No.

In the Supreme Court of the United States

FAYTIMA HOWARD,
Petitioner,
v.
MACOMB COUNTY,
Respondent.

On Petition For A Writ Of Certiorari To TheUnited States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Macomb County foreclosed and auctioned Faytima Howard's home to collect a property tax debt, receiving substantially more than she owed. The Takings Clause requires the government to pay for the excess property taken. *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 639 (2023). But the County kept all the proceeds because Howard did not comply with Michigan's unusual claims process that very few owners successfully navigate. *See* Mich. Comp. Laws § 211.78t. While *Knick v. Township of Scott*, 588 U.S. 180, 189 (2019), expressly permits takings claimants to pursue their cases in federal court without exhausting state procedures, the Sixth Circuit construed *Nelson v. City of New York*, 352 U.S. 103, 110 (1956), to mean that no taking occurred because Howard erred in complying with the state's administrative claims process.

1. Does the government violate the Takings Clause's "categorical duty" to pay just compensation for property taken in excess of the taxes, fees, and penalties, per *Tyler*, by enacting a procedure that leaves most former owners without their homes and without compensation?

2. To the extent that *Nelson v. City of New York* requires tax debtors to exhaust state remedies prior to bringing a constitutional takings challenge in federal court, should *Nelson* be overruled?

These questions also are presented in *Beeman v. Muskegon County Treasurer*, No. 24-858; *Koetter v. Manistee County Treasurer*, No. 24-1095; and *McGee v. Alger County Treasurer*, No. 25-203.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Faytima Howard was the plaintiff-appellant in the proceedings below.

Respondent Macomb County, Michigan, was the defendant-appellee in the proceedings below.

STATEMENT OF RELATED CASES

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

Howard v. Macomb County, No. 24-1665 (6th Cir. Mar. 28, 2025)

Howard v. Macomb County, No. 1:23-cv-12595 (E.D. Mich. Aug. 6, 2024)

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PETITION FOR A WRIT OF CERTIORARI

The government violates the Takings Clause when it confiscates more property than necessary to collect delinquent property taxes, penalties, interest, and fees. *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 639 (2023). Most states sell tax-delinquent property, collect what is owed, and then automatically remit surplus proceeds or provide a simple and lenient procedure for owners to recover the surplus. But five states feign compliance with *Tyler*, regularly taking more than what is owed by requiring owners to meet premature, pre-sale deadlines to claim surplus proceeds.[1] When owners do not strictly comply with these uniquely demanding claims statutes, the government confiscates the entire property, no matter how large the proceeds or small the tax debt. For most owners in these five states, *Tyler*'s promise remains unfulfilled.

Michigan runs at the head of the pack. That state's courts uniformly refuse to hear takings lawsuits for just compensation if former tax debtors fail to strictly comply with its notice-of-claim statute. *In re Muskegon Cnty. Treasurer for Foreclosure*, 348 Mich. App. 678 (2023), *petition for writ of certiorari pending sub nom. Beeman v. Muskegon Cnty. Treasurer*, No. 24-858 (U.S.); *see also Koetter v. Manistee Cnty. Treasurer*, No. 24-1095 (U.S.); *McGee v. Alger Cnty. Treasurer*, No. 25-203 (U.S.). With the Sixth Circuit's decision below in this case, federal courts also refuse to consider former tax debtors' takings claims, leaving them homeless, without their surplus

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[1] *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).

proceeds, and without any possibility of judicial review in federal or state court.

Here, Faytima Howard suffered successive losses. First, the suburban home that she shared with her daughter and grandson was severely damaged by fire, displacing the family. When the insurance company balked at paying for necessary repairs, Howard's financial distress caused her to fall behind on her property taxes. Ultimately, Macomb County foreclosed on the home and auctioned it for $499,007 on September 6, 2023 (after this Court decided *Tyler*). App. 3a. Because Howard did not comply with the claims statute, the County kept hundreds of thousands of dollars in proceeds for itself, an amount that greatly exceeded Howard's tax debt and related costs.

Howard filed her takings complaint, a proposed class action under 42 U.S.C. § 1983 and other statutes, against the County in federal court. App. 52a.

Although takings claimants proceeding under Section 1983 are *not* required to exhaust state remedies, *Knick v. Township of Scott*, 588 U.S. 180, 189 (2019); *Felder v. Casey*, 487 U.S. 131, 142 (1988), the County argued that Howard "does not have a takings claim under the Fifth or Fourteenth Amendments because PA 256 [Michigan's claim statute] provides a procedure to recover surplus proceeds from a tax foreclosure sale." App. 22a. The district court, adopting the County's position, relied entirely on *Nelson v. City of New York,* 352 U.S. 103, 110 (1956), where this Court rejected a takings claim by a former owner of property seized to satisfy a tax debt because the owners missed a brief opportunity during the foreclosure action to request surplus proceeds from a future sale. App. 26a (Under *Nelson*, "if the government provides a remedy—that is,

a process for that person to seek compensation—the government does not unconstitutionally take.").

The Sixth Circuit agreed, holding that *Nelson* controls the result. App. 6a, 11a ("unlike the state laws at issue in *Knick*, 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."). Thousands of Michiganders have thus far been deprived of their just compensation for failing to comply with the state's claim process and barred from seeking relief in both federal and state courts, solely because of this Court's decision in *Nelson*.

To the extent that *Nelson*'s statements on the Takings Clause are not deemed *dicta*, Howard asks the Court to overturn it. *Nelson*'s takings language conflicts with this Court's takings decisions holding that the government has an affirmative, "categorical duty" to pay owners just compensation, *Horne v. Department of Agriculture*, 576 U.S. 350, 358 (2015), with "reasonable, certain, and adequate" procedures for remittance. *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 659 (1890); *see also Monongahela Nav. Co. v. United States*, 148 U.S. 312, 325 (1893) (the power to take private property is "inseparably connected" to the required payment of just compensation as to be "parts of one and the same principle."). *Nelson* also cannot be squared with this Court's rejection of exhaustion requirements for takings claims brought pursuant to 42 U.S.C. § 1983 in *Knick*, 588 U.S. at 189, or the holding in *Felder*, 487 U.S. at 142, that government cannot impose notice of claim requirements to deny constitutional claims raised via 42 U.S.C. § 1983.

This Court should grant the Petition to clarify that *the government* bears the burden of remitting just

compensation to a known owner. The Eleventh Circuit, in conflict with the Sixth Circuit below, recently explained that, unlike other types of citizen claims against the government, "[t]he Takings Clause guarantees a legal damages-type remedy, and it is 'self-executing'. These characteristics . . . make the Takings Clause a constitutional unicorn—no other constitutional guarantee expressly contains these two features." *Fulton v. Fulton Cnty. Bd. of Comm'rs*, 148 F.4th 1224, 1240 (11th Cir. 2025). *See also Chicago, B&Q Ry. Co. v. People of State of Ill.*, 200 U.S. 561, 593 (1906) (government that takes property "must obey the constitutional injunction to make or secure just compensation to the owner."). The government's "categorical duty" to remit just compensation cannot be conditioned on an owner's successful completion of bureaucratic hurdles. *See Fulton*, 148 F.4th at 1242 ("[I]f a legislative substitute for 'just compensation' is not coextensive with the constitutionally prescribed remedy of 'just compensation,' then the constitutionally prescribed remedy remains directly available."). *Nelson*'s approval of such hurdles is irreconcileable with takings jurisprudence.

This Court should grant the Petition to hold that a state statute cannot impose burdens on property owners that effectively restrict or undermine government's unqualified obligation to pay just compensation for a taking.

OPINIONS BELOW

The decision below (App. 1a-17a) is published at 133 F.4th 566 (6th Cir. 2025). The district court's opinion dismissing the claims raised here (App. 18a-28a) is unpublished but available at 2024 WL 3680996 (E.D.

Mich. Aug. 6, 2024). The Sixth Circuit's order denying rehearing is at App. 29a.

JURISDICTION

On March 28, 2025, the Sixth Circuit Court of Appeals issued the decision at issue here. App. 1a. On May 19, 2025, the court denied a timely petition for rehearing and rehearing en banc. App. 29a. Justice Kavanaugh granted a motion extending the time to file this Petition to October 16, 2025. 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. § 1254.

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. 30a-51a.

STATEMENT OF THE CASE

A. Michigan's claim statute

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. 6a. As relevant here, tax foreclosures occur in February or March each year. MCL § 211.78t.[2] If a tax debt is not paid and the County does not agree to a payment plan with the owner by March 31, the foreclosing government unit (here, the County) obtains fee simple title. MCL §§ 211.78k(5)(b), 211.78g(1). 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. 10a.

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

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[2] The Sixth Circuit described this process as "forfeiture." App. 3a. Under MCL § 211.78, "forfeited" or "forfeiture" means a foreclosing governmental unit may seek a judgment of foreclosure if the property is not redeemed, but the government "does not acquire a right to possession or any other interest in the property." That is, "'[f]orfeiture' simply permits defendants to seek a judgment of foreclosure." *Rafaeli, LLC*, 505 Mich. at 448.

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); App. 10a.

Once owners file a motion, the government approves or disapproves the disbursement. MCL § 211.78t(5). 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 former owners 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 (MCL § 211.78m(8)) that the statute authorizes the county to keep. *See* MCL § 211.78t(12)(b).

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 statute cuts off the owner's right to any future claim or constitutional challenge and the government keeps the windfall of the owner's equity.

B. Macomb County's confiscation of Howard's property

Faytima Howard (f/k/a Faytima Leak) owned a suburban home where she, her daughter, and her grandson resided at 19790 Westchester Drive in Clinton Township, Michigan. App. 19a. After a fire significantly

damaged ther home, and she encountered subsequent difficulties obtaining money for repairs from her insurance company,[3] Howard fell behind on her property taxes of approximately $10,000. App. 64a, 84a. Macomb County obtained a foreclosure judgment against the property on February 4, 2022. App. 78a, 84a. Howard maintained title for another year, however, by entering into a payment plan with the County. *See* MCL 211.78q(1). On February 3, 2023, the County obtained another foreclosure judgment, at which point Howard owed $16,719 in property taxes for 2019 and 2020 (totalling $25,256, including interest and fees).[4] App. 77a. The County extended the redemption period pursuant to a payment plan.[5] App. 68a. When Howard missed payments, the County cancelled the plan. *Ibid.* On June 16, 2023, the County mailed a notice to Howard that the County cancelled the payment plan and that she must file Form 5743 by July 1, 2023, to claim any remaining proceeds from sale of

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[3] The repairs have yet to be completed. https://tinyurl.com/33mpumtp (visited Oct. 1, 2025) (describing unfinished interior, with photographs).

[4] The February 3, 2023, foreclosure judgment against Howard (then called Faytima Leak) is available at the Macomb County website, Tax Foreclosure Pleadings at 224 (filed Feb. 3, 2023), https://tinyurl.com/4256xb2a.

