigan Supreme Court held in *Rafaeli, LLC v Oakland Co*, 505 Mich 429, 484; 952 NW2d 434 (2020), that former owners of properties sold at tax-foreclosure sales for more than what was owed in taxes, interests, penalties, and fees have “a cognizable, vested property right to the surplus proceeds resulting from the tax-foreclosure sale of their properties.” This right continues to exist after fee simple title to the properties vested with the foreclosing governmental unit (FGU). The FGUs “retention and subsequent transfer of those proceeds into the county general fund amounted to a taking of plaintiffs’ properties under Article 10, § 2 of [Const 1963],” and the former owners were entitled to just compensation in the form of the return of the surplus proceeds. *Id.* at 484-485. When the Court decided *Rafaeli*, the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, did not provide a means by which property owners could recover their surplus proceeds.

In response to *Rafaeli*, the Legislature passed 2020 PA 255 and 2020 PA 256, which were given immediate

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<sup>1</sup> *In re Petition of Manistee Co Treasurer for Foreclosure*, unpublished order of the Court of Appeals, entered June 20, 2023 (Docket No. 363723).

### Appendix 3a

effect on December 22, 2020. These acts purported to “codify and give full effect to the right of a former holder of a legal interest in property to any remaining proceeds resulting from the foreclosure and sale of the property to satisfy delinquent real property taxes under the [GPTA] . . . .” Enacting Section 3 of 2020 PA 255; Enacting Section 3 of 2020 PA 256. At issue in the current appeal is MCL 211.78t, a provision added to the GPTA by 2020 PA 256. Section 78t provides the means for former owners to claim and receive any applicable remaining proceeds from the tax-foreclosure sales of their former properties.

Property owners whose properties sold at tax-foreclosure sales after July 17, 2020, the date the *Rafaelli* decision was issued, and who intend to recover any surplus proceeds from the sale are required to notify the FGU of their intent by submitting a “Notice of Intention to Claim Interest in Foreclosure Sales Proceeds” (Treasury Department Form 5743) by the July 1 immediately following the effective date of the foreclosure of their properties. Form 5743 must be notarized and filed with the FGU “by personal service acknowledged by the FGU or by certified mail, return receipt requested.” MCL 211.78t(2). Property owners who satisfy these requirements are “claimants.” In the January immediately following the sale or transfer of foreclosed properties, the FGU notifies the claimants about the total amount of remaining proceeds or the amount of shortfall in proceeds, among other things. MCL 211.78t(3)(i). The notice also instructs the claimants that they may file a motion in the circuit court in the foreclosure proceeding to recover any remaining proceeds payable to them. MCL 211.78t(3)(k). Such motion must be filed between February 1 and May 15 of the year



## Appendix 4a

immediately following the tax-foreclosure sale. MCL 211.78t(4). At the end of this claim period, the FGU responds by verifying that claimants timely filed Form 5743 and identifying any remaining proceeds.<sup>2</sup> MCL 211.78t(5)(i). The circuit court then conducts a hearing to determine the relative priority of the claimants' interests in any remaining proceeds. After requiring the payment of a sales commission to the FGU of 5% of the amount for which the property was sold, the trial court then "allocate[s] any remaining proceeds based on its determination of priority, and order[s] the FGU to pay the remaining proceeds to claimants in accordance with the trial court's determination." MCL 211.78t(9). The FGU has 21 days to pay the amount ordered by the trial court. MCL 211.78t(10).

### B. PERTINENT FACTS AND PROCEEDINGS

The material facts in this case are not in dispute. Respondents owned real properties in Manistee County and fell behind on their property taxes. Petitioner, acting as the FGU, foreclosed on their properties, effective March 31, 2021. Petitioner sent respondents two notices informing them that their properties may be sold for more than they owed in taxes and associated costs, that they had the right to claim any excess proceeds, and how to exercise that right. Neither respondent conveyed to petitioner their intention to claim any remaining proceeds by submitting Form 5743 by July 1. The properties were sold at

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<sup>2</sup> Specifically, the FGU files with the circuit court proof of service of the notice that the FGU mailed to claimants in January, along with additional information identifying the property and the details of its sale, including the amount of any remaining proceeds or shortfall in proceeds. MCL 211.78t(5)(i).

## Appendix 5a

auction, and the proceeds were applied to respondents' delinquent property taxes, interests, penalties, and fees. The properties sold for significantly more than respondents owed. Koetter's foreclosed property sold for \$106,500, and the proceeds remaining after satisfaction of her tax debt and associated costs were \$97,311.60. Culp's fore-closed property sold for \$69,500, leaving \$62,873.36 in remaining proceeds after satisfaction of her tax debt and associated costs. Respondents filed motions in the circuit court to recover the remaining proceeds, and petitioner opposed the motions because neither respondent had complied with the notice requirements in § 78t(2). After a hearing on the motions, the court took the matter under advisement and ultimately issued an order denying respondents' motions. The court also denied their joint motion for reconsideration. This appeal followed.

## II. ANALYSIS

On appeal, respondents contend that the procedures described in MCL 211.78t are not the exclusive means for recovering surplus proceeds and that petitioner has committed an unconstitutional taking. They also contend that § 78t(2)'s deadline for filing a notice of intent to claim the proceeds is unenforceable and that they were not provided adequate due process. This Court resolved these issues in *In re Petition of Muskegon Co Treasurer for Foreclosure*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (2023) (Docket No. 363764). MCR 7.215(C)(2) provides that "[a] published opinion of the Court of Appeals has precedential value under the rule of stare decisis." Accordingly, we must conclude that respondents' claims fail, and we must affirm the trial court's order

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denying respondents' motions to disburse remaining proceeds.

### A. STANDARDS OF REVIEW

"In reviewing the circuit court's resolution of a motion under MCL 211.78t, this Court reviews factual findings for clear error." *Muskegon Treasurer*, \_\_\_ Mich App at \_\_\_; slip op at 3. "[T]he interpretation and application of constitutional provisions and statutes" are questions of law subject to de novo review. *Id.* Whether a party has been afforded due process is reviewed de novo. *In re Moroun*, 295 Mich App 312, 331; 814 NW2d 319 (2012). "Whether a specific party has been unjustly enriched is generally a question of fact . . . [but] whether a claim for unjust enrichment can be maintained is a question of law . . . ." *Jackson v Southfield Neighborhood Revitalization Initiative*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2023) (Docket No. 361397); slip op at 27-28.

### B. EXCLUSIVITY OF MCL 211.78T

Respondents first argue that MCL 211.78t does not provide the exclusive means of recovering the proceeds remaining from a tax-foreclosure sale after satisfaction of the tax debt and related costs. We disagree.

This Court resolved this issue in *Muskegon Treasurer*, \_\_\_ Mich App at \_\_\_; slip op at 5, holding that our Legislature intended MCL 211.78t as the exclusive means of recovering proceeds remaining after a tax-foreclosure sale and the satisfaction of the former owner's tax debt. The Legislature is presumed to have intended the meaning it plainly expressed, and in MCL 211.78t(11), the Legislature clearly expressed its intent that "Section 78t is the *exclusive*

## Appendix 7a

*mechanism* for a claimant to claim and receive any applicable remaining proceeds under the laws of this state.” *Id.* (quotation marks and citation omitted). “Giving ‘exclusive’ its plain, ordinary meaning, MCL 8.3a, our Legislature intended MCL 211.78t as the sole mechanism by which a former owner of foreclosed property could obtain any proceeds remaining from the tax-foreclosure sale and satisfaction of the owner’s delinquent taxes and associated costs.” *Id.*

As did the respondents in *Muskegon Treasurer*, respondents in the present case contend that alternate means of recovering the proceeds that remain after the sale or transfer of their property and the satisfaction of their tax debts and associated costs is suggested by: (1) the difference between *Rafaeli*’s “surplus proceeds” and the statute’s “remaining proceeds”; (2) use of the permissive “may” in MCL 211.78t(1); and (3) the fact that “claimants” are a subset of foreclosed property owners. From this, respondents contend that, even if MCL 211.78t is the exclusive means for claimants to recover remaining proceeds if they choose to do so, there still exists alternate means for foreclosed property owners to recover surplus proceeds.

As this Court explained in *Muskegon Treasurer*, to the extent that the respondents were claiming an ambiguity between “remaining proceeds” and “surplus proceeds,” this argument was really about whether 2020 PA 256 actually addressed the constitutional infirmity of the prior GPTA; it has “no bearing on whether the Legislature intended its amendment to the GPTA to be the exclusive mechanism for a former property owner to pursue a constitutional claim.” *Muskegon Treasurer*, \_\_\_ Mich

## Appendix 8a

App at \_\_\_\_; slip op at 5. This Court also rejected the respondents’ interpretation of the use of “may” in MCL 211.78t(1) as signaling an alternate means of recovering remaining proceeds. Rather, it acknowledges that there are valid reasons why former property owners might exercise their discretion by not submitting Form 5743. Like the respondents in *Muskegon Treasurer*, respondents in the present incorrectly assumed “that the alternative to pursuing a claim under MCL 211.78t was to pursue a claim by some other means—rather, their alternative was not to claim an interest in the foreclosed property in the first place.” *Id.*

In short, we are bound by the holding in *Muskegon Treasurer* that the Legislature intended MCL 211.78t as the exclusive mechanism for claiming and recovering remaining proceeds.