[5] This information was presented by Macomb County during oral argument at the Sixth Circuit and is consistent with Petitioner's understanding of events. Relevant excerpts of that argument are presented in the appendix, and may be considered by this Court. *See United States v. Zolin*, 491 U.S. 554, 567 n.10 (1989) (noting transcript of hearing as part of the record); *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 45 & 45 n.8 (1961) (transcript is part of the "entire record"); *Hughes v. United States*, 72 S. Ct. 163 (1951) (mem.) (refusing to strike transcripts of oral argument from the proffered record).

the property. App. 68a. One week later, on June 23, 2023, the County took title to Howard's home. One week after that came the July 1, 2023 deadline to serve Form 5743, the notice of intent to claim the surplus proceeds. App. 10a. Howard did not submit the form. On September 6, 2023, the County sold Howard's home at a public auction[6] for $499,007, an amount that greatly exceeded the tax debt and related costs.[7] App. 4a.

The County kept the entire amount.

C. The Sixth Circuit permits confiscation of Howard's property based on *Nelson v. City of New York*

Shortly after the foreclosure sale, Howard filed a civil rights complaint in the District Court for the Eastern District of Michigan. App. 52a. She alleged a takings claim under the Fifth and Fourteenth Amendments, brought via 42 U.S.C. § 1983, asserting that the County violated her right to just compensation by confiscating her surplus proceeds pursuant to the state claim statute, MCL § 211.78t. App. 59a. She made a similar "inverse condemnation" claim under state law. App.

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[6] Macomb County outsources its auction proceedings to Zeus Auction, an online platform. *See* Macomb County Treasurer, *Auction Rules and Regulations* (Sep. 16, 2024), https://tinyurl.com/4czcrvfs.

[7] The County disputes the final sale amount but concedes that it sold for significantly more than the tax debt. *See* App. 68a (guessing Howard lost around $60,000 more than her total debts on the property); App. 65a (County's attorney states the property sold for "275," which Petitioner construes as $275,000 based on context and the city tax assessor's publicly available records that list the sale price as $275,001); *see* Clinton Township Tax Assessment Records, https://tinyurl.com/wtxpjsdh.

60a.[8] The district court dismissed her case, holding that there was no taking because she failed to comply with the state claim statute. App. 26a.

The Sixth Circuit affirmed based largely on language in *Nelson v. City of New York*, 352 U.S. 103 (1956). App. 10a-11a. *Nelson* suggested that an owner loses the right to be paid for the surplus value of property taken to pay a debt if he misses a brief opportunity during a foreclosure action to preserve that right. Although *Tyler* distinguished *Nelson* ("Unlike in *Nelson*, Minnesota's scheme provides no opportunity for the taxpayer to recover the excess value"), 598 U.S. at 644, the Sixth Circuit construed *Nelson* as affirmed by *Tyler* and binding: "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." App. 7a (quoting *Tyler*).

The Sixth Circuit also examined historical procedures for returning surplus proceeds. Those examples gave owners years after the sale to recover the surplus proceeds.[9] App. 8a-9a. Yet Michigan's statute

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[8] Unlike *Beeman v. Muskegon County Treasurer*, No. 24-858, *Koetter v. Manistee County Treasurer*, No. 24-1095, and *McGee v. Alger County Treasurer*, No. 25-203, Howard did not raise a due process challenge to the statute. App. 13a (Sixth Circuit noting that she "should have" done so).

[9] The court inaccurately described two statutes as giving a short claim opportunity. The 1866 Minnesota mortgage foreclosure law provided that even if the former owner failed to claim within three months, "the district judge may direct the same to be put out at interest . . . for the benefit of the defendant, his representatives or assigns, to be paid to them." Minn. Gen. Stat. of 1866, ch. 81, tit. II, § 35 (1867); *see also* Minn. Gen. Stat. of 1878, ch. 81, tit. II, § 35 (same). Other Minnesota laws from

requires owners to navigate the process and make the initial claim with the County *before the sale* and then make a second claim in court after the sale. Nonetheless, the court held there was no taking because Howard failed to comply with Michigan's statutory claim process.

The court denied Howard's petition seeking rehearing or rehearing en banc on May 19, 2025.

REASONS FOR GRANTING THE PETITION

I. The Court Should Settle Whether the Government May Avoid Its Categorical Duty to Pay Just Compensation by Burdening Owners with an Unreasonable and "Exclusive" Claims Process

Under the Fifth Amendment's Takings Clause, the government has a "categorical duty" to pay just compensation when it takes private property for a public use. *Horne*, 576 U.S. at 358; *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 323 (2002). The government satisfies its categorical duty to pay for taking private property only

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that time—including tax sale laws—put *no deadline* on owners to recover their money. *See, e.g*, General Laws of Minn., Ch. XII, § 6 (1867); General Laws of Minn., Ch. IV, § 3 (1862); General Laws of Minn., Ch. VI (1864). The cited 1881 Washington statute only required owners to "file with the [state court] clerk a waiver of all objections" to "the sale" in order to *accelerate* the return of surplus proceeds. The same statute provides 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 Wash. § 367.5 (1881) (emphasis added).

with a "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).

The categorical duty to pay just compensation applies when the government seizes private property to pay a tax debt. *Tyler*, 598 U.S. at 639. While the government "ha[s] the power" to sell property to recover unpaid property taxes, it violates the Takings Clause if the government "confiscate[s] more property than was due." *Ibid.* The government must pay for any excess property taken. *Ibid.*

After *Tyler*, most states using confiscatory tax foreclosures revised their statutes to resemble other debt collection laws—giving owners a reasonable period after the sale of seized property to recover any proceeds remaining after the debts are paid.[10] Indeed, most states already *automatically* remitted surplus proceeds to owners[11] or gave them years after sale to recover their

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[10] *See, e.g.*, 2024 Colo. Legis. Serv. Ch. 165 (H.B. 24-1056); 36 Me. Rev. Stat. Ann. § 943-C; 2024 Mass. Legis. Serv. Ch. 140 §§ 80, 93 (H.B. 4800); 2023 Neb. Laws L.B. 727; 2024 Ohio Laws File 81 (Am. Sub. H.B. 315); 2025 Or. House Bill No. 2089 § 9; 2024 S.D. Laws Ch. 38 (HB 1090).

[11] *See, e.g.*, Del. Code Ann. tit. 9, § 8779; Ga. Code Ann. §§ 48-4-5, -81(f) (court "shall" distribute funds if a judicial foreclosure; if administrative foreclosure, then at least five years to claim surplus); Idaho Code § 31-808(2)(c); Kan. Stat. Ann. § 79-2803; Ky. Rev. Stat. Ann. §§ 426.500, 91.517 (depending on local entity, either the money "shall" be paid to owner, or owners have two years to apply); Md. Code Ann., Tax-Prop. § 14-818; Mont. Code Ann. § 15-18-221; N.C. Gen. Stat. §§ 105-374(q)(6), 105-375(i), 1-339.70; Vt. Stat. Ann. tit. 32, § 5061(b); Wis. Stat. § 75.36(2m)(b).

money.[12] But Alabama, Arizona, Michigan, New Jersey, and New York rely on *Nelson* to give owners an unusual and short claim window that occurs before the sale and long before the money is available to collect. *Supra* n.1. In other words, they require owners to claim just compensation *before* the taking. *Cf. Jackson v. Southfield Neighborhood Revitalization Initiative*, No. 166320, __ Mich. ___, 2025 WL 1959046, at *5 (Mich. July 16, 2025) ("Where a public foreclosure sale occurs, the government commits a taking only if it retains any surplus proceeds received from the sale of the property."); *id.* at *14 (Welch, J., concurring) ("a taking [that] occurs only as to excess proceeds []would not be possible if the takings claim occurred as soon as a tax-foreclosure judgment becomes final. This is because the 'excess proceeds' are not determined until after the judgment of foreclosure is issued.").

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[12] *See, e.g.*, Ark. Code Ann. § 26-37-205(b) (two years to claim); Conn. Gen. Stat. § 12-157(f) (ninety days before being treated as unclaimed property, which is held indefinitely for the owner); Fla. Stat. § 197.582 (120 days to make claim before money is treated as unclaimed property, held for the owner); Haw. Cnty. Code § 19-45 (two years to claim); Ind. Code § 6-1.1-24-7(c), (e)(2) (three years); Miss. Code Ann. § 27-41-77 (two years); Mo. Rev. Stat. § 140.230(2) (ordinarily one to three years); N.M. Stat. Ann. § 7-38-71(A)-(C) (two years and then treated as unclaimed property, held for the owner); Ohio Rev. Code Ann. § 5721.20 (three years); 72 Pa. Cons. Stat. § 5860.205(f) (three years); S.C. Code Ann. § 12-51-130 (five years); Tenn. Code Ann. § 67-5-2702 (court orders payment to former owner and unclaimed money is held by state unclaimed property fund for benefit of owner); Tex. Tax Code § 34.03(a)(2) (two years); Utah Code Ann. § 59-2-1351.1(7) (held indefinitely for owner as unclaimed property for owner); Va. Code Ann. §§ 58.1-3967, -3970 (two years, but local government may allow longer); Wash. Rev. Code § 84.64.080(10) (three years); W. Va. Code § 11A-3-65 (two years); Wyo. Stat. Ann. § 39-13-108(d)(iv)(C) (two years or longer).

The result is predictable: all but the most sophisticated owners miss this counterintuitive deadline. In Michigan, the claim statute has stopped around 95% of owners—100% in some counties—from collecting the surplus proceeds from the sale of their foreclosed properties.[13] State records document a widespread problem as counties confiscate millions of dollars. The most recent report of tax foreclosure sales (2022) reveals that thirty Michigan counties remitted *not one penny* of surplus proceeds to former owners, while retaining windfalls for themselves. Typical examples are Branch County, which confiscated $337,397.87; Clinton County, which kept $209,809.90; and Livingston County, which kept $290,453.13. Some counties confiscated much more, such as Barry County, which remitted nothing and kept $993,750.34, and Oakland County which remitted $991,021 and kept $2,592,366.[14] Respondent Macomb County remitted $39,855 and kept $1,067,130, according to the report. *Supra* n.14 at 47. Compounding the injustice, those who lose their property to tax foreclosure tend to be vulnerable and more likely to be elderly or ill. *Kidd v. Pappas*, No. 22 C 7061, 2025 WL 1865983 (N.D. Ill. July 7, 2025) (class members who lost property to tax

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[13] 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*, https://tinyurl.com/yhfuhkdm (visited Oct. 8, 2025).

[14] Mich. Dep't of Treasury, *Foreclosing Governmental Unit Report of Real Property Foreclosure Sales* (compilation of county reports of 2022 foreclosures), https://tinyurl.com/3hxkxtuy (visited Oct. 8, 2025). Counties submit these reports pursuant to MCL § 211.78m(8)(i). The amount remitted to former owners is recorded in column xi and the amount kept by the county in column xii.

foreclosure were overwhelmingly "not sophisticated parties" and can't afford to hire a lawyer); *Wayside Church v. Van Buren Cnty.*, Nos. 24-1598, 24-1676, 2025 WL 2829601, at *12 (6th Cir. Oct. 6, 2025) (Kethledge, J., concurring) (Michigan counties, with "complete lack of remorse," "exploited" legal traps to "prey upon" many "lower-income or elderly" former homeowners, with "catastrophic" results).

This Court's decision in *Nelson* is the reason why federal and state courts authorize these confiscations, even though they violate the government's categorical duty to pay for what it takes with a reasonable, certain, and adequate process, the modern and traditional duty of debt collectors, and the traditional rule against accidental waiver of constitutional rights.