### C. DUE PROCESS

Respondents next contend that their rights to procedural and substantive due process were violated when petitioner confiscated over \$168,000 from them without notice and on the basis of an arbitrary notice deadline. We disagree.

As this Court observed in *Muskegon Treasurer*, \_\_\_\_ Mich App at \_\_\_\_; slip op at 8, due process is “flexible and calls for such procedural protections as the particular situation demands.” (Quotation marks, and citation omitted.) Courts generally consider the following three factors to determine what is required by procedural due process:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through

## Appendix 9a

the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. [*Id.*, quoting *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976).]

This Court held in *Muskegon Treasurer, id.*, that “[t]he statutory scheme set up by our Legislature and followed by petitioner satisfies due process.” Integral to the conclusion in that case was the fact that the petitioner followed the statutory scheme by providing the respondents with notices that adequately informed them of “their right to claim any excess proceeds and told them how to express their intent to exercise that right.” *Id.* Similarly, in this case, petitioner followed the statutory scheme by providing notices containing the required information. The statutory scheme satisfies due process, and petitioner followed the scheme. Therefore, respondents received the process that was due, and their claim of a violation of procedural due process must fail.

Nevertheless, respondents contend that the notices that they received were inadequate because: (1) they were discretionary; and (2) they did not identify the amount of proceeds that remained. Respondents contend that the notices set pursuant to MCL 211.78t(3) were inadequate because they were sent only to foreclosed property owners who complied with the notice deadline in § 78t(2). This Court rejected each of these arguments in *Muskegon Treasurer*. The statutory scheme requires FGUs to send each person with an interest in a forfeited property an explanation

## Appendix 10a

of their right to claim remaining proceeds mandated by MCL 211.78i(7). *Muskegon Treasurer*, \_\_\_ Mich App at \_\_\_; slip op at 8. This information was included in the notices that petitioner sent to respondents after their properties were foreclosed and with ample time to allow respondents to submit Form 5743 by July 1. Respondents' contention that the notices were inadequate because they did not identify the remaining proceeds arises from their faulty interpretation of *Rafaeli* as holding that a former property owner's right to recover remaining proceeds arises only *after* the tax-foreclosure sale when, in fact, "the right to collect excess proceeds existed before the tax-foreclosure sale," even if it was not compensable at that time. *Id.* at \_\_\_; slip op at 9.

Lastly, respondents' argument that the MCL 211.78t(3) notices were inadequate because they were sent only to those who complied with § 78t(2) reveals that "what respondents really want is different, i.e., postsale process." *Id.* at \_\_\_; slip op at 8. Like in *Muskegon Treasurer*, respondents advocate for a system in which FGUs inform foreclosed property owners of the results of the tax-foreclosure sale or transfer of their properties and provide a means for them to claim excess proceeds even if they did not timely file Form 5743. See *id.* However, that is not Michigan's system, and "[s]o long as the statutory scheme adopted by our Legislature comports with due process—and MCL 211.78t does—whether such a scheme makes sense or not, or whether a 'better' scheme could be devised, are policy questions for the Legislature, not legal ones for the Judiciary." *Id.* at \_\_\_; slip op at 9.

## Appendix 11a

Like this Court did in *Muskegon Treasurer*, we reject respondents' attempt to frame their "arguments in terms of substantive due process." *Id.* Respondents' substantive due-process theory merges with their takings claim under the Fifth and Fourteenth Amendments to the United States Constitution and under Const 1963, art 10, § 2. If "a constitutional claim is covered by a specific constitutional provision the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process." *Id.*, quoting *United States v Lanier*, 520 US 259, 272 n 17; 117 S Ct 1219; 137 L Ed 2d 432 (1997) (alteration omitted).

### D. HARSH AND UNREASONABLE CONSEQUENCES

Respondents next argue that trial courts should set aside MCL.211.78t(2)'s July 1 notice deadline because it occurs before their claim for surplus proceeds accrued and because enforcement of the deadline results in harsh-and-unreasonable consequences. This argument was likewise raised and rejected in *Muskegon Treasurer*.

Respondents' argument that the July 1 notice deadline is unreasonable because it occurs before their claim for surplus proceeds has accrued arises from the same misinterpretation of *Rafaeli* that we discussed above. In *Rafaeli*, 505 Mich at 476-477, the Supreme Court held that the right to recover proceeds remaining after the tax-foreclosure sale of property existed under English common law, was "firmly established in the early years of Michigan statehood," and was a common-law right commonly understood to exist by the ratifiers of the Michigan Constitution in 1963. Therefore, as we have already indicated,



## Appendix 12a

respondents' right to collect surplus proceeds existed before the tax-foreclosure sale, even if it was not yet a *compensable* claim. See *id.* Accordingly, petitioner's notices were not unreasonable simply because they were sent to respondents before the tax-foreclosure sale.

Respondents argue in their reply brief that the July 1 deadline should be set aside because the consequences for missing it are unreasonably harsh. As explained in *Muskegon Treasurer*, “[t]he ‘harsh-and-unreasonable’ consequences exception has been applied to statutes of limitations and notice requirements when the consequences of strictly enforcing a time period are so harsh and unreasonable that it effectively divested plaintiffs of the access to the courts intended by grant of the substantive right.” *Muskegon Treasurer*, \_\_\_ Mich App at \_\_\_; slip op at 5-6 (quotation marks omitted). This Court addressed the same argument in *Muskegon Treasurer*, \_\_\_ Mich App at \_\_\_; slip op at 5-7, and concluded that “[t]he circumstances of this case do not justify application of the harsh-and-unreasonable consequences exception to the statutory notice requirement of MCL 211.78t(2).” Because the relevant circumstances of the present case are identical with those in *Muskegon Treasurer*, we again reject application of the harsh-and-unreasonable consequences exception.

### E. TAKINGS

Next, respondents argue that petitioner's “confiscation” of their surplus proceeds is an unconstitutional taking in violation of Takings Clauses in the federal and state Constitutions. Respondents are incorrect.

## Appendix 13a

The Fifth Amendment to the federal constitution, which applies to the states by operation of the Fourteenth Amendment,<sup>3</sup> prohibits taking private property for public use without just compensation. US Const, Ams V and XIV. Similarly, the Michigan Constitution's Takings Clause prohibits the government from taking private property for public use "without just compensation being first made or secured in a manner prescribed by law." Const 1963, art 10, § 2. The Michigan and Federal Takings Clauses are not coextensive, see *AFT Mich v Michigan*, 497 Mich 197, 217; 866 NW2d 782 (2015), but respondents do not argue that Michigan's provision should be construed more broadly in the context of this case.

Once again, the same argument raised now was considered and rejected in *Muskegon Treasurer*.

Petitioner provided respondents with notice that adequately informed them of the steps to take to recover any proceeds that remained after the tax-foreclosure sale of their properties and the satisfaction of their tax debts and associated costs. The first step toward recovery was the minimally burdensome requirement of informing the FGU of the intent to assert a claim for any excess proceeds through the timely submission of Form 5743. Respondents did not take this action. [*Muskegon Treasurer*, \_\_\_ Mich App at \_\_\_; slip op at 10.]

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<sup>3</sup> See *Muskegon Treasurer*, \_\_\_ Mich App at \_\_\_; slip op at 9.

## Appendix 14a

Therefore, “respondents did not suffer a compensable taking.” *Id.*<sup>4</sup>

Respondents argue that petitioner has no legal interest in their surplus proceeds and that 2020 PA 256 does not authorize petitioner to seize funds, nor did it contemplate that petitioner would confiscate the proceeds and keep them indefinitely. Respondents’ argument mischaracterizes petitioner’s action and overlooks the statutory scheme in MCL 211.78. MCL 211.78m(8) addresses the distribution of proceeds from tax-foreclosure sales. An FGU must deposit money from tax-foreclosure sales into a restricted account, direct the investment of the account, and then use the funds as directed by MCL 211.78m(8)(a) through (i). When properties are sold for an amount at, or greater than, the minimum bid, the FGU must first satisfy the former property owner’s tax debt, including any relevant fees incurred by the FGU. MCL 211.78m(8)(a) through (b). The statute then requires the FGU to make payments “to claimants of remaining proceeds for the year ordered under section 78t . . . .” MCL 211.78m(8)(c). In the present case, no payments were ordered under § 78t because respondents did not satisfy the notice requirements of § 78t(2). Respondents do not identify any statutory provision relevant to the facts of this case that would allow petitioner to distribute proceeds to respondents when they have not complied with § 78t(2). To the extent that petitioner complied with the requirements of

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<sup>4</sup> Like in *Muskegon Treasurer*, we do not need to address whether the 5% sales commission is a taking “because respondents were never subject to the sales commission, given their failure to make a valid claim in the first place.” *Muskegon Treasurer*, \_\_\_ Mich App at \_\_\_; slip op at 11.

## Appendix 15a

§ 78m(8), it neither seized nor confiscated respondents' proceeds.

In their reply brief, respondents rely on *Knick v Scott Twp, Pennsylvania*, \_\_\_ US \_\_\_; 139 S Ct 2162; 204 L Ed 2d 558 (2019), to assert that their right to surplus proceeds is protected by the federal Takings Clause, regardless of state law. They also rely on *Perez v Campbell*, 402 US 637, 652; 91 S Ct 1704; 29 L Ed 2d 233 (1971), to argue that the federal Supremacy Clause preempts those sections of 2020 PA 256 that are interpreted or applied to deny those rights. The flaw in respondents' argument is that they do not have a federal Takings claim, and the Supremacy Clause has no application because the notice requirement in MCL 211.78t does not deprive respondents of their vested, constitutionally protected property right to recover remaining proceeds; rather, it provides a reasonable and minimally burdensome means of exercising that right that passes constitutional muster. See *Muskegon Treasurer*, \_\_\_ Mich App at \_\_\_; slip op at 11.

### F. UNJUST ENRICHMENT

Lastly, respondents urge this Court to view petitioner's retention of their surplus proceeds as unjust enrichment and either to apply a constructive trust or to order a money judgment. We decline to do either.

Unjust enrichment is a cause of action to correct a party's unjust retention of a benefit owed to another. *Wright v Genesee Co*, 504 Mich 410, 417; 934 NW2d 805 (2019). Contrary to respondents' implication, petitioner was not "unjustly enriched." See *id.* Petitioner merely followed the statutory scheme set forth by our Legislature, under which petitioner lacks

## Appendix 16a

the discretion to disburse remaining proceeds to foreclosed property owners who did not comply with the notice requirements of MCL 211.78t(2). See MCL 211.78m(8). Moreover, as discussed above, the Legislature made clear that it intended Section 78 to be the exclusive mechanism for recovery of surplus proceeds, and by doing so, it implicitly abrogated equitable remedies established at common law. See *Muskegon Treasurer*, \_\_\_ Mich App at \_\_\_; slip op at 4.

Affirmed.

/s/ Allie Greenleaf Maldonado

/s/ Kirsten Frank Kelly

/s/ James Robert Redford

Appendix 17a

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR  
THE COUNTY OF MANISTEE

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IN THE MATTER OF THE  
PETITION OF MANISTEE  
COUNTY TREASURER FOR  
THE FORECLOSURE OF  
CERTAIN PARCELS OF  
PROPERTY DUE TO  
UNPAID 2018 AND PRIOR  
YEARS' TAXES, INTEREST,  
PENALTIES, AND FEES

Hon. David A.  
Thompson

Case No. 20-  
17073-CZ

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OPINION AND ORDER REGARDING CLAIM OF  
CHELSEA KOETTER AND ANN CULP

At a session of said Court, held in the Circuit Courtroom,  
Manistee County Courthouse, Manistee, Michigan, on the  
29 day of August 2022.

## Appendix 18a

This matter comes before the Court on the petition of the Manistee County Treasurer to foreclose on several properties due to unpaid taxes from 2018 and prior years. This order addresses two Claimants, Chelsea Koetter and Anna Culp, who filed a Verified Motion to Disburse Remaining Proceeds From Tax Foreclosure Sale for certain parcels. The Court has read the motions, heard oral argument and reviewed the supplemental filings, and now DENIES all claimant's motions in full.

The Court finds that the Claimants failed to timely file a Notice of Intention to Claim Interest in Foreclosure Sales Proceeds as required by MCL 211.78t(2) after receiving ample and multiple notices regarding the procedure for doing so. The Petitioner also provided Claimants with notice of the Judgment which contained the information specified in MCL 211.78t(2).

With respect to Claimants arguments in their supplemental brief regarding the unconstitutionality of 2020 Public Act 256, the Legislature is the only correct venue for those arguments. Not only are these issues not properly before the court, but binding precedent exists which reflects the plain text of the statute. As our Supreme Court explained in *Sun Valley Foods Co. v Ward*, 460 Mich 230, 236-237; 596 NW2d 119 (1999), “[t]he words of a statute provide the most reliable evidence of its intent. If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted.”

Further, the doctrine of stare decisis requires “that a court must strictly follow decision handed down by

Appendix 19a

higher courts within the same jurisdiction.” *In re AGD*, 327 Mich App 332, 339; 933 NW2d 751 (2019). As Petitioner properly cites in his supplemental brief, “[i]n *Rafaeli, LLC v Oakland County*, 505 Mich 429; 952 NW2d 434 (2020), the Michigan Supreme Court at footnote 108 asserts “[n]othing in our holding today prevents the Legislature from enacting legislation that would require former property owners to avail themselves of certain procedural avenues to recover the remaining proceeds. See, e.g. *Nelson*, 352 US at 110 & n10.” *Rafaeli*, supra at 473. The Michigan Legislature did just that when it enacted MCL 211.78t, et seq. as a result of the *Rafaeli* opinion. The exclusive procedure on how a claimant may obtain remaining proceeds is clearly enumerated in MCL 211.78t and Claimants Koetter and Culp failed to avail themselves of this process and their claims are barred.

NOW THEREFORE;

IT IS ORDERED that Claimants Chelsea Koetter and Anna Culp’s Verified Motions to Disburse Remaining Proceeds from Tax Foreclosure Sale are DENIED, and the Petitioner Treasurer may submit an appropriate order for disbursement of remaining excess tax sale proceeds.

IT IS FURTHER ORDERED that this is not a final order resolving all claims.

<u>8/29/2022</u>	<u>s/ David A. Thompson</u>
Date	Hon. David A. Thompson (P52090) Chief Judge, 19 <sup>th</sup> Circuit



## Appendix 20a

## Order

**Michigan Supreme Court  
Lansing, Michigan**

November 22, 2024

Elizabeth T. Clement,  
Chief Justice

167367

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch  
Kyra H. Bolden,  
Justices

*In re* PETITION OF MANISTEE  
COUNTY TREASURER FOR  
FORECLOSURE.

MANISTEE COUNTY  
TREASURER,

Petitioner-Appellee,

V

ANN CULP and CHELSEA  
KOETTER,

### Respondents-Appellants.

SC: 167367

COA: 363723

Manistee CC:

20-017073-CZ

On order of the Court, the application for leave to appeal the June 13, 2024 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Appendix 21a

Seal of the Michigan Supreme Court  
Lansing

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 22, 2024

s/ Larry S. Royster  
Clerk

Appendix 22a

**Order**                      **Michigan Supreme Court**  
   **Lansing, Michigan**

November 22, 2024

Elizabeth T. Clement,  
Chief Justice

167367

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch  
Kyra H. Bolden,  
Justices

*In re* PETITION OF MANISTEE  
COUNTY TREASURER FOR  
FORECLOSURE.

---

MANISTEE COUNTY  
TREASURER,

Petitioner-Appellee,

v

ANN CULP and CHELSEA  
KOETTER,

Respondents-Appellants.

SC: 167367

COA: 363723

Manistee CC:

20-017073-CZ

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On order of the Court, the motion for reconsideration of this Court's November 22, 2024 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).

Appendix 23a

Seal of the Michigan Supreme Court  
Lansing

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 31, 2025

s/ Larry S. Royster  
Clerk

Appendix 24a

**MCL § 211.78m of the General Property Tax  
Act, provides in part:**

\* \* \*

(16)(c) “Minimum bid” is the minimum amount established by the foreclosing governmental unit for which property may be sold or transferred under subsections (1) to (3). The minimum bid must include all of the delinquent taxes, interest, penalties, and fees due on the property, and may include any additional expenses incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, maintenance, repair, or remediation of the property or the administration of this act for the property, including, but not limited to, foreclosure avoidance, mailing, publication, personal service, legal, personnel, outside contractor, and auction expenses.

\* \* \*

Appendix 25a

**MCL § 211.78t of the General Property Tax Act,  
provides in part:**

(1) A claimant may submit a notice of intention to claim an interest in any applicable remaining proceeds from the transfer or sale of foreclosed property under section 78m, subject to the following:

(a) For foreclosed property transferred or sold under section 78m after July 17, 2020, the notice of intention must be submitted pursuant to subsection (2).

\* \* \*

(2) For foreclosed property transferred or sold under section 78m after July 17, 2020, by the July 1 immediately following the effective date of the foreclosure of the property, a claimant seeking remaining proceeds for the property must notify the foreclosing governmental unit using a form prescribed by the department of treasury. The department of treasury shall make the form available to the public on an internet website maintained by the department of treasury. A foreclosing governmental unit shall make the form available to the public on an internet website maintained by the foreclosing governmental unit if the foreclosing governmental unit maintains an internet website. Notice to a foreclosing governmental unit under this subsection must be by personal service acknowledged by the foreclosing governmental unit or by certified mail, return receipt requested. The notice must be notarized and include all of the following:

- (a) The name of the claimant.
- (b) The telephone number of the claimant.