A. *Nelson v. City of New York*

In *Nelson*, the property owners failed to pay their water bills on two properties because of a bookkeeper's misconduct. *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. The owners later moved to vacate the judgment, arguing violations of procedural due process and equal protection. *Id.* at 106, 109. *Nelson* rejected these claims, holding "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." *Id.* at 108.

The Court also addressed the petitioners' belated argument that the City took property without just

compensation.[15] *Id.* at 109. "New York City's ordinance . . . permitted the owner to recover the surplus but required that the owner have 'filed a timely answer in [the] foreclosure proceeding, asserting his property had a value substantially exceeding the tax due.'" *Tyler*, 598 U.S. at 644 (quoting *Nelson*, 352 U.S. at 110). Because the owners "did not take advantage of this procedure," *Nelson* says, "they forfeited their right to the surplus." *Tyler*, 598 U.S. at 644; *see Nelson*, 352 U.S. at 110. To protect their property right in the excess value of the property, the owners would have had to stake their claim *before foreclosure and before there was any money to claim*. *Ibid.* Because the owners missed that narrow window, *Nelson* states there was no taking. *Ibid.*

Thus, *Nelson* apparently endorsed New York City's claim exhaustion requirement and established a principle that a valid takings claim can be extinguished if an owner fails to pursue even the narrowest state remedy. *Tyler* "readily distinguished" *Nelson*. *Tyler*, 598 U.S. at 643. A case is distinguished "to minimize

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[15] These comments should be considered *dicta* because the takings claim was raised solely in a reply brief before this Court (*see Nelson*, 352 U.S. at 110 (noting "belated" takings argument)); it was neither pressed nor passed upon in the lower court; and was unnecessary to resolution of the questions presented. *Magruder v. Drury*, 235 U.S. 106, 113 (1914); *United States v. Williams*, 504 U.S. 36, 41 (1992). The Court is also wary of "endow[ing] a fleeting statement with lasting significance," *Wilkins v. United States*, 598 U.S. 152, 161 (2023), particularly when that statement operates to bar litigants from court. *Id.* at 165. As Justice Scalia noted, "*dicta*, 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 plainly evident here.

the case's precedential effect or to show that it is inapplicable." *Distinguish*, Black's Law Dictionary (11th ed. 2019). *Tyler* avoided the question presented here: whether *Nelson* is binding and, if so, whether it should be overturned.

B. *Nelson* cannot be reconciled with the duty to pay just compensation

This Court has repeatedly expressed the principle that just compensation *must* be paid for a taking of property, stressing in different ways the *mandatory* nature of the constitutional obligation. *See, e.g.*, *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021) ("the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation."); *Horne*, 576 U.S. at 358 ("The Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home."); *Tahoe-Sierra*, 535 U.S. at 323 ("When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner"); *Brown v. Legal Found. of Washington*, 538 U.S. 216, 233 (2003) (same); *Koontz v. St. Johns River Mgmt. Dist.*, 570 U.S. 595, 613 (2013) (government "must pay just compensation" when it takes money); *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005) ("where government requires an owner to suffer a permanent physical invasion of her property—however minor—it must provide just compensation"); *United States v. Carmack*, 329 U.S. 230, 242 (1946) (noting "obligation to pay just compensation").

The government's obligation to compensate within a reasonable time after it takes property is not an "empty formality, subject to modification at the government's

pleasure." *Cedar Point*, 594 U.S. at 158. As Justice Brennan explained, "the just compensation requirement in the Fifth Amendment is not precatory: once there is a 'taking,' compensation *must* be awarded." *San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621, 654 (1981) (Brennan, J., dissenting). *Cf. Cont'l Oil Co. v. Bonanza Corp.*, 706 F.2d 1365, 1372 (5th Cir. 1983) (defining "categorical duty" as one that incurs criminal or civil penalties if not done). This has long been the rule and no state law can undermine it. "The just compensation clause may not be evaded or impaired by any form of legislation." *Baltimore & Ohio R.R. Co. v. United States*, 298 U.S. 349, 368 (1936). "It does not rest with the public, taking the property, through . . . the legislature, . . . to say what shall be the rule of compensation. The constitution has declared that just compensation *shall* be paid . . . ." *Monongahela Nav. Co.*, 148 U.S. at 327 (emphasis added).[16] This Court explained in *Jacobs v. United States*, 290 U.S. 13, 16 (1933), that "the form of the [just compensation] remedy did not qualify the right. It rested upon the Fifth Amendment. Statutory recognition was not necessary. A promise to pay was not necessary. Such a promise was implied because of the duty to pay imposed by the Amendment." The government's obligation to pay just compensation is "comprehensive," entitling owners to interest payments even when interest is not explicitly commanded by statute. *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 306 (1923).

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[16] The nature of a categorical duty is one that "shall" be done. *Lawson v. United States*, 124 F.3d 198, 1997 WL 530540, *3 (6th Cir. 1997). "Shall" is a mandatory command. *Bufkin v. Collins*, 604 U.S. 369, 379 (2025). And that command appears in the Fifth Amendment itself: "nor shall private property be taken for a public use, without just compensation."

The government thus secures its obligation to pay just compensation by pledging its full faith and credit. *Chicago, B&Q Ry. Co.*, 200 U.S. at 593 ("secure"); *Joslin Mfg. Co. v. City of Providence*, 262 U.S. 668, 677 (1923) (pledge "public faith and credit"); *Sweet v. Rechel*, 159 U.S. 380, 401 (1895) (same).[17] "Secure means "to assure of payment" and "make certain the payment of a debt or discharge of an obligation." *N.Y. and Presbyterian Hosp. v. United States*, 881 F.3d 877, 885 (Fed. Cir. 2018) (citations omitted); *Elzea v. Nat'l Bank of Ga.*, 570 F.2d 1248, 1250 n.6 (5th Cir. 1978) ("secure" means "to guarantee or make certain the payment of a debt or discharge of an obligation."). To pledge the faith of a government "means, of course, that payment shall be made. . . ." *Kankakee Cnty. v. Aetna Life Ins. Co.*, 106 U.S. 668, 670 (1883). In short, a state's "full faith and credit" "*guarantees*" payment of legal obligations. *Williams v. Dallas Area Rapid Transit*, 242 F.3d 315, 320 (5th Cir. 2001) (emphasis added); *see also Md. Indus. Dev. Fin. Auth. v. Meadow-Croft*, 243 Md. 515, 522 (1966) ("The generally accepted meaning of a pledge of the faith and credit of a political entity is that the governmental body is *unconditionally liable* for the payment of the debt, if sufficient money is not otherwise made available.") (emphasis added). As Justice Harlan phrased it, the constitutional obligation to pay just compensation is a "covenant between the government

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[17] *See State v. City of Lakeland*, 154 Fla. 137, 139 (1944) (pledge of faith "express[es] an undertaking by the city to be irrevocably obligated, in good faith, to use such of its resources and taxing power as may be authorized or required by law for the full and prompt payment of the principal and interest of the obligation as it becomes due"). The purpose of pledging full faith and credit is to minimize the intended recipient's risk of loss. *Rockford Life Ins. Co. v. Ill. Dep't of Revenue*, 482 U.S. 182, 184-85 (1987).

and every citizen whose property is appropriated by it for public use." *Schillinger v. United States*, 155 U.S. 163, 177 (1894) (Harlan, J., dissenting); *see also State v. Beackmo*, 8 Blackf. 246, 250 (Ind. 1846) (payment of just compensation is a "sacred obligation" to be "carefully guarded and most scrupulously observed"). For this reason, some courts describe the actual payment of just compensation as a "ministerial, non-discretionary duty." *Watson Mem. Spiritual Temple of Christ v. Korban*, 387 So.3d 499, 512 (La. 2024).

There is no plausible debt collection exception to the government's categorical duty to pay just compensation. *See Tyler*, 598 U.S. at 639-40. Quite the opposite. For centuries, the law has imposed on debt collectors a duty to fairly sell confiscated property and refund any surplus. *See, e.g.*, 2 Blackstone, *Commentaries on the Laws of England* 453 (1768) ("bound by an implied contract in law . . . when sold, to render back the overplus."); *Cocks v. Izard*, 74 U.S. 559, 562 (1868); *United States v. Taylor*, 104 U.S. 216, 221-22 (1881) (the government had a duty to hold surplus proceeds "indefinite[ly]" as "trustee" for the taxpayer); *Slater v. Maxwell*, 73 U.S. 268, 276 (1867) (duty to fairly sell property); *People ex rel. Seaman v. Hammond*, 1 Doug. 276, 280-81 (Mich. 1844) (owner is "at all times" entitled to receive surplus funds); *McDuffee v. Collins*, 117 Ala. 487, 492 (1898) (tax collector bore the "duty of seeking the owner and paying him the balance" or holding it in trust); *Bogie v. Town of Barnet*, 129 Vt. 46, 52 (1970) (government "must suffer the restraints of fiduciary duty" when selling property to collect taxes).

In none of these cases does the burden shift from the government to citizens defending their property rights. Instead, the unbroken line of cases from early in the nation's history until the current decade highlights the

requirement that compensation be paid for a taking. *Nelson* is an aberration that unaccountably shifts the covenantal obligation of government to pay just compensation to the former property owners to comply with any claims process that self-interested states may devise.

C. Michigan's statute cannot be reconciled with the duty to pay just compensation

To conform to the requirements of the Takings Clause, just compensation and the process to provide it must be "reasonable, certain, and adequate." *Cherokee Nation*, 135 U.S. at 659; *Sage v. Brooklyn*, 89 N.Y. 189, 195 (1882) (process must be "sure, sufficient and convenient"); *State Hwy. Comm'r v. Kreger*, 128 Va. 203, 212-13 (1920) (valid statute ensures an owner will "receive with reasonable certainty and without unnecessary or unreasonable delay the just compensation to which he is entitled"). Courts historically forbid government from shifting the government's "categorical duty" to pay onto the person whose property was taken. In a takings case, "[i]t is not incumbent upon [the owner] to demand that the authorities shall respect his rights; the duty is [the government's] to work no unlawful invasion of them." *Bigelow v. Ballerino*, 111 Cal. 559, 564-65 (1896). *See also Kelly v. Okla. Tpk. Auth.*, 269 P.2d 359, 363 (Okla. 1954) ("[T]he owner has an absolute right to the condemnation money, and the condemnor has neither right nor authority to impose any condition or obligation upon the owner's right."), citing Nichols on Eminent Domain, Vol. 3, Sec. 8.3 (3d ed. 1964); *Haverhill Bridge Proprietors v. Essex Cnty. Comm'rs*, 103 Mass. 120, 124-25 (1869) (rejecting government's effort to make procedural opportunities a stand-in for reasonable compensation).