## Appendix 26a

(c) The address at which the claimant wants to receive service.

(d) The parcel identification number of the property, and, if available, the address of the property.

(e) An explanation of the claimant's interest in the property.

(f) A description of any other interest in the property immediately before the foreclosure under section 78k held by other persons and known by the claimant, including a lien or a mortgage.

(g) A sworn statement or affirmation by the claimant that the information included in the notice is accurate.

(3) Not later than the January 31 immediately succeeding the sale or transfer of the property under section 78m, the foreclosing governmental unit shall send by certified mail, return receipt requested, a notice in a form prescribed by the department of treasury to each claimant that notified the foreclosing governmental unit pursuant to subsection (2). The notice must include the following information:

(a) The parcel identification number of the property.

(b) The legal description of the property.

(c) The address for the property if an address is available for the property.

(d) The date on which the property was sold or transferred under section 78m or, if the property was not sold or transferred under section 78m, a statement indicating that the property was not sold or transferred.

## Appendix 27a

(e) The minimum bid for the property as determined by the foreclosing governmental unit under section 78m.

(f) The amount for which the property was sold or transferred under section 78m.

(g) The amount of the sale cost recovery for the property, which must be equal to 5% of the amount under subdivision (f).

(h) The amount of any outstanding unpaid state, federal, or local tax collecting unit tax liens on the property immediately preceding the effective date of the foreclosure of the property under section 78k based on the records of the foreclosing governmental unit.

(i) The total amount of any remaining proceeds, or the amount of the shortfall in proceeds if the minimum bid under section 78m and other fees incurred by the foreclosing governmental unit in foreclosing and selling the property under section 78m exceed the amount received by the foreclosing governmental unit from a sale or transfer of the property under section 78m.

(j) The name and address provided by each claimant for the property pursuant to subsection (2).

(k) A statement that a claimant must file pursuant to subsection (4) a motion with the circuit court in the same proceeding in which the judgment of foreclosure of the property was effective under section 78k to claim any remaining proceeds payable to the claimant. The statement must include the case number assigned to the proceeding, the name of the judge assigned to the proceeding, and contact information for the clerk of the circuit court.



## Appendix 28a

(4) For a claimant seeking remaining proceeds from the transfer or sale of a foreclosed property transferred or sold under section 78m after July 17, 2020, after receipt of a notice under subsection (3), the claimant may file a motion with the circuit court in the same proceeding in which the judgment of foreclosure of the property was effective under section 78k to claim any portion of the remaining proceeds that the claimant is entitled to under this section. A motion under this subsection must be filed during the period beginning on February 1 immediately succeeding the date on which the property was sold or transferred under section 78m and ending on the immediately succeeding May 15, and may not be filed after that May 15 if notice was provided under section 78i of the show cause hearing under section 78j and the foreclosure hearing under section 78k before the show cause hearing and the foreclosure hearing, notwithstanding section 78l. The motion must indicate both of the following:

(a) Whether the claimant or an entity in which the claimant held a direct or indirect interest purchased the property under section 78m.

(b) Whether the claimant does or does not hold a direct or indirect interest in the property at the time the motion is filed.

(5) At the end of the claim period described in subsection (4), the foreclosing governmental unit shall file with the circuit court proof of service of the notice required under subsection (3) and, for each property for which a claimant provided notice under subsection (2), a list of all of the following information:

## Appendix 29a

(a) The parcel identification number of the property.

(b) The legal description of the property.

(c) The address for the property if an address is available for the property.

(d) The date on which the property was sold or transferred under section 78m or, if the property was not sold or transferred under section 78m, a statement indicating that the property was not sold or transferred.

(e) The minimum bid for the property as determined by the foreclosing governmental unit under section 78m.

(f) The amount for which the property was sold or transferred under section 78m.

(g) The amount of the sale commission for the property, which must be equal to 5% of the amount under subdivision (f).

(h) The amount of any outstanding unpaid state, federal, or local tax collecting unit tax liens on the property immediately preceding the effective date of the foreclosure of the property under section 78k based on the records of the county treasurer.

(i) The amount of any remaining proceeds, or the amount of the shortfall in proceeds if the minimum bid under section 78m and other fees incurred in foreclosing and selling the property exceed the amount received by the foreclosing governmental unit from a sale or transfer of the property under section 78m.

(j) The name and address provided by each claimant for the property pursuant to subsection (2).

## Appendix 30a

(6) For a claimant seeking remaining proceeds from the transfer or sale of a foreclosed property transferred or sold under section 78m pursuant to this subsection, the claimant must notify the foreclosing governmental unit using the form prescribed by the department of treasury under subsection (2) in the manner prescribed under subsection (2) by the March 31 at least 180 days after any qualified order. By the following July 1, the foreclosing governmental unit shall provide each claimant seeking remaining proceeds for the property and notifying the foreclosing governmental unit under this subsection with a notice relating to the foreclosed property in the form and manner provided under subsection (3). To claim any applicable remaining proceeds to which the claimant is entitled, the claimant must file a motion with the circuit court in the same proceeding in which a judgment of foreclosure was effective under section 78k by the following October 1. The motion must be certified and include all of the following:

- (a) The name of the claimant filing the motion.
- (b) The telephone number of the claimant.
- (c) The address at which the claimant wants to receive service.
- (d) The parcel identification number of the property, and, if available, the address of the property.
- (e) An explanation of the claimant's interest in the property.
- (f) A description of any other interest in the property, including a lien or a mortgage, immediately before the foreclosure under section 78k held by any other person or entity and known by the claimant.

## Appendix 31a

(g) A statement indicating that the claimant or an entity in which the claimant held a direct or indirect interest did or did not purchase the property under section 78m.

(h) A statement indicating that the claimant does or does not hold a direct or indirect interest in the property at the time the motion is filed.

(i) A sworn statement or affirmation by the claimant that the information included in the motion is accurate.

(7) At the end of the claim period described in subsection (4) or after receipt of a motion under subsection (6), the foreclosing governmental unit shall file with the circuit court proof of service of the notice required under subsection (3) and, for each property for which a claimant provided notice under subsection (2) or filed a motion under subsection (6), a list of all of the following information:

(a) The parcel identification number of the property.

(b) The legal description of the property.

(c) The address for the property if an address is available for the property.

(d) The date on which the property was sold or transferred under section 78m or, if the property was not sold or transferred under section 78m, a statement indicating that the property was not sold or transferred.

(e) The minimum bid for the property as determined by the foreclosing governmental unit under section 78m.

## Appendix 32a

(f) The amount for which the property was sold or transferred under section 78m.

(g) The amount of the sale commission for the property, which must be equal to 5% of the amount under subsection (f).

(h) The amount of any remaining proceeds, or the amount of the shortfall in proceeds if the minimum bid under section 78m and other fees incurred in foreclosing and selling the property exceed the amount received by the foreclosing governmental unit from a sale or transfer of the property under section 78m.

(i) The amount of any outstanding unpaid state, federal, or local tax collecting unit tax liens on the property immediately preceding the effective date of the foreclosure of the property under section 78k based on the records of the county treasurer.

(j) The name and address provided by each claimant for the property pursuant to subsection (2) or (6).

(8) A motion by a claimant under this section must provide the specific basis for the claimant's asserted interest in some or all of the remaining proceeds, including the claimant's interest in the property immediately before its foreclosure under section 78k and documentation evidencing that interest. The claimant also shall affirm that the claimant did not transfer and was not otherwise divested of the claimant's interest in the property before the judgment of foreclosure was effective under section 78k. If a claimant had a lien or other security interest in the property at the time the judgment of foreclosure was effective under section 78k, the claimant shall indicate the amount owed to the claimant pursuant to the

## Appendix 33a

lien or security interest and the priority of the claimant's lien or security interest. The motion must be verified and include a sworn statement or affirmation by the claimant of its accuracy. A claimant filing a motion under this section must serve a copy of the motion on the foreclosing governmental unit.