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 owners can't be found or fail to demand the money within one year, the State of Michigan holds it "indefinitely" for them. *See O'Connor v. Eubanks*, 83 F.4th 1018, 1021 (6th Cir. 2023) (describing how unclaimed money statute requires holding property for the owner indefinitely); MCL §§ 567.224, 567.234 (money held for an owner by a court but not claimed within one year is administered pursuant to unclaimed money statute). And 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 Howard must act within ninety-two days of foreclosure—weeks before the sale and before the taking is complete under *Rafaeli*, 505 Mich. at 474—to preserve their inchoate, future right to collect any just compensation.[18] This is long before most owners realize what is happening, as reflected in the overwhelming failure rate. And the government still confiscates just compensation owed to those few owners who timely submit the notarized form but fail to perfectly comply with every requirement, like the type

[18] Howard herself was given a grand total of two weeks to submit the notarized form after the County cancelled her payment plan. App. 10a, 68a.

of mail used. *See In re Alger Cnty. Treasurer for Foreclosure*, Nos. 363803, 363804, 2024 WL 4174925, at *4 (Mich. Ct. App. Sep. 12, 2024) (owner's claim denied for sending Form 5743 via trackable Priority Mail Express instead of return receipt requested), *petition pending sub nom. McGee v. Alger Cnty. Treasurer*, No. 25-203 (U.S.); MCL § 211.78t(4); Billy Binion, *She Underpaid a Property Tax Bill. So the Government Seized Her Home, Sold It—and Kept the $102,636 Profit*, Reason Magazine (July 26, 2024) (describing MCL § 211.78t as a "byzantine debt collection statute that sends homeowners on a wild goose chase should they want to get their equity back").[19] Government cannot "make[] an exception only for itself" to avoid paying just compensation. *Tyler*, 598 U.S. at 645.

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 allows counties to retain interest earned on the principal for the year the county holds the money, MCL § 211.78t(12)(b), instead of remitting it to owners, contrary to the Just Compensation Clause. *United States v. Thayer-West Point Hotel Co.*, 329 U.S. 585, 588 (1947) (federal statute prohibiting recovery of interest on unpaid claims could not apply in condemnation actions because the Fifth Amendment entitles a property owner to receive, as part of just compensation, interest from the date of the taking to the date of payment).[20] Additionally, the counties take five

[19] https://tinyurl.com/ytnxwa7z.

[20] Despite statutory authority to keep interest on foreclosure proceeds, MCL § 211.78t(12)(b), Macomb County states that it voluntarily allows those few individuals who successfully claim surplus proceeds to recover the interest on their principal. App.

percent of the sale price, on top of all taxes, penalties, interest, fees, and expenses, even if the county purchased the property. MCL § 211.78m(16)(c). The statute calls this five percent deduction a "commission," but the real estate agent's fee is already deducted under MCL § 211.78m(16)(c). Moreover, Macomb County, like most Michigan counties, contracts with a private company to administer the statute.[21] Hence, owners who successfully navigate the statute recover at most only ninety-five percent of surplus proceeds and may be deprived of the accrued interest. *Cf. Phillips v. Washington Legal Found.*, 524 U.S. 156, 170 (1998) ("The government may not seize rents received by the owner of a building simply because it can prove that the costs incurred in collecting the rents exceed the amount collected."). This is not just compensation. "'[J]ust compensation' means the full monetary equivalent of the property taken." *United States v. Reynolds*, 397 U.S. 14, 16 (1970).

65a-66a (Macomb County counsel's assertion before the Sixth Circuit).

[21]Macomb County and one other Michigan county outsource the auctions to SRI Services, which uses the Zeus online auction platform. *See supra* n.6. Most Michigan counties outsource the notice and auction tasks to Title Check, a company that charges buyers a ten percent commission. *See Garcia v. Title Check, LLC*, No. 22-1574, 2023 WL 2787298, at *1 (6th Cir. Apr. 5, 2023).

II. The Court Should Resolve the Conflict Between *Nelson*'s Exhaustion Requirement and the Court's Disavowal of Exhaustion Requirements in Other Takings Cases

An owner who is denied just compensation for a taking may bring a constitutional takings claim in federal or state court without first exhausting state administrative or judicial remedies. *Knick*, 588 U.S. at 189; *Felder*, 487 U.S. at 142. But several federal and state courts, including the court below, construe *Nelson* to mean that owners must exhaust a state claim process for just compensation after a tax foreclosure—even though the process itself *always* results in less than just compensation. These courts allow the government to use procedural hurdles to evade its duty to pay just compensation. Other jurisdictions hold fast to *Knick* and *Felder*, creating a split of authority. This Court should grant review to settle the conflict.

A. Takings decisions that rely on *Nelson* conflict with this Court's holdings in *Knick* and *Felder*

Nelson's reasoning is most analogous to *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194 (1985). The Court in *Williamson County* held 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." *Ibid.* Unless the claimant sought and was denied such compensation in a state court action, there was no ripened federal taking. *Id.* at 194-96. But *Williamson County* proved unworkable and unjust, often barring takings claims from both federal and state courts. *See Knick*, 588 U.S. at 185.

That is largely why this Court overruled *Williamson County*, holding instead that as soon as "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." *Knick*, 588 U.S. at 189. *Knick* restored the traditional understanding that merely offering a process is not the same as timely paying just compensation. *See Wilson v. Hawaii*, 145 S. Ct. 18, 20 (2024) (Thomas, J., statement on denial of cert.) ("[T]he availability of state-law compensation remedies cannot delay or undo the accrual of a takings claim.") (citing *Knick*, 588 U.S. at 193-94). In short, "a property owner acquires an *irrevocable* right to just compensation immediately upon a taking." *Knick*, 588 U.S. at 192 (citing *First English Evangelical Lutheran Church of Glendale v. Los Angeles Cnty.* 482 U.S. 304, 315, 318 (1987) (emphasis added).

Knick realigned this Court's takings jurisprudence with principles expressed in *Patsy v. Board of Regents of Florida*, 457 U.S. 496 (1982), and *Felder*, 487 U.S. at 142, which held that plaintiffs need not exhaust state administrative remedies before asserting civil rights claims under Section 1983. In *Felder*, a Wisconsin statute required arrestees 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 "minimize governmental liability" and stood out "rather starkly, from rules uniformly applicable to all suits." *Id.* at 145. The notice-of-claim statute imposed an "exhaustion requirement on persons who choose to assert their federal right in state courts," *id.* at 146, and therefore Section 1983 preempted it. *Id.* at 149 (noting congressional intent to provide judicial fora for constitutional claims).

Wisconsin's notice-of-claim statute did not involve lengthy or expensive administrative proceedings. Still, it forced claimants "to seek satisfaction from those alleged to have caused the injury in the first place." *Ibid.* The Court held that failure to follow the claim statute could not bar relief for the federal constitutional claim brought in Wisconsin state court. *Ibid.*[22] That holding was consistent with this Court's precedents that "[p]eculiarities of local law may not gnaw at rights rooted in federal legislation." *S. Buffalo Ry. Co. v. Ahern*, 344 U.S. 367, 372 (1953). *See also Brown v. Western Ry. of Ala.*, 338 U.S. 294, 299 (1949) (this Court will "protect federally created rights from dismissal because of over-exacting local requirements for meticulous pleadings"); *Davis v. Wechsler*, 263 U.S. 22, 25 (1923) ("it is necessary to see that local practice shall not be allowed to put unreasonable obstacles in the way" of assertion of federal rights in state courts). *Felder*'s bottom line is that states "may no more condition the federal right to recover for violations of civil rights than bar that right altogether." *Felder*, 487 U.S. at 144.

In conflict with *Knick* and *Felder*, state and federal courts rely on *Nelson* to hold that the 92-day notice-of-claim deadline in MCL § 211.78t is mandatory and failure to comply defeats any takings claim. *Compare* App. 12a (*Nelson* "tells us everything we need to know") *and In re Muskegon County Treasurer for Foreclosure*, 348 Mich. App. at 688 ("[O]ur Legislature's own words could hardly be clearer: Section 78t 'is the *exclusive mechanism* for a claimant to claim and receive any

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[22] *Cf. Williams v. Reed*, 604 U.S. 168, 170 (2025) (states may not employ an "exclusive" statutory process requirement that effectively immunizes state officials from lawsuits brought under 42 U.S.C. § 1983).

applicable remaining proceeds under the laws of this state.'"), *with Felder*, 487 U.S. at 140 (notice-of-claim statutes "are neither universally familiar *nor in any sense indispensable* prerequisites to litigation") (emphasis added). The court below does not hold that the claims are *nonjusticiable* because Howard missed the deadline; it holds that, per *Nelson*, missing the notice of claim deadline *means there was no taking*. App. 11a ("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."). The court construed *Knick* as "guarantee[ing]" only that a plaintiff can bring a takings claim if she first "follow[s] the . . . procedures for claiming the surplus, only to be denied it." *Ibid.* *Nelson*'s approval of such procedures cannot be reconciled with *Knick* and *Felder*. The Court should grant review to hold it was unpersuasive *dicta* or to overrule it.

B. The lower courts conflict in their application of *Nelson*

The Tenth and Eleventh Circuits follow *Knick*, not *Nelson*, in holding that no exhaustion of state remedies is necessary to bring a federal takings claim under analogous circumstances, where an owner wants to recover her own money. In *Knellinger v. Young*, the Tenth Circuit considered whether owners of unclaimed property held in custody by the state must file a claim for the property before filing a lawsuit alleging a taking of interest accrued on the money while in custody. The court held that property owners "need not file administrative claims with Colorado before they may sue for just compensation. The moment a state takes private property for public use without just compensation, a property owner has an actionable claim under the

Takings Clause." 134 F.4th 1034, 1038, 1044 n.4 (10th Cir. 2025) (analyzing *Knick*).

The Eleventh Circuit also followed *Knick* in a case involving a property owner's challenge to the state's retention of accrued interest on unclaimed property: "It made no difference that state law provided a 'procedure that [could] subsequently result in just compensation,' because 'it is the existence of the Fifth Amendment right that allows the owner to proceed directly to federal court under § 1983.'" *Maron v. Chief Fin. Officer of Fla.*, 136 F.4th 1322, 1330-31 (11th Cir. 2025) (citing *Knick*, 588 U.S. at 191). Therefore, "[e]ven if a plaintiff later compensated by state law remedies would have no further claim, that would be 'because the taking has been *remedied* by compensation, not because there was *no taking* in the first place.'" *Ibid.* (citation omitted); *see also Sharritt v. Henry*, No. 23 C 15838, 2024 WL 4524501, at *13 (N.D. Ill. Oct. 18, 2024) (a procedure "cannot both be the proper procedure that former owners can exercise to receive compensation . . . *and* a gatekeeping mechanism that prevents those who lost their land from receiving compensation."). Similarly, in *Fulton* the Eleventh Circuit held that a property owner could still bring a takings claim in federal court even though he did not comply with Georgia's twelve-month notice of claim deadline. *Fulton*, 148 F.4th at 1236. *See also id.* at 1240 ("A guaranteed remedy is a guaranteed remedy only if it's accessible.").

In conflict with the Tenth and Eleventh Circuits, the Sixth Circuit, Michigan courts, and several federal district courts construe *Nelson* to mean that an owner's failure to strictly comply with the state administrative and court process defeats a claim for just compensation. App. 11a; *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*, 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. Mun. 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).

The decision below is now infecting takings law outside the tax foreclosure context, with the Sixth Circuit recently holding that an owner who did not exhaust administrative remedies before challenging an uncompensated taking "'forfeited' its takings claim when it chose not to follow that [state] procedure." *OPV Partners, LLC v. City of Lansing*, No. 24-2035, 2025 WL 1898235, at *3 (6th Cir. July 9, 2025) (relying on *Howard* to bar a takings challenge to rental property regulations).