(9) After the foreclosing governmental unit responds to a claimant's motion under this section, the court shall set a hearing date and time for each property for which 1 or more claimants filed a motion under this section and notify each claimant and the foreclosing governmental unit of the hearing date at least 21 days before the hearing date. At the hearing, the court shall determine the relative priority and value of the interest of each claimant in the foreclosed property immediately before the foreclosure was effective. The foreclosing governmental unit may appear at the hearing. The burden of proof of a claimant's interest in any remaining proceeds for a claimant is on the claimant. The court shall require payment to the foreclosing governmental unit of a sale commission equal to 5% of the amount for which the property was sold by the foreclosing governmental unit. The court shall allocate any remaining proceeds based upon its determination and order that the foreclosing governmental unit pay applicable remaining proceeds to 1 or more claimants consistent with its determination under this subsection. An order for the payment of remaining proceeds must not unjustly enrich a claimant at the expense of the public. If a claimant indicated in the motion that the claimant or an entity in which the claimant held a direct or indirect interest purchased the property under section 78m or if the claimant indicated in the motion that the

## Appendix 34a

claimant held a direct or indirect interest in the property at the time the motion was filed, the order must require remaining proceeds to be applied to any unpaid obligations payable to a tenant at the time the foreclosure was effective or any unpaid civil fines relating to the property owed at the time the foreclosure was effective for violation of an ordinance authorized by section 4l of the home rule city act, 1909 PA 279, MCL 117.4l, in the local tax collecting unit in which the property is located. The order must provide for the payment of any unpaid amounts not otherwise payable to another claimant owed by a claimant to satisfy a state, federal, or local tax collecting unit tax lien on the property immediately preceding the effective date of the foreclosure under section 78k if the lien had priority over the claimant's interest in the property. The order also must provide that any further claim by a claimant under this act relating to the foreclosed property is barred.

(10) The foreclosing governmental unit shall pay the amounts ordered by the court to the claimants and any other persons ordered by the court under subsection (9) within 21 days of the order pursuant to section 78m.

(11) This section is the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under the laws of this state. A right to claim remaining proceeds under this section is not transferable except by testate or intestate succession.

(12) As used in this section:

(a) "Claimant" means a person with a legal interest in property immediately before the effectiveness of a judgment of foreclosure of the property under

## Appendix 35a

section 78k who seeks pursuant to this section recognition of its interest in any remaining proceeds associated with the property.

(b) “Remaining proceeds” means the amount equal to the difference between the amount paid to the foreclosing governmental unit for a property due to the sale or transfer of the property under section 78m and the sum of all of the following:

(i) The minimum bid under section 78m.

(ii) All other fees and expenses incurred by the foreclosing governmental unit pursuant to section 78m in connection with the forfeiture, foreclosure, sale, maintenance, repair, and remediation of the property not included in the minimum bid.

(iii) A sale commission payable to the foreclosing governmental unit equal to 5% of the amount paid to the foreclosing governmental unit for the property.



Appendix 36a

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR  
THE COUNTY OF MANISTEE

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IN THE MATTER OF THE  
PETITION OF MANISTEE  
COUNTY TREASURER FOR  
THE FORECLOSURE OF  
CERTAIN PARCELS OF  
PROPERTY DUE TO  
UNPAID 2018 AND PRIOR  
YEARS' TAXES, INTEREST,  
PENALTIES, AND FEES

Hon. David A.  
Thompson, Circuit  
Judge

File No. 20-17073-  
CZ

---

Lucas Middleton (P79493)  
*Attorney for Petitioner*  
622 W. Kalamazoo Ave  
Kalamazoo, MI 49007  
(269) 585-1271

---

**JUDGMENT OF FORECLOSURE**

At a session of said Court held on the 12th of February  
2021, in the Manistee County Courthouse located in the  
City of Manistee, County of Manistee, State of Michigan.

PRESENT: THE HONORABLE DAVID A. THOMPSON,  
CIRCUIT JUDGE

This matter was initiated with the filing of a  
Petition on or about June 3, 2020. The Petition  
identified parcels of property forfeited to the Manistee  
County Treasurer under MCL 211.78g for unpaid  
2018 and prior years' truces and set forth the amount  
of the unpaid delinquent taxes, interest, penalties,

## Appendix 37a

and fees, for which each parcel of property was forfeited, The Petition sought judgment in favor of the Manistee County Treasurer (“Petitioner”) for the forfeited unpaid delinquent taxes, interest, penalties, and fees, listed against each parcel of property. The Petition further sought a judgment vesting absolute title to each parcel of property in the Petitioner, without right of redemption, as to parcels not redeemed on or before March 31, 2021.

Before the hearing on the Petition, Petitioner filed with the Clerk of the Court proof of service of the notice of show cause hearing and notice of foreclosure hearing, proof of publication, and proof of personal visit, as required by MCL.211.78k(l), for each remaining parcel.

A hearing on the Petition and objections thereto was held on February 12th, 2021, at which time all parties interested in the forfeited properties who appeared were heard.

NOW, THEREFORE, the Court makes the following findings of fact:

1. Petitioner has complied with the procedures for the provision of notice by mail, for visits to forfeited property, and for notice by publication all as outlined in MCL 211.78i.

2. Those parties entitled to notice and an opportunity to be heard have been provided that notice and opportunity.

NOW, THEREFORE, IT IS ORDERED:

- A. The amount of forfeited delinquent taxes, interest, penalties, and fees, set forth in the list of foreclosed property attached to this Judgment (ATTACHMENT A) is valid and judgment of

## Appendix 38a

foreclosure is entered in favor of Petitioner against each parcel of property, separately, for payment of the amount set out against the parcel.

B. Fee simple title to each parcel of property foreclosed upon by this Judgment will vest absolutely in Petitioner, subject to the limitations of paragraphs C and D, below, without further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees, foreclosed against such parcel, plus any additional interest required by statute, are not paid to the Petitioner on or before March 31, 2021.

C. All liens against each parcel, including any lien for unpaid taxes or special assessments, except future installments of special assessments, and liens recorded by Petitioner or the State of Michigan pursuant to the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq.*, are extinguished, if all forfeited delinquent taxes, interest, penalties, and fees, against such parcel, plus any additional interest required by statute, are not paid to the Petitioner on or before March 31, 2021.

D. All existing recorded and unrecorded interests in each parcel are extinguished except: (1) a visible or recorded easement or right-of-way, (2) private deed restrictions, (3) restrictions or other governmental interests imposed pursuant to the Natural Resources and Environmental Protection Act, *supra.*, (4) interests of a lessee or an assignee of an interest of a lessee under an oil or gas lease recorded before the date of the filing of this Petition, (5) interests in property assessable as personal property under section MCL 211.8(g), and (6) interests preserved under Section 1(3) of the Dormant Minerals Act, MCL 554.291(3), if

## Appendix 39a

all forfeited delinquent taxes, interest, penalties, and fees, against such parcel, plus any additional interest required by statute, are not paid to the Petitioner on or before March 31, 2021.

E. The Petitioner has good and marketable fee simple title to each parcel, subject to the limitations of paragraphs C and D, above, if all delinquent taxes, interest, penalties, and fees, against the parcel, plus any additional interest required by statute, are not paid to the Petitioner on or before March 31, 2021.

F. This is a final order with respect to the foreclosure of each parcel affected by this Judgment and unless appealed pursuant to MCL 211.78k(7) shall not be modified, stayed, or held invalid after March 31, 2021 unless there is a contested case concerning a parcel in which event this Judgment, with respect to the parcel involved in such contested case, shall not be modified, stayed, or held invalid 21 days after the entry of judgment in such contested case.

G. Pursuant to MCL 211.78t(2) any person, (hereinafter referred to as a “claimant” as that term is defined in MCL 211.78t(12)(a)), who had a legal interest in any property subject to this Judgment immediately prior to the period referenced in paragraph F may seek recognition of their interest in any remaining proceeds as that term is defined in MCL 211.78t(12)(b) by using a form prescribed by the Michigan Department of Treasury to so notify Petitioner. The notice must be notarized and made by personal service acknowledged by Petitioner or by certified mail, return receipt requested, in either case by the July 1 immediately following the effective date

## Appendix 40a

of this Judgment and contain the information specified in MCL 211.78t(2).

H. Pursuant to MCL 211.78t(3), not later than the January 31 immediately succeeding the sale or transfer by Petitioner of property subject to this Judgment pursuant to MCL 211.78m Petitioner shall send by certified mail, return receipt requested, to each claimant that notified Petitioner pursuant to MCL 211.78t(2), a notice in a form prescribed by the Michigan Department of Treasury, informing each claimant of the information specified in MCL 211.78t(3).

I. Pursuant to MCL 211.78t(4) after receiving the notice specified in MCL 211.78t(3) a claimant may seek the remaining proceeds from property in which the claimant had a legal interest immediately prior to the period referenced in paragraph F by filing a motion with this Court using the same case number that appears on this Judgment. Pursuant to MCL 211.78t(4) a motion under said subsection must be filed during the period beginning on February 1 immediately succeeding the date on which the property was sold or transferred under MCL 211.78m and ending on the immediately succeeding May 15 and must indicate whether the claimant or an entity in which the claimant held a direct or indirect interest purchased the property under MCL 211.78m and whether the claimant does or does not hold a direct or indirect interest in the property at the time the motion is filed. The motion must also satisfy the requirements of MCL 211.78t(8).

J. Pursuant to MCL 211.78t(5), at the end of the period referenced in paragraph I and specified in MCL

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211.78t(4), Petitioner shall file with this Court proof of service of the notice referenced in paragraph H and for each property for which a claimant provided the notice referenced in paragraph G Petitioner shall also file with this Court the information specified in MCL 211.78t(5)(a)-(j).