The Sixth Circuit followed the lead of Michigan state courts. In addition to the decisions presently on petition before this Court, *see supra* at 1, the Michigan Supreme Court recently relied on *Nelson* to add exhaustion requirements to takings claims. In *Hathon v. Michigan*, the state's high court dismissed as unripe a takings claim based on government's retention of surplus proceeds that was filed *two years before the claims statute here was adopted*. 17 N.W.3d 686, 686-87 (Mich. 2025) (following *Nelson*). Although the state has held the owners' private property for seven years—without

compensation—the court ordered the owners to comply with MCL § 211.78t by filing Form 5743 within eleven days before pursuing their constitutional claims seeking just compensation. *Ibid.* *Hathon* and the court below thus mimic the exhaustion rationale that this Court rejected in *Knick* and *Felder*. *See also Schafer v. Kent Cnty.*, No. 164975, __ N.W.3d __, 2024 WL 3573500, at *6, *16 n.94, *17 (Mich. July 29, 2024) (explaining *Hathon*'s procedural history, and holding that the claim provisions of MCL § 211.78t are fully retroactive). The Court should grant review to settle this conflict among the lower courts and resolve the conflict between *Nelson*, *Knick*, and *Felder*.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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OCTOBER 2025

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FAYTIMA HOWARD,
Plaintiff-Appellant,
v. No. 24-1665

MACOMB COUNTY, MICHIGAN,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Michigan at Bay City.
No. 1:23-cv-12595—Thomas L. Ludington, District Judge.

Argued: March 20, 2025

Decided and Filed: March 28, 2025

Before: SUTTON, Chief Judge; MOORE and RITZ, Circuit Judges.

COUNSEL

ARGUED: Philip L. Ellison, OUTSIDE LEGAL COUNSEL PLC, Hemlock, Michigan, for Appellant. Frank Krycia, MACOMB COUNTY, Mount Clemens, Michigan, for Appellee. Theodore Seitz, DYKEMA GOSSETT PLLC, Lansing, Michigan, for Amicus Curiae.
ON BRIEF: Philip L. Ellison, OUTSIDE LEGAL COUNSEL PLC, Hemlock, Michigan, for Appellant.

Frank Krycia, MACOMB COUNTY, Mount Clemens, Michigan, for Appellee. Theodore W. Seitz, Mark J. Magyar, DYKEMA GOSSETT PLLC, Lansing, Michigan, Matthew B. Hodges, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, Donald R. Visser, VISSER AND ASSOCIATES, PLLC, Kentwood, Michigan, for Amici Curiae.

OPINION

SUTTON, Chief Judge. After Faytima Howard failed to pay her property taxes, Macomb County seized and sold her property in 2023. She sued, alleging that the county violated the Takings Clause of the Fifth Amendment by keeping proceeds allegedly in excess of her tax debt. There was a time when the Michigan foreclosure regime violated the State and Federal Constitutions. In 2020, the Michigan Supreme Court ruled that Michigan's failure to compensate property owners for the gap between their tax debts and the price realized from foreclosure sales of their property violated the Takings Clause of the Michigan Constitution. *See Rafaeli, LLC v. Oakland County*, 952 N.W.2d 434, 466 (Mich. 2020). Two years later, we held that the same law violated the Takings Clause of the U.S. Constitution. *See Hall v. Meisner*, 51 F.4th 185, 196 (6th Cir. 2022).

Howard faces two problems in relying on those precedents today. One is that the State, in response to the Michigan Supreme Court's decision, amended its

law in 2020 to permit property owners to obtain any surplus value in their foreclosed properties. The new law corrected the constitutional deficiencies of the old one. The other is that Howard did not take advantage of that process. For these reasons, the district court dismissed the complaint for failure to state a claim. We affirm.

I.

Faytima Howard owned property in Macomb County, Michigan. By March 2020, she had fallen at least a year behind on her property taxes. That prompted Macomb County to begin the process of foreclosing her property under Michigan's General Property Tax Act. *See* Mich. Comp. Laws § 211.1 *et seq*.

The process lasted around three years and gave Howard several chances to pay her taxes and avoid foreclosure. During 2020, the county mailed Howard three notices informing her of her unpaid taxes and giving her an opportunity to pay them. *See id.* §§ 211.78b, 211.78c, 211.78f. By March 2021, when she still had not paid the taxes, the county deemed her property forfeited. *See id.* § 211.78g(1)–(2). That allowed the county to begin foreclosure proceedings, even as Howard retained title to the property and the right to use it.

The county filed a petition to foreclose Howard's property in June 2021. *See id.* § 211.78h(1). The county sent a new notice to Howard, this time (1) notifying her about an upcoming hearing where she could object to the taxes or work out a plan to pay them, *see id.* §§ 211.78j(1), 211.78k(2), and (2) notifying her of the right to claim any proceeds

exceeding her tax debt if the county sold the property. *See id.* § 211.78i(2)–(3), (7)(i). The record does not reveal whether she attended the hearing. What it does reveal is that the county moved forward with the foreclosure proceedings. In February 2022, the state court entered a judgment of foreclosure that gave the county title to her property. *See id.* § 211.78k(5)–(6).

The county held a foreclosure sale. It sold the property for $499,007, a price that Howard alleges is "much greater" than her unspecified tax debt. R.3 at 4. Because Howard never invoked the Act's process for claiming any surplus proceeds, the county kept the full amount.

In October 2023, Howard sued Macomb County on behalf of herself and other property owners, alleging that it violated the Takings Clause of the Fifth Amendment by retaining the proceeds of the sale beyond the amount of her tax debt. The district court dismissed the complaint for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6).

II.

The Takings Clause of the Fifth Amendment ensures that "private property" shall not "be taken for public use, without just compensation." U.S. Const. amend. V. The guarantee applies to the States through the Fourteenth Amendment. *First Eng. Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 310 n.4 (1987). While the Clause prohibits States from taking property without paying for it, the Clause does not prohibit them from taxing it. *County of Mobile v. Kimball*, 102 U.S. 691, 703 (1880). Neither does the Clause prohibit States from employing measures to collect these taxes, such

as imposing interest and fees for unpaid taxes or foreclosing on the property to satisfy the debt. *Jones v. Flowers*, 547 U.S. 220, 234 (2006).

The power to tax ends, and the duty to account for a taking begins, when a State confiscates more property than it is owed. *See Tyler v. Hennepin County*, 598 U.S. 631, 639 (2023). In the context of a foreclosure sale, that means the State may keep the proceeds of a foreclosure sale to the extent they cover the tax debt, including any interest and fees as well as costs of collection. *See id.* at 638–42. But any residual after that belongs to the property owner, not the State. *See id.*; *United States v. Lawton*, 110 U.S. 146, 149–50 (1884).

All of this, the Supreme Court concluded in *Tyler*, flows from the language of the Takings Clause and background principles of English common law. *See Tyler*, 598 U.S. at 639–40. "The principle that government may not take more from a taxpayer than she owes can trace its origins at least as far back as Runnymeade in 1215, where King John swore in the Magna Carta" that the sheriff may satisfy the debts of a dead man by seizing his property, but only "until the debt which is evident shall be fully paid." *Id.* at 639 (quoting W. McKechnie, *Magna Carta, A Commentary on the Great Charter of King John*, ch. 26, p. 322 (rev. 2d ed. 1914)). English statutory law adopted the same limit. At the same time that "Parliament gave the Crown the power to seize and sell a taxpayer's property to recover a tax debt," it demanded "that any '[o]verplus' from the sale 'be immediately restored to the [o]wner.'" *Id.* (quoting 4 W. & M., ch. 1, § 12, in 3 Eng. Stat. at Large 488–89 (1692)). English common law, too, required the seller to "render back the

overplus." 2 William Blackstone, *Commentaries on the Laws of England* *284 (1766). The residual reflected the value of the owner's "equitable estate" in the property that exceeded the debt. *See Casborne v. Scarfe*, 1 Atk. 603, 606; 26 Eng. Rep. 377, 379 (1737); 6 Holdsworth, *A History of English Law* 663 (1924); *Hall*, 51 F.4th at 194–95. When these rights traveled "across the Atlantic," the newly minted States and the National Government protected them as well. *Tyler*, 598 U.S. at 640.

Until a few years ago, Michigan did not follow these principles. But recently, its own Supreme Court, *Rafaeli*, 952 N.W.2d at 454–60, together with the federal courts, *see Tyler*, 598 U.S. at 638–45; *Hall*, 51 F.4th at 189–96, established that the State had no right to keep the residual from its foreclosure sales—the amount of the sale that exceeded the property owner's debt.

In an effort to correct this problem, the State established a procedure by which a property owner may recover the surplus after a foreclosure sale. *See* Mich. Comp. Laws § 211.78t. The State now gives owners a chance to recover any surplus, lest a permissible exercise of the taxing power stretch into an impermissible taking. *See Tyler*, 598 U.S. at 647.

Nelson v. City of New York shows that this kind of process complies with the Takings Clause. 352 U.S. 103 (1956). New York City gave property owners, delinquent on their property taxes, up to seven weeks to pay the overdue taxes after the city filed for foreclosure as well as an additional twenty days to file an answer in the foreclosure proceeding. *Id.* at 105–06, 110. If the owners wanted any surplus from the

upcoming sale, they had to make it known through a timely filed answer. *Id.* at 104 n.1, 110. With these procedures in place, the city foreclosed on several properties. *Id.* at 104–06. The owners did not follow the requisite steps for requesting the surplus from the foreclosure sale. *Id.* at 106. The city kept the surplus, prompting the owners to sue to get it back. *Id.* at 106, 110. No taking occurred, the Court reasoned, because the owners gave up their rights to the surplus by failing to follow the process for obtaining it. *Id.* at 110.

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. *Tyler*, 598 U.S. at 644. *Tyler* held that Hennepin County, Minnesota, committed a taking when it kept an owner's surplus after a foreclosure sale and failed to offer the owner any way to get it back. *Id.* at 647. The Court distinguished Minnesota's law, which gave the owner no opportunity to obtain the surplus, from the New York City law at issue in *Nelson*, which set the process for claiming it and made the owners responsible for their decision not to follow it. *Id.* at 644.

Nelson's insight, that States may require owners to follow a statutory process for obtaining a surplus, respects historical practices in the area. At common law, property owners resorted to "ordinary legal remedies" to recoup their surplus when the State did not provide a manner for refunding it. *Farnham v. Jones*, 19 N.W. 83, 85 (Minn. 1884). English and American courts considered it "well settled" that property owners could bring actions for trover or trespass against the officer charged with selling the

property. *See Cone v. Forest*, 126 Mass. 97, 100–01 (1879); *Farnham*, 19 N.W. at 85; *Stead v. Gascoigne*, 129 Eng. Rep. 488, 488; 8 Taunt. 527, 528 (1818); *Batchelor v. Vyse*, 174 Eng. Rep. 113, 114; 1 M. & Rob. 331, 333 (1834).