K. Pursuant to MCL 211.78t(9), the Court shall set a hearing date and time for each property for which one or more claimants filed a motion and notify each claimant and the Petitioner at least 21 days before such hearing date. At the hearing this Court shall determine the relative priority and value of the interest of each claimant as specified in MCL 211.78t(9) and shall issue orders in accordance with that subsection. Pursuant to MCL 211.78t(10), Petitioner shall, within 21 days of said orders, pay any amounts ordered by the Court.

L. Petitioner may continue to remove parcels from the list included in the attached ATTACHMENT A for redemption, exemption, or otherwise in accordance with law, up to March 31, 2021.

<u>2/12/2021</u>	<u>s/ David A. Thompson</u>
Date	DAVID A. THOMPSON
	Circuit Judge

**ATTACHMENT A**  
**FORFEITURE LIST FOR MANISTEE COUNTY**  
For 2020 Forfeitures of 2018 and prior taxes  
All Records

\* \* \* \* \*

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PARCEL	TAX DUE	INTEREST / FEES DUE	TOTAL DUE	TAX YEARS DELINQUENT
51-02- 581-711- 01	1,199.59	831.93	2,031.52	2018

TILLSONS ADD TO VILL OF BEAR LAKE LOTS 1,  
2, 3 EXC COM NE COR LOT 3, TH W ALG N LI 20  
FT, TH SE'LY TO SECOR OF LOT 3, TH N ALG E LI  
TO POB, BLK 4, ALSON 1/2 OF ALLEY LYING ADJ  
TO LOTS 1 THRU 3 AS VAC IN LIBER 689 PAGE 926  
7 693 PAGE 868 [[SALE(75) 75 1342 0057 (89) 350  
4522 0252 (92) 440 1560 0261, 264 (97) 437 1646 0195  
(98) 6689 0926, 6693 0868 (99) 885 1716 0617 (04)  
1082 1912 0305

Property Address: 8073 LAKE ST  
Owner: KOETTER CHELSEA MARIE  
8073 LAKE ST BEAR LAKE MI 49614  
Taxpayer:

\* \* \* \* \*

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**PAYMENT DEADLINE**

Persons that hold an interest in real estate with unpaid **2018** and/or previous years taxes will **LOSE ALL TITLE INTEREST IN THAT PROPERTY AFTER MARCH 31, 2021**

**Payment** of 2018 and/or previous years taxes **MUST BE PAID IN FULL** by end of business **MARCH 31, 2021.**

or this property **WILL BE FORECLOSED**

**THERE IS NO WAY TO RECOVER THIS PROPERTY AFTER MARCH 31, 2021.**

**If this property is foreclosed, you have a right to claim any excess funds remaining after the sale or transfer of the property by filing a Notice of Intention form by JULY 1, 2021 (see below).**

**Reference #:** 51-18-00048

**Property County:** Manistee

**Parcel ID #:** 02-581-711-01

**Street Address:** 8073 LAKE ST, BEAR LAKE

**Legal Description:**

TILLSONS ADD TO VILL OF BEAR LAKE LOTS 1, 2, 3  
EXC COM NE COR LOT 3, TH W ALG N LI 20 FT, TH  
SELY TO SE COR OF LOT 3, TH N ALG E LI TO POB,  
BLK 4, ALSO N 1/2 OF ALLEY LYING ADJ TO LOTS 1  
THRU 3 AS VAC IN LIBER 689 PAGE 926 7 693 PAGE  
868 [[SALE(75) 75 1342 0057 (89) 350 4522 0252 (92) 440  
1560 0261, 264 (97) 437 1646  
0195 (98) 6689 0926, 6693 0868 (99) 885 1716 0617 (04)  
1082 1912 0305



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**Extra Info About This Property:**

**NOT PERSONAL CHECKS. CERTIFIED  
FUNDS ONLY**

**CONTACT THE MANISTEE COUNTY  
TREASURER AT (231)-723-3173 FOR THE  
CURRENT PAYOFF AMOUNT**

Please disregard this notice if you have recently paid  
this amount, or if you claim no interest in this  
property.

**VERIFY PAYMENT OF TAXES BY YOUR  
LENDER** if you escrow tax payments with your  
Mortgage.

**This real estate is in the process of FORE-  
CLOSURE for unpaid 2018 and/or previous  
years property taxes.**

THE CIRCUIT COURT FOR THE COUNTY OF  
MANISTEE HAS ENTERED A JUDGMENT WHICH  
BECOMES EFFECTIVE MARCH 31, 2021 VESTING  
TITLE IN THE FORECLOSING GOVERNMENTAL  
UNIT.

It is recommended that you pay, or notify persons that  
are responsible for paying these taxes immediately to  
prevent loss of this property.

**IF THIS PROPERTY IS FORECLOSED**, it may later  
be sold for more than the total amount due to the  
Foreclosing Governmental Unit. Any person who held  
an interest in this property at the time of foreclosure  
has a right to file a claim for remaining excess money,  
if any. In order to make a claim, **YOU MUST SUBMIT  
A NOTICE OF INTENTION FORM TO THE**

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Manistee County Treasurer **NO LATER THAN  
JULY 1, 2021.**

If you have questions or comments about this process, contact us by sending email to [manistee@title-check.com](mailto:manistee@title-check.com) or calling 269-226-2600.

Title Check LLC is a title search and notice contractor and an authorized representative of the Foreclosing Governmental Unit.

Manistee	51-18-00048
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**OFFICIAL BUSINESS**  
**Manistee County Treasurer**

(Muskegon Postal/Bar Code)  
622 W KALAMAZOO AVE  
Kalamazoo MI 49007-3308

FIRST CLASS MAIL U.S. POSTAGE PAID Kalamazoo MI Permit No. 338
---

CHELSEA MARIE KOETTER  
8073 LAKE ST  
BEAR LAKE MI 49614-9677

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**NOTICE OF FORECLOSURE**

As of March 31, 2021, the property described below has been **FORECLOSED** by order of the Manistee County Circuit Court due to unpaid 2018 and/or previous years taxes. This property is now owned by the **Manistee County Treasurer**

**Any interest that you possessed in this property prior to foreclosure, including any equity associated with your interest, has been lost.**

This property may later be sold or transferred for more than the total amount due to the Foreclosing Governmental Unit. Any person that held an interest in this property at the time of foreclosure has a right to file a claim for **REMAINING PROCEEDS** pursuant to MCL 211.78t.

**In order to make a claim, you must take action no later than JULY 1, 2021** as explained below.

**Reference #:** 51-18-00048

**Property County:** Manistee

**Parcel ID #:** 02-581-711-01

**Street Address:** 8073 LAKE ST, BEAR LAKE

**Legal Description:**

TILLSONS ADD TO VILL OF BEAR LAKE LOTS 1, 2, 3 EXC COM NE COR LOT 3, TH W ALG N LI 20 FT, TH SE'LY TO SE COR OF LOT 3, TH N ALG E LI TO POB, BLK 4, ALSO N 1/2 OF ALLEY LYING ADJ TO LOTS 1 THRU 3 AS VAC IN LIBER 689 PAGE 926 7 693 PAGE 868 [[SALE(75) 75 1342 0057 (89) 350 4522 0252 (92) 440 1560 0261, 264 (97) 437 1646

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0195 (98) 6689 0926, 6693 0868 (99) 885 1716 0617 (04)  
1082 1912 0305

### **Extra Info About This Property:**

#### **CLAIMS FOR REMAINING PROCEEDS**

The property will be offered for sale or transfer in accordance with state law. Any person that held an interest in this property at the time of foreclosure has a right pursuant to MCL 211.78t to file a claim for remaining proceeds that are realized from the sale or transfer of this property. Remaining proceeds are those proceeds left over, if any, after the total amount due to the Foreclosing Governmental Unit is paid.

In order to make a claim, YOU MUST SUBMIT A NOTICE OF INTENTION TO CLAIM INTEREST IN FORECLOSURE SALES PROCEEDS FORM 5743 TO THE MANISTEE COUNTY TREASURER **NO LATER THAN JULY 1, 2021**. You can access Form 5743 by visiting [www.miTaxNotice.com/form5743](http://www.miTaxNotice.com/form5743) or by contacting the Manistee County Treasurer.

You must submit the completed Form 5743 by **CERTIFIED MAIL OR PERSONAL DELIVERY** to The Manistee County Treasurer, 415 Third St, Manistee, MI 49660 no later than **July 1, 2021**.

If you submit Form 5743, the Foreclosing Governmental Unit will send you a notice no later than January 31, 2022 informing you whether any remaining proceeds are available and providing additional information about how to file a claim in the Muskegon County Circuit Court to claim such remaining proceeds.