At the same time, some States enacted laws to "regulate the manner of enforcing the [property owners'] right" to the surplus. *Farnham*, 19 N.W. at 85. A few States required property owners to request the surplus and show their entitlement to it. *See, e.g.*, S.C. Rev. Stat. ch. 15, § 357 (1894); Or. Codes & Gen. Laws ch. 17, § 2824 (1887); Me. Rev. Stat. tit. I, ch. 6, § 35 (1857); N.Y. Rev. Stat. part I, ch. VIII, tit. VIII, § 10 (1846). One State required property owners to "file with the [state court] clerk a waiver of all objections" to the sale in order to receive the surplus. Wa. Code § 367(5) (1881). At least three other States, one in its constitution, required property owners to claim their surplus within a certain time, lest they forfeit their right to it. *See* S.C. Rev. Stat. tit. III, ch. XV, art. IV, § 357 (1894) (requiring the State to hold the surplus for "five years from [the] date of sale" to be refunded to "any person or persons conclusively proving . . . that they are entitled to said surplus . . . on account of their former ownership"); W. Va. Const. art. IX, § 6 (1870) (requiring owners to "file[]" a "claim" to the surplus in "the Circuit Court which decreed the sale[] within two years thereafter"); Minn. Gen. Stat. ch. 81, tit. II, § 35 (1867) (requiring owners to "appl[y] for" their surplus within "three months" after the sale). Some States, it is true, enacted positive laws entitling property owners to the surplus. *See, e.g.*, Ind. Rev. Stat. ch. 12, art. X, § 162 (1843) ("If the real or personal property of any person shall be sold for taxes, . . . the residue

shall be paid to the person entitled by law to the same . . . ."); Va. Rev. Code app. IV, ch. 5, § 5 (1819) (requiring the State "to pay the surplus, if any, to the person who may have been proprietor of the land"); An act in New Hampshire relating to constables collecting rates or assessments, § 5 (enacted 1719, repealed 1792) (requiring the sheriff "to return the overplus upon such sale, if any be, unto the owner"). But not one State to our knowledge required the government to return the surplus immediately to the owner without any requirement that the owner cooperate with the State.

Still other States experimented with different ways to account for the surplus. At least one other State, instead of paying owners their surplus out of the treasury, required the purchasers of the property to give the owners bonds for the amount of the surplus. *See, e.g.*, Pa. Gen. Laws ch. 137, § 2 (1847). The owner could seek payment on the bond for "at least twenty years." *Thudium v. Deardorf*, 3 Pa. 90, 92–93 (1846). Some States also tried to avoid surpluses altogether by permitting the sale of only so much land as necessary to pay the tax and holding the sale void otherwise. *See, e.g.*, *Margraff v. Cunningham's Heirs*, 57 Md. 585, 588 (1882); *Loomis v. Pingree*, 43 Me. 299, 311 (1857); Digest of the State Laws of Ala., Taxes § 50 (1843). Through it all, we are not aware of any State that gave citizens a right into perpetuity to reclaim surplus funds from a government foreclosure sale and to do so without having to follow any state procedures along the way.

Michigan now does what *Nelson* and *Tyler* and background historical practices allow. Michigan law gave Howard an opportunity to recover her surplus

and set several reasonable steps for claiming it. Before foreclosing on a property, the Act requires the county to mail owners notice of their right to "any remaining proceeds" from a sale. Mich. Comp. Laws § 211.78i(7)(i). The Act gives owners nearly four months to mail a form stating their "intention to claim" any "remaining proceeds" to the county. *Id.* § 211.78t(1)(a), (2). The county posts the one-page form online along with steps for submitting it. *Auction and claims*, www.macombgov.org/departments/treasurers-office/tax-foreclosure/auction-and-claims (last visited Mar. 27, 2025). If the owner does not submit her intention to claim any surplus, the county may sell the property for the amount of the tax. Mich. Comp. Laws § 211.78m(1). If the owner does submit the form, the county has two options. It may (1) sell the property to itself or another county, city, or the state, for its fair market value, or (2) sell the property to the public through an auction. *Id.* § 211.78m(1)–(2). On the January following the sale, the county mails a notice to any owner who claimed an interest in the surplus. *Id.* § 211.78t(3)(i), (k). The notice informs owners of the "amount of any remaining proceeds" and tells them how to "file" "a motion" to claim the surplus in state court by the middle of May. *Id.* The county posts this two-page form online, too. At that point, the state court reviews the owners' motions and orders the county to pay them their surplus. *See id.* § 211.78t(9)–(10).

Howard never told the county that she intended to claim any surplus. *See id.* § 211.78t(2). As with the owners in *Nelson*, Howard failed to comply with the State's procedures for collecting any surplus and, in doing so, forfeited her claim to it. *See* 352 U.S. at 110.

Howard resists this conclusion, first by contending that precedent allows her to recover directly from the county under the Takings Clause as opposed to collecting it under the Michigan law. Under *Knick v. Township of Scott*, 588 U.S. 180 (2019), as Howard reads it, she has no obligation to satisfy the requirements of the Michigan procedure. *Knick*, it is true, held that, when a State takes a citizen's property, she may file a claim for just compensation under 42 U.S.C. § 1983 without exhausting her right to seek compensation under state law. *Id.* at 191. But unlike the state laws at issue in *Knick*, 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. A county that allows property owners to obtain any surplus after a foreclosure and keeps the residual only if the owners do not seek it does not commit a taking. *See Nelson*, 352 U.S. at 110; *see also Tyler*, 598 U.S. at 644. Had Howard followed the Act's procedures for claiming the surplus, only to be denied it, then she could immediately bring a takings claim under § 1983. That is all that *Knick* guarantees.

Howard separately claims that *Knick* cut back on *Nelson*. But, as shown, the two cases address distinct issues. *Nelson* addressed whether state action caused a taking. *Knick* addressed the available remedies after a taking occurs. That explains why *Knick* never mentions *Nelson*. And it explains why *Tyler* relied on *Nelson* in explaining how to determine the existence of a taking. *See Tyler*, 598 U.S. at 643–45.

Howard persists that Michigan has no right to make these state-law, surplus-recovery procedures "exclusive"—to the exclusion, that is, of § 1983. But

Howard sees conflict where there is harmony. By making these procedures "exclusive," the Michigan Legislature meant only to restrict owners' *state* remedies for seeking any surplus. *See Schafer v. Kent County*, – N.W.3d – , 2024 WL 3573500, at *19 (Mich. July 29, 2024).

Bowles v. Sabree does not alter this conclusion. 121 F.4th 539 (6th Cir. 2024). It merely observed that, under *Knick*, the legislature could not have meant more than to create an exclusive *state* procedure for recovering any surplus after a foreclosure sale. *See id.* at 555. *Bowles* did not say or suggest that § 1983 preempted Michigan's procedures. *See id.* Instead of generating conflict with § 1983, Michigan's procedures prevent the State from violating the Takings Clause in the first instance.

Howard contends that Michigan should require the county to file a condemnation action to take her surplus instead of requiring her to initiate the process to claim it. But neither *Nelson* nor *Tyler* imposes any such burden.

Howard maintains that this case parallels *Tyler* because the county kept the surplus after the foreclosure sale in both cases. That comparison misses a crucial distinction between the Minnesota and Michigan procedures. While Minnesota precluded owners from claiming any surplus, Michigan invites them to do so. *See Tyler*, 598 U.S. at 639. That tells us everything we need to know about how to satisfy the pertinent precedent: *Nelson*.

Howard complains that Michigan's procedures contain hurdles apt to bar owners from recovering their just desserts. She features two: (1) that owners

must submit a notice of their intent to claim the surplus before they know if a surplus exists, and (2) that they must file a post-sale motion that has many complex requirements. But if that is the case, she should have brought a claim under the Due Process Clause of the Fourteenth Amendment. No such claim appears in her complaint. It is far from clear, at all events, that Michigan asks any more of property owners than New York City asked of them in seeking to recover these residuals. *See Nelson*, 352 U.S. at 104 n.1, 110. Howard certainly has not alleged that the Michigan procedures prohibit her from claiming the surplus or otherwise violate due process.

As for the pre-sale notice, moreover, Howard never explains why owners must know the amount of the surplus to know whether they want it. This pre-sale notice, as in *Nelson*, benefits owners by allowing the county to hold a separate sale to yield any available surplus. *See* Mich. Comp. Laws § 211.78m(1)–(2); *Nelson*, 352 U.S. at 105–06, 110. As for the post-sale motion, the two-page, fill-in-the-blank form is do-it-yourself friendly, and the county sends owners detailed explanations about how and where to file it. *See* Mich. Comp. Laws § 211.78t(3)(k). If any questions remain, owners can visit the self-help center maintained by the county. *Legal self-help center*, www.macombgov.org/departments/16th-judicial-circuit-court/legal-self-help-center (last visited Mar. 27, 2025).

Howard claims that the Act fails to provide just compensation because it does not award interest and attorney's fees and subtracts a 5% sales commission from the surplus. Mich. Comp. Laws § 211.78t(9), (12)(b)(iii). But asking whether the Act provides just

compensation is the wrong question. A county that complies with the Act by returning any surplus proceeds to the rightful owners when they claim it and keeps the surplus proceeds when they do not simply does not commit a taking. Absent a taking, the imperative of just compensation does not arise. *See Nelson*, 352 U.S. at 110.

The key question implicated by the 5% sales commission is not whether it deprives the owner of just compensation; it is whether the amount gives the State more than its due. It does not. Recall that *Nelson*, as well as the common law and statutory law before it, allows States to create procedures for owners to claim whatever is left from the foreclosure sale after the State satisfies the tax debt. Recall, too, that the States' authority to tax empowers them also to collect fees and the costs of conducting those procedures. *See Jones*, 547 U.S. at 234; *Tyler*, 598 U.S. at 638. Some of those costs—think of advertising the sale or determining (and enforcing) the winning bid after the foreclosure auction—will inure to the property owner's advantage by ensuring a successful sale and increasing the proceeds from it. Nothing in the complaint shows that this 5% commission is anything more than a reasonable fee to compensate the county for this real estate work or to incentivize the county to sell the property at the highest price possible.

The fee also finds company among historical and modern precedents. Several States and Territories permitted sales commissions when officers sold property to collect debts. *See, e.g.*, Digest of the State Laws of Ala., Taxes § 50 (1843) (allowing the collector to "demand and receive, from each delinquent whose property shall have been advertised, in addition to his

other compensation for collecting the taxes, a commission of five per centum upon the amount raised"); Digest of the State Laws of Ga., Land, art. IV, § 100 (1851) (allowing the sheriff to "receive as compensation for his services five per cent. on the amount received"); Ohio Stat. ch. 244, § 42 (1833) (allowing the auditor to collect "four per cent." and the county or township to collect "six per cent. on all moneys wherewith he or they may stand charged"); Territory of Ariz. Code ch. 57, § 9 (1871) (allowing sheriffs to impose a "five per cent" fee "for the first five thousand dollars" and a "three per cent" fee "for all above" that amount "for making the money upon execution").

Howard rejoins that the county already assesses fees and expenses actually incurred during the foreclosure sale in at least one other provision. *See* Mich. Comp. Laws § 211.78m(16)(c); *see also id.* § 211.78t(12)(b)(ii). As we understand it, Michigan charges some actual costs (e.g., for "legal" and "personnel" services, "auction expenses," and other costs "in connection with the forfeiture[and] foreclosure") under two statutes. *See id.* §§ 211.78m(16)(c), 211.78t(12)(b)(ii). Then, on top of that, it charges 5% on each sale, to account for other costs in making these sales and to incentivize the county to aggressively seek the highest price. *See id.* § 211.78t(12)(b) ("'Remaining proceeds' means the amount equal to the difference between the amount paid to" the county for the property and the aggregation of the tax debt on the property, actual costs of the sale, and a "sale commission payable to the [county] equal to 5% of the amount paid to the [county] for the property").

To the extent Howard means to bring an as-applied challenge to the 5% charge, she is not in a strong position to do so given her choice not to exercise her rights under the state law. Having forfeited that option, we have little way of knowing what actually happened with respect to the sale of her property, and nothing in her complaint tries to fill that gap. A similar problem haunts Howard's claim about the lack of interest paid on the proceeds from the sale that would normally go to the property owner. It may be true, as Howard argues, that this statute does not provide interest. But because Howard did not invoke the statutory repayment scheme, there is no way to know whether the county itself provides interest on the payment or whether another Michigan statute would require interest on the payment.

To the extent Howard means to bring a facial challenge to the 5% fee, she has not shown that it would be unconstitutional in every setting. *See United States v. Salerno*, 481 U.S. 739, 745 (1987). There is nothing facially unconstitutional about accounting for some fees and costs in one provision and other types of fees and costs in another. Nor is Michigan an outlier. A survey of other state laws shows considerable, and reasonable, variation among the States in their approaches to defining and calculating fees and costs. *See, e.g.*, Utah Code Ann. § 59-2-1351.1(7) (effective 2018) (calculating "tax notice charges, penalties, interest, and administrative costs"); Wis. Stat. Ann. § 75.36(3)(a) (effective 2024) (itemizing deductible costs, such as "reasonable and customary real estate agent or broker fees," as well as "interest, penalties, special assessments, special charges and special taxes"); Conn. Gen. Stat. Ann.

§ 12-157(c)–(d), (i) (effective 2015) (calculating the "interest, fees and other charges," including the costs of "auctioneers, clerks and other persons to assist the tax collector in the conduct of the sale" and "other charges allowed by law"); 44 R.I. Gen. Laws Ann. § 44-9-37 (effective 1956) (calculating "taxes, interest and charges," "together with the expenses of the sale"); Md. Code Ann., Tax-Prop. § 14-818(a)(4) (effective 2023) (calculating "interest, penalties, and costs of sale"). On this record, Michigan's 5% commission does not facially violate the Fifth Amendment.

For these reasons, we affirm.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

FAYTIMA HOWARD, Plaintiff, v. COUNTY OF MACOMB, Defendant.	Case No. 1:23-cv-12595 Honorable Thomas L. Ludington United States District Judge

_____/

OPINION AND ORDER GRANTING THOMAS A. FOX'S MOTION FOR LEAVE TO FILE AMICUS BRIEF, GRANTING DEFENDANT'S MOTION TO DISMISS, AND DISMISSING PLAINTIFF'S COMPLAINT

For decades, the Michigan General Property Tax Act (GPTA) directed counties to retain the surplus proceeds from properties sold at tax-foreclosure auction. In 2020, the Michigan Supreme Court decided that the practice of retaining surplus proceeds—codified by the Michigan legislature into state law—was unconstitutional. In response, the Michigan legislature enacted Public Act 256, which provides a process by which former property owners may seek to recover surplus proceeds from the sale of their former property. Plaintiff Faytima Howard, whose property was sold at a tax-foreclosure sale in 2022, did not avail herself of that process, but now sues Macomb County, arguing its retention of the surplus proceeds using the procedures of Public Act

256—despite her failure to claim those proceeds—is a taking under both the federal and state constitutions.

I.

A.

Plaintiff Faytima Howard owned property located at 19790 Westchester Drive in Clinton Township, Michigan (the" Westchester Property"). ECF No. 3 at PageID.14. In February 2022, after Plaintiff had fallen behind on her property-tax obligations, Defendant Macomb County "petitioned for and seized ownership of" the Westchester Property through a Judgment of Foreclosure. *Id.* Seven months later, Defendant sold the Westchester Property at tax auction for $499,007.00, which Plaintiff alleges was "much greater than any [property tax] delinquency." *Id.* She alleges that Defendant "refuses to pay just compensation to Plaintiff" for the Westchester Property. *Id.*

B.

In July 2020, the Michigan Supreme Court unanimously held that the retention of surplus proceeds from tax-foreclosure sales according to the then-in-effect GPTA was an unconstitutional taking under Michigan's Takings Clause. *See Rafaeli, LLC v. Oakland Cnty.*, 952 N.W.2d 434 (Mich. Ct. App. 2020). At that time, the GPTA "did not provide a mechanism by which former property owners could recover their surplus proceeds." *In re Muskegon Cnty. Treasurer for Foreclosure*, No. 363764, 2023 WL 7093961, at *1 (Mich. Ct. App. Oct. 26, 2023).

In December 2020, in response to *Rafaeli*, the Michigan legislature enacted Public Act 256 ("PA 256"), which "create[ed] a controlling and structured system for adjudication of tax foreclosure disputes as the exclusive means of obtaining surplus proceeds." *Schafer v. Kent Cnty.*, No. 164975, 2024 WL 3573500, at *19 (Mich. July 29, 2024); *see also* MICH. COMP. LAWS § 211.78t (detailing this process). United States District Judge Linda V. Parker recently summarized the relevant statute's process to recover surplus proceeds as follows:

> For property sold after *Rafaeli*, such as the Property here, the GPTA requires a claimant seeking any surplus proceeds to submit a form to the foreclosing governmental unit by the July 1 immediately following the effective date of the foreclosure. [MICH. COMP. LAWS] § 211.78t(2). Foreclosing governmental units must make the form available to the public on their internet websites. *Id.* Additionally, the Michigan Department of Treasury must publish the form on its website. *Id.* Claimants are required to return the form to the foreclosing governmental unit in person or by certified mail, return receipt requested. *Id.*
>
> If a claim form is timely submitted, the GPTA establishes a deadline for the foreclosing governmental unit to respond by sending the claimant certain information concerning the sale or transfer of the property. *Id.* § 211.78t(3). This information includes the date of sale or transfer, the minimum bid for the property, the amount for which the property was sold or transferred, and other costs lawfully reduced from the

> proceeds. *Id.* § 211.78t(3)(a)-(i). Also included is notice to the claimant that a motion to claim any remaining proceeds must be filed with the circuit court in the same proceeding in which the judgment of foreclosure of the property was effective. *Id.* § 211.78t(3)(k). The GPTA establishes [a three-and-a-half-month timeframe in] which the motion must be filed. *Id.* § 211.78t(4).

Metro T. Properties, LLC v. Cnty. of Wayne, No. 23-CV-11457, 2024 WL 644515, at *3 (E.D. Mich. Feb. 15, 2024).

After *Rafaeli*, federal courts eventually determined that schemes such as Michigan's pre-*Rafaeli* GPTA also violated the Federal Constitution. *See Hall v. Meisner*, 51 F.4th 185, 196 (6th Cir. 2022), *reh'g denied*, No. 21-1700, 2023 WL 370649 (6th Cir. Jan. 4, 2023), c*ert. denied sub nom. Meisner v. Tawanda Hall*, 143 S. Ct. 2639, 216 L. Ed. 2d 1225 (2023), *cert. denied*, 143 S. Ct. 2638 (2023) (concluding that a Michigan county acting according to the pre-*Rafaeli* GPTA "took the plaintiffs' property without just compensation, in violation of the Takings Clause"); *Tyler v. Hennepin Cnty., Minn.*, 598 U.S. 631, 644 (2023) (holding a county's retention of surplus proceeds from a tax-foreclosure sale violates the Fifth Amendment of the U.S. Constitution where there is "no opportunity for the taxpayer to recover" surplus proceeds).

C.

In October 2023, well after PA 256 was in effect, Plaintiff filed a two-count Complaint against Defendant. ECF No. 3. In Count I, Plaintiff alleges

Defendant "has taken" Plaintiff's and the proposed class members' "property interests in the form of surplus proceeds and have appropriated this property for public use without the payment of just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution." *Id.* at PageID.20. In Count II, Plaintiff pursues a state law inverse condemnation claim against Defendant, alleging Defendant's took the property "without using any direct condemnation processes[.]" *Id.*

On December 11, 2023, Defendant filed a motion to dismiss, arguing that Plaintiff does not have a takings claim under the Fifth or Fourteenth Amendments because PA 256 provides a procedure to recover surplus proceeds from a tax foreclosure sale. ECF No. 9 at PageID.41. Additionally, Defendant argues Plaintiff's inverse condemnation claim "fails as a matter of law" because PA 256 is the *exclusive remedy* for former property owners seeking to recover surplus proceeds and "Michigan law does not recognize an inverse condemnation claim alleging the taking of tax foreclosure[.]" *Id.* at PageID.44; *see also* MICH. COMP. LAWS. § 211.78t. Plaintiff responded, arguing her claims should not be dismissed, ECF No. 15, and Thomas A. Fox—the lead plaintiff in a similar tax foreclosure case[1]—sought permission to file an amicus

[1] Though Plaintiff and Fox bring similar taking and inverse condemnation claims, Fox's claims arise from events that occurred *before* the Michigan legislature enacted PA 256, which created the surplus proceeds recovery process. *See Fox v. Cnty. of Saginaw*, No. 19-CV-11887, 2021 WL 120855, at *1 (E.D. Mich. Jan. 13, 2021), *aff'd sub nom. Fox v. Saginaw Cnty., Michigan by Bd. of Commissioners*, No. 21-1108, 2022 WL 523023 (6th Cir. Feb. 22, 2022).

brief in support of Plaintiff's position, ECF No. 14; *see also Fox v. Cnty. of Saginaw*, No. 19-CV-11887, 2021 WL 120855, at *1 (E.D. Mich. Jan. 13, 2021), *aff'd sub nom. Fox v. Saginaw Cnty., Michigan by Bd. of Commissioners*, No. 21-1108, 2022 WL 523023 (6th Cir. Feb. 22, 2022) (detailing Fox's factual and legal claims).

II.

Under Civil Rule 12(b)(6), a pleading fails to state a claim if it does not contain allegations that support recovery under any recognizable theory. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When considering a Rule 12(b)(6) dismissal, the court must accept all factual allegations of the complaint as true and will construe the pleading in favor of the nonmovant. *See Lambert v. Hartman*, 517 F.3d 433, 439 (6th Cir. 2008). The plaintiff need not provide "detailed factual allegations" to survive dismissal, but the "obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In essence, the plaintiff's complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," but the court need not accept as true the complaint's legal conclusions. *Iqbal*, 556 U.S. at 678–79 (quotations and citation omitted).

III.

A. Plaintiff's Federal Takings Claim

Defendant contends that Plaintiff does not have a takings claim under the Fifth or Fourteenth Amendments because Michigan has furnished a procedure for recovering surplus proceeds from a tax foreclosure sale. ECF No. 9 at PageID.41. *See also* MICH. COMP. LAWS § 211.78t Plaintiff responds that Defendant "misinterprets" federal precedent, ECF No. 15 at PageID.420, and asserts that the relevant caselaw "in no way made a determination that should a state statute or local ordinance provide due process, then there is no federal Takings Clause cause of action. To the contrary, 'state law cannot be the only source.'" *Id.* at PageID.421 (quoting *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 638 (2023). In short, Plaintiff argues that a takings claim is not conditioned on whether a former property owner proactively sought compensation for what the government took, and that former property owners are entitled to compensation *regardless of* whether they seek to redeem those proceeds using Michigan's effort at providing a remedy by statutory procedure. *See id.* at PageID.420–21; *see also* ECF No. 14-1 at PageID.108–10.