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The claims process is described in MCL 211.78t  
which can be viewed at  
<http://legislature.mi.gov/doc.aspx?mcl-211-78t>

You are not required to be represented by an attorney in order to file Form 5743 though you may retain or consult an attorney if desired. Those who wish to consult with an attorney about this notice or your ability to make a claim for remaining proceeds under MCL 211.78t may go to the State Bar of Michigan's legal resource and referral web page at <https://lrs.michbar.org> or may call (800) 968-0738 for assistance in finding private legal counsel.

If you have questions or comments about this process, contact us by sending email to [manistee@title-check.com](mailto:manistee@title-check.com) or calling 269-226-2600. Title Check LLC is a title search and notice contractor and an authorized representative of the Foreclosing Governmental Unit. Form 5743 must be filed with Manistee County Treasurer and SHOULD NOT be directed to Title Check, LLC.

Manistee	51-18-00048
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**OFFICIAL BUSINESS**  
**Manistee County Treasurer**

(Manistee Postal/Bar Code)  
622 W KALAMAZOO AVE  
Kalamazoo MI 49007-3308

FIRST CLASS MAIL U.S. POSTAGE PAID Kalamazoo MI Permit No. 338
---

CHELSEA MARIE KOETTER  
8073 LAKE ST  
BEAR LAKE MI 49614-9677

## Notice of Intention to Claim Interest in Foreclosure Sales Proceeds

Issued under authority of Public Act 206 of 1993; Section 211.78t.

Beginning with 2021 foreclosure sales and transfers, a person that intends to make a claim for excess sales proceeds must complete and return this notarized notice to the Foreclosing Governmental Unit by July 1 in the year of foreclosure. This notice must be delivered via certified mail, return receipt requested, or by personal service. Completing and returning this form evidences an intent to make a future claim but is not itself a claim for sales proceeds.

<b>PART 1: APPLICANT INFORMATION</b>			
Claimant Last Name or Business Name <u>Koehler</u>	Claimant First Name <u>Debra</u>	Middle Initial <u>M</u>	
Claimant's Address to be used for Service (Street Number, City, State, ZIP Code) <u>8073 Lake Street</u>			
Claimant's Telephone Number <u>231</u>	Claimant's E-mail Address <u>[REDACTED]</u>	<u>@yahoo.com</u>	
<b>PART 2: PROPERTY IDENTIFICATION</b>			
County <u>Manistee</u>	Local Taxing Municipality <u>Bear Lake Township</u>	Foreclosure Year <u>2018</u>	
Parcel Address (Street Number, City, State, ZIP Code) <u>8073 Lake St</u>		Local Parcel Number	
<b>PART 3: EXPLANATION OF INTEREST</b>			
I hereby claim an interest in the above parcel, as of the foreclosure date, due to the reason(s) selected below:			
<input type="checkbox"/> Warranty Deed Dated: _____ Recorded in Liber/Page: _____			
<input checked="" type="checkbox"/> Quit Claim Deed Dated: <u>10/13/2018</u> Recorded in Liber/Page: <u>2018 R 005 1910</u>			
<input type="checkbox"/> Mortgage Dated: _____ Amount: _____ Recorded in Liber/Page: _____			
<input type="checkbox"/> Other Lien Dated: _____ Amount: _____ Nature of Lien: _____ Recorded in Liber/Page: _____			
I know of the following other interests in this property, which were in effect immediately prior to foreclosure:			
<div style="border: 1px solid black; padding: 5px;">Didn't pay taxes in 2018, single mom of two boys. Been struggling with Anxiety &amp; depression</div>			
<b>PART 4: CERTIFICATION AND NOTARY</b>			
I hereby swear that the above information is true and correct in relation to the subject property			
Claimant's Signature <u>Debra Koehler</u>	Date <u>7/9/2021</u>		
Subscribed and sworn to before me by Applicant on the following date:			
Notary's Signature <u>Undrey Marquardt</u>	Commission Expiration <u>Notary Public - State of Michigan</u>		
Notary State of Authorization <u>Michigan</u>	Notary Acting in Capacity of <u>Notary Public - State of Michigan</u>		
My commission expires <u>02/04/2025</u>			
<b>FORECLOSING GOVERNMENTAL UNIT RECEIPT ACKNOWLEDGMENT</b>			
FGU Staff Signature of Receipt <u>Candy L. Dancz</u>	FGU Staff Printed Name <u>CANDY L. DANCZ</u>		
Date of Receipt <u>7/09/2021</u>			



## Appendix 50a

Michigan Department of Treasury  
5743 (02-21)

### **Notice of Intention to Claim Interest in Foreclosure Sales Proceeds**

Issued under authority of Public Act 206 of 1893; Section  
211.78t

Beginning with 2021 foreclosure sales and transfers, a person that intends to make a claim for excess sales proceeds must complete and return this notarized notice to the Foreclosing Governmental Unit by July 1 in the year of foreclosure. This notice must be delivered via certified mail, return receipt requested, or by personal service. Completing and returning this form evidences an intent to make a future claim but is not itself a claim for sales proceeds.

<b>PART 1: APPLICANT INFORMATION</b>		
Claimant Last Name or Business Name Koetter	Claimant First Name Chelsea	Middle Initial M
Claimant's Address to be Used for Service (Street Number, City, State, Zip Code) c/o Visser and Associates, PLLC, 2480 44th St. SE, Suite 150, Kentwood, MI 49512		
Claimant's Telephone Number: 616-531-9860	Claimant's E-mail Address donovan@visserlegal.com	
<b>PART 2: PROPERTY IDENTIFICATION</b>		
County Manistee	Local Taxing Municipality Bear Lake Township	Foreclosure Year 2021
Parcel Address (Street Number, City, State, ZIP Code)	Local Parcel Number 02-581-711-01	

## Appendix 51a

8073 Bear Lake St. Bear Lake MI 49614		
<b>PART 3: EXPLANATION OF INTEREST</b>		
I hereby claim an interest in the above parcel, as of the foreclosure date, due to the reason(s) selected below:		
<input type="checkbox"/> Warranty Deed Dated: _____ Recorded in Liber/Page: _____ <input checked="" type="checkbox"/> Quit Claim Deed Dated: <u>10/13/2016</u> Recorded in Liber/Page: <u>Document No. 2016R005196</u> <input type="checkbox"/> Mortgage Dated: __ Amount: __ Recorded in Liber/Page: __ <input type="checkbox"/> Other Lien Dated: __ Amount: __ Recorded in Liber/Page: __ I know of the following other interests in this property which were in effect immediately prior to foreclosure: <div style="border: 1px solid black; padding: 5px;">None</div>		
<b>PART 4: CERTIFICATION AND NOTARY</b>		
<i>I hereby swear that the above information is true and correct in relation to the subject property</i>		
Claimant's Signature s/ Chelsea Koetter		Date 8/10/2021
<i>Subscribed and sworn to before me by Applicant on the following date:</i>		
Notary's Signature s/ H. Renee Tondu		Commission Expiration Oct. 19, 2021 [Notary Stamp]
Notary State of Authorization MI	Notary County of Authorization Manistee	Notary Acting in County Benzie
<b>FORECLOSING GOVERNMENTAL UNIT RECEIPT ACKNOWLEDGMENT</b>		
FGU Staff Signature of Receipt	FGU Staff Printed Name	Date of Receipt



Appendix 52a

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR  
THE COUNTY OF MANISTEE

\*\*\*\*\*

IN THE MATTER OF THE  
PETITION OF MANISTEE  
COUNTY TREASURER FOR  
THE FORECLOSURE OF  
CERTAIN PARCELS OF  
PROPERTY DUE TO  
UNPAID 2018 AND PRIOR  
YEARS' TAXES, INTEREST,  
PENALTIES, AND FEES,

Case No. 20-  
17073-CZ

HON. DAVID A.  
THOMPSON

---

VISSER AND ASSOCIATES, PLLC  
Donald R. Visser (P27961)  
Donovan J. Visser (P70847)  
Bria Adderley-Williams (P84876)  
*Attorneys for Claimant*  
2480 – 44th Street, S.E., Suite 150  
Kentwood, MI 49512  
(616) 531-9860

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**VERIFIED MOTION TO DISBURSE  
REMAINING PROCEEDS FROM  
TAX FORECLOSURE SALE**

---

COMES NOW, Claimant Chelsea Koetter (“Claimant”), by and through Counsel, VISSER AND ASSOCIATES, PLLC, and requests that this Court compel the Manistee County Treasurer to disburse the Remaining Proceeds from the tax foreclosure and

## Appendix 53a

sale of Claimant's former property pursuant to MCL § 211.78t. In support thereof, Claimant states as follows:

1. Claimant was the owner of certain real property identified by permanent parcel number 02-581-711-01 located in the County of Manistee ("Subject Property"). Claimant's recorded deed is attached as **Exhibit 1**.

2. On February 12, 2021, pursuant to the General Property Tax Act ("GPTA"), this Court entered a Judgment of Foreclosure which included the Subject Property. This Court's Judgment of Foreclosure is attached as **Exhibit 2**.

3. Claimant did not transfer or otherwise divest its interest in the Subject Property prior to the effective date of the Judgment of Foreclosure.

4. Further, the Subject Property was not encumbered by a lien or other security interest at the time the Judgment of Foreclosure became effective.

5. Subsequent to the entry of the Judgment of Foreclosure, the Manistee County Treasurer sold the Subject Property for \$106,500.

6. The amount of unpaid delinquent taxes, interest, penalties, and fees incurred and owing to the Manistee County Treasurer for the Subject Property was \$3,863.40.

7. As a consequence of the sale of the Subject Property, the County Treasurer received \$102,636.60.

8. Neither Claimant nor any entity in which Claimant held a direct or indirect interest purchased the Subject Property through the tax sale process outlined under MCL § 211.78m.

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9. At the time this motion was filed, Claimant did not hold any direct or indirect interest in the Subject Property apart from its vested property interest in the “Remaining Proceeds” as defined in MCL § 211.78t.

10. In accordance with MCL § [2]11.78t(9), the County has deducted a 5% commission fee from the sale proceeds in the amount of \$5,325.

11. Claimant’s Remaining Proceeds are not subject to any further deductions outlined by MCL § 211.78t(8), and Claimant is entitled to claim the Remaining Proceeds of \$97,311.60 pursuant to MCL § 211.78t(4).

WHEREFORE, Claimant requests that this Court enter an Order directing the Manistee County Treasurer to turn over Remaining Proceeds of \$97,311.60 to Claimant Chelsea Koetter within 21 days of this Court’s order as required by MCL § 211.78t(10).

Respectfully submitted,  
VISSER AND  
ASSOCIATES, PLLC

Dated: May 9, 2022

\_\_\_\_\_  
s/  
Donald R. Visser (P27961)  
Donovan J. Visser (P70847)  
Bria Adderley-Williams  
(P84876)  
*Counsel for Claimant*

Appendix 55a

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR  
THE COUNTY OF MANISTEE

\*\*\*\*\*

IN THE MATTER OF THE  
PETITION OF MANISTEE  
COUNTY TREASURER FOR  
THE FORECLOSURE OF  
CERTAIN PARCELS OF  
PROPERTY DUE TO  
UNPAID 2018 AND PRIOR  
YEARS' TAXES, INTEREST,  
PENALTIES, AND FEES.

Case No. 20-  
17073-CZ

HON. DAVID A.  
THOMPSON

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Lucas Middleton  
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Treasurer*  
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2480 – 44<sup>th</sup> St. SE,  
Suite 150  
Kentwood, MI 49512  
(616) 531-9860

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**AFFIDAVIT OF CHELSEA KOETTER**

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I, CHELSEA KOETTER, being first duly sworn,  
deposes and says:

## Appendix 56a

1. I am over the age of 18 and have personal knowledge of the matters attested to herein.

2. I was the former owner of property commonly known as 8073 Lake Street, Bear Lake, Michigan, 49614.

3. Apparently, my interest in said property was foreclosed for failing to pay the 2018 taxes, despite the 2019 and 2020 taxes having been paid.

4. Prior to the foreclosure, I attempted to figure out what was going on, but the Treasurer's office was closed due to COVID.

5. In June of 2021, I went to the Treasurer's office with my grandmother to attempt to correct things. I was told it was too late and there was nothing I could do because the property had already been foreclosed. No one mentioned that a form could be filled out for claiming proceeds for the sale and no one gave me a form.

6. Only because of the intervention of a family friend did I hear of the need to file a form. My friend informed me of this form and I filled it out on July 9, 2021 (see attached **Exhibit 1**). The form was accepted by the Treasurer. I was told that the deadline for filing the form had been extended to July 15, 2021. However, on July 22, 2021, I received a letter in the form of **Exhibit 2** saying the form was being rejected. *Further, affiant sayeth not.*

DATED: July 26, 2022

s/ Chelsea Koetter  
Chelsea Koetter

Appendix 57a

STATE OF MICHIGAN    )  
                                  )ss  
COUNTY OF BENZIE    )

Subscribed to before me, a Notary Public, on this  
26<sup>th</sup> day of July 2022, by Chelsea Koetter.

s/ H. Renee Tondur

[Notary Stamp]

Appendix 58a

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR  
THE COUNTY OF MANISTEE

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IN THE MATTER OF THE  
PETITION OF MANISTEE  
COUNTY TREASURER FOR  
THE FORECLOSURE OF  
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(616) 531-9860

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**AFFIDAVIT OF ROBERT MICK**

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I, ROBERT MICK, being first duly sworn, deposes  
and says:

## Appendix 59a

1. I am over the age of 18 and have personal knowledge of the matters attested to herein.

2. I am the father of Chelsea Koetter.

3. I went to the Treasurer's office and paid off the taxes on the following dates:

a. 02/05/2019 (2018 Winter Taxes);

b. 02/14/2020 (2019 Winter Taxes);

c. 10/27/2020 (2020 Summer Taxes).

By intent or neglect, the Treasurer's office did not bring up the taxes still due for 2018 on any of those occasions. Had those taxes been brought to my attention, I would have paid those as well. I was ready, present and able to pay all the taxes—as can be illustrated by the fact I paid the 2019s and 2020s in full. On two of these occasions, I asked the personnel at the Treasurer's office to verify that all taxes were paid and they looked up the records and confirmed I was paying all the taxes that were due.

4. On October 13, 2016, I delivered the Affidavit attached as **Exhibit A** to the County's Department of Equalization informing them that both my daughter and I had an interest in the real property.

5. Also on October 13, 2016, I delivered the Affidavit attached as **Exhibit B** to the County's Department of Equalization disclosing my ownership interest as well as my daughter's ownership interest in the real property.

6. On October 13, 2016 the Deed attached as **Exhibit C** was recorded by the County Register of Deeds.

7. I was not provided notice of the foreclosure.

*Further, affiant sayeth not.*



Appendix 60a

DATED: July 26, 2022

s/ Robert Mick  
Robert Mick

STATE OF MICHIGAN    )  
                                  )ss  
COUNTY OF BENZIE    )

Subscribed to before me, a Notary Public, on this  
28<sup>th</sup> day of July 2022, by Robert Mick.

s/ H. Renee Tondur

[Notary Stamp]

No.

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In The  
**Supreme Court of the United States**

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CHELSEA KOETTER,

*Petitioner,*

v.

MANISTEE COUNTY TREASURER,

*Respondent.*

---

*On Petition For A Writ Of Certiorari  
To The Michigan Court Of Appeals*

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**CERTIFICATE OF COMPLIANCE**

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As required by Supreme Court Rule 33.1(h), I certify that the PETITION FOR A WRIT OF CERTIORARI contains 8,981 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 17, 2025.

s/ Christina M. Martin

CHRISTINA M. MARTIN

*Counsel of Record*

Pacific Legal Foundation

3100 Clarendon Blvd.

Suite 1000

Arlington, VA 22201

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CMartin@pacificallegal.org

*Counsel for Petitioner*

**AFFIDAVIT OF SERVICE**

SUPREME COURT OF THE UNITED STATES

No. \_\_\_\_

-----X  
CHELSEA KOETTER,

*Petitioner,*

*v.*

MANISTEE COUNTY TREASURER,

*Respondent.*

-----X  
STATE OF NEW YORK            )

COUNTY OF NEW YORK        )

I, Natasha S. Johnson, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

I am retained by Counsel of Record for *Petitioners*.

That on the 17th day of April, 2025, I served the within *Petition for a Writ of Certiorari* in the above-captioned matter upon:

***Counsel for Respondent:***

Lucas Middleton  
222 N Kalamazoo Mall, STE 100  
Kalamazoo, MI 49007  
(269) 585-1271  
[lucas@lvm-legal.com](mailto:lucas@lvm-legal.com)

***Served pursuant to 28 U.S.C. § 2403(b)***

Dana Nessel  
Attorney General  
Department of Attorney General  
P.O. Box 30212  
Lansing, MI 48909  
(517) 335-7622  
[miag@michigan.gov](mailto:miag@michigan.gov)

***Respondent (Plaintiff Below)***

Ann Culp  
15722 Harlan Rd.  
Copemish, MI 49625  
(231) 510-0715  
[Aculp8108@yahoo.com](mailto:Aculp8108@yahoo.com)

by sending three copies of same, addressed to each individual respectively, through U.S. Priority Mail, respectively. An electronic version was also served by email to each individual.

That on the same date as above, I sent to this Court forty copies of the within *Petition for a Writ of Certiorari* and three hundred dollar filing fee check through the Overnight Federal Express, postage prepaid. In addition, the brief has been submitted through the Court's electronic filing system.

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 17th day of April, 2025.



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Natasha S. Johnson

Sworn to and subscribed before me  
this 17th day of April, 2025.



**MARIANA BRAYLOVSKIY**  
Notary Public State of New York  
No. 01BR6004935  
Qualified in Richmond County  
Commission Expires March 30, 2026