But Plaintiff's argument has a problem: a 1956 Supreme Court case, *Nelson v. City of New York*, 352 U.S. 103 (1956). In *Nelson*, the Supreme Court concluded that "*nothing* in the Federal Constitution prevents [municipalities from retaining surplus proceeds from a foreclosure sale] where the record shows adequate steps were taken to notify the [former] owners of the charges due and the foreclosure proceedings" and the former owners did not undertake

"timely action to redeem or to recover[] any surplus" proceeds according to state law. *Id.* at 110 (emphasis added). Importantly, in *Nelson*, the Court explicitly rejected the appellant's argument that the retention of surplus proceeds was a taking under the Fifth Amendment because there was no "statute which absolutely precludes an owner from obtaining the surplus proceeds of a judicial sale." *Id.*

Plaintiff argues that *Nelson* is distinguishable because under the relevant law in *Nelson*, the former property owner could claim the surplus proceeds *during the foreclosure proceeding itself*, whereas Michigan law requires a separate process to claim the surplus proceeds, *after* the sale. ECF No. 14-1 at PageID.107–108; *see also* ECF No. 15 at PageID.421 ("adopt[ing] the arguments of Amici's Brief" on the issue). Notable, indeed. But Plaintiff overlooks the equally notable similarity between the law in *Nelson* and Michigan's current law: in both, there is no "statute which absolutely precludes an owner from obtaining the surplus proceeds of a judicial sale." *Nelson* at 110.

And though *Nelson* is almost 70 years old, modern Supreme Court decisions suggests *Nelson* remains good law. In *Tyler v. Hennepin Cnty, Minn.*, decided in 2023, the Supreme Court reasoned that the ordinance at issue in *Nelson* "simply defined the process through which the [former property] owner could claim the surplus proceeds" and did not "prohibit claiming the surplus proceeds altogether," whereas the statute in *Tyler* "provid[ed] no opportunity" for the former property owner to recover surplus proceeds, and that those proceeds "*always* remain[ed] with the State." 598 U.S. 631, 644 (2023) (emphasis added). This

detailed distinction between *Nelson* and *Tyler* certainly suggests the holding in *Nelson* remains legally sound. The Sixth Circuit, this Court, and Michigan state courts have held the same. *See, e.g.*, *Metro T. Properties, LLC v. Cnty. of Wayne,* No. 23-CV-11457, 2024 WL 644515, at *4 (E.D. Mich. Feb. 15, 2024) (dismissing plaintiff's federal takings claim under *Nelson* where plaintiff did not follow Michigan's procedure for recovering such proceeds); *Rafaeli, LLC v. Oakland Cnty.*, 952 N.W. 2d 461, 434 (Mich. 2020) ("*Nelson* . . . informs us that no federal Takings Clause claim will exist when there is a statutory path to recover the surplus proceeds but the property owners fail to avail themselves of that procedure."); *Hall v. Meisner*, 51 F.4th 185, 196 (6th Cir. 2022) (emphasizing that "[t]he express basis for the decision in *Nelson*" was that the plaintiffs had not followed the established procedure to recover their surplus proceeds, but the pre-*Rafaeli* GPTA "gave the plaintiffs no such opportunity at all.").

In sum, there is no dispute that if the government takes property from a person, it must compensate that person. But, under *Nelson* and *Tyler*, if the government provides a remedy—that is, a process for that person to *seek* compensation—the government does not unconstitutionally take. Thus, Plaintiff's takings claim will be dismissed.

B. Plaintiff's State Law Inverse Condemnation Claim

Turning to Plaintiff's state law inverse condemnation claim, *see* ECF No. 3 at PageID.20–21, Defendant argues this claim "fails as a matter of law since Michigan law does not recognize an inverse

condemnation claim alleging the taking of tax foreclosure surplus since the adoption [MICH. COMP. LAWS § 211.78t]." ECF No. 9 at PageID.44. Plaintiffs do not argue otherwise.[2]

Indeed, as the Michigan Court of Appeals recognized in October 2023, former property owners may not seek to recover surplus proceeds under a state inverse-condemnation theory where the recovery procedure outlined in MICH. COMP. LAWS § 211.78t is the *exclusive* means for recovering such proceeds. *In re Muskegon Cnty. Treasurer for Foreclosure*, No. 363764, 2023 WL 7093961, at *4 (Mich. Ct. App. Oct. 26, 2023) ("The specific language of [MICH. COMP. LAWS §] 211.78t indicates our Legislature's intent for the statute to serve as the sole mechanism by which former property owners can recover proceeds remaining after the sale or transfer of their foreclosed properties and the satisfaction of their tax debt and related costs."). And even if Plaintiff was able to pursue her inverse condemnation claim here under

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[2] Plaintiff's response to Defendant's argument here does not dispute the merits, but instead "requests that this Court refrain from any ruling on the state inverse condemnation" until the Michigan Supreme Court addresses the issue in *Hathon v. State of Mich*. ECF No. 15 at PageID.422. On July 29, 2024, the Michigan Supreme Court published its opinion in *Hathon v. State of Mich.*, which did not analyze the propriety of the state-prescribed procedure being the *exclusive* remedy. However, the decision did appear to accept that the state-prescribed procedure is the *exclusive remedy* for seeking surplus proceeds. *See Schafer v. Kent Cnty.*, No. 164975, 2024 WL 3573500, at *19 (Mich. July 29, 2024) (noting that MICH. COMP. LAWS § 211.78t "create[ed] a controlling and structured system for adjudication of tax-foreclosure disputes as the *exclusive means* of obtaining surplus proceeds.").

Michigan law, it would be dismissed for the same reason her federal takings claim will be dismissed: because Michigan law "now provides an opportunity for [Plaintiff] to recover the [surplus proceeds]," but Plaintiff did not follow that process, so she "did not suffer a compensable taking," *id.* at *8–9 (citing *Nelson v. City of New York*, 352 U.S. 103 (1956)). And the Michigan Supreme Court's recent decision in *Hathon* and *Schafer* did not disturb that conclusion. Accordingly, Plaintiff's Inverse Condemnation Claim must be dismissed, as well.

IV.

Accordingly, it is **ORDERED** that Thomas A. Fox's Motion for Leave to File Amicus Brief in Opposition to Defendant's Motion to Dismiss, ECF No. 14, is **GRANTED**.

Further, it is **ORDERED** that Thomas A. Fox's Amicus Brief, ECF No. 14-1, is **ACCEPTED AS FILED**.

Further, it is **ORDERED** that the Defendant's Motion to Dismiss, ECF No. 9, is **GRANTED**.

Further, it is **ORDERED** that Plaintiffs' Amended Complaint, ECF No. 3, is **DISMISSED**.

This is a final order and closes the above-captioned case.

Dated: August 6, 2024

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States
District Judge

FILED
May 19, 2025
KELLY L. STEPHENS, Clerk

No. 24-1665

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FAYTIMA HOWARD,	)	
Plaintiff-Appellant,	)	
v.	)	ORDER
MACOMB COUNTY, MICHIGAN,	)	
Defendant-Appellee.	)	
	)	

BEFORE: SUTTON, Chief Judge; MOORE and RITZ, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens

Kelly L. Stevens, Clerk

* Judge Davis is recused in this case.

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

(1) Not later than the first Tuesday in July immediately succeeding the entry of judgment under section 78k vesting absolute title to tax delinquent property in the foreclosing governmental unit, this state may exercise the right of first refusal to purchase foreclosed property at the greater of the minimum bid or its fair market value by paying that amount to the foreclosing governmental unit if the foreclosing governmental unit is not this state. If this state elects not to purchase the property under its right of first refusal and 1 or more claimants have filed a claim for remaining proceeds from the foreclosed property under section 78t(2), a city, village, township, or city authority may purchase foreclosed property located within that city, village, township, or area of the city authority included in the judgment and subject to sale under this section by paying the foreclosing governmental unit the greater of the minimum bid or the fair market value of the property. If this state elects not to purchase the property under its right of first refusal and no claimant has filed a claim for remaining proceeds from the foreclosed property under section 78t(2), a city, village, township, or city authority may purchase the foreclosed property by paying the foreclosing governmental unit the minimum bid. If a city, village, township, or city authority does not purchase that property and 1 or more claimants have filed a claim for remaining proceeds from the foreclosed property under section 78t(2), the county in which that property is located may purchase that property under this section by paying the foreclosing governmental

unit the greater of the minimum bid or the fair market value of the property. If a city, village, township, or city authority does not purchase that property and no claimant has filed a claim for remaining proceeds from the foreclosed property under section 78t(2), the county in which the property is located may purchase that property under this section by paying the foreclosing governmental unit the minimum bid. If a city, village, township, city authority, or county does not purchase that property, 1 or more claimants have filed a claim for remaining proceeds from the foreclosed property under section 78t(2), and the property is within the area of a county authority, the county authority may purchase the property under this section by paying the foreclosing governmental unit the greater of the minimum bid or the fair market value of the property. If a city, village, township, city authority, or county does not purchase that property and no claimant has filed a claim for remaining proceeds from the foreclosed property under section 78t(2), the county authority in which the property is located may purchase that property under this section by paying the foreclosing governmental unit the minimum bid. If property is purchased by a city, village, township, city authority, county, or county authority under this subsection, the foreclosing governmental unit shall convey the property to the purchasing city, village, township, city authority, county, or county authority within 30 days.

(2) Subject to subsection (1), beginning on the third Tuesday in July immediately succeeding the entry of the judgment under section 78k vesting absolute title to tax delinquent property in the foreclosing governmental unit and ending on the immediately

succeeding first Tuesday in November, the foreclosing governmental unit, or its authorized agent, at the option of the foreclosing governmental unit, shall hold 1 or more property sales at 1 or more convenient locations at which property foreclosed by a judgment entered under section 78k will be sold by auction sale, which may include an auction sale conducted via an internet website. Notice of the time and location of a sale must be published not less than 30 days before a sale in a notice publication circulated in the county in which the property is located, if there is one. If no notice publication is circulated in that county, publication must be made in a notice publication circulated in an adjoining county. Each sale must be completed before the first Tuesday in November immediately succeeding the entry of judgment under section 78k vesting absolute title to the tax delinquent property in the foreclosing governmental unit. Except as provided in this subsection and subsection (5), property must be sold to the person bidding the minimum bid, or if a bid is greater than the minimum bid, the highest amount above the minimum bid. The foreclosing governmental unit may sell properties individually or may offer 2 or more properties for sale as a group. The minimum bid for a group of properties must equal the sum of the minimum bid for each property included in the group. The foreclosing governmental unit may adopt procedures governing the conduct of the sale and the payment for conveyance of properties under this section and may cancel the sale before the issuance of a deed under this subsection if authorized under the procedures. The foreclosing governmental unit shall require full payment at the close of each day's bidding or by a date

not more than 21 days after the sale. Before the foreclosing governmental unit conveys a property sold at a sale, the purchaser shall provide the foreclosing governmental unit with proof of payment to the local tax collecting unit in which the property is located of any property taxes owed on the property at the time of the sale. A foreclosing governmental unit shall cancel a sale if unpaid property taxes owed on a property or properties at the time of a sale are not paid within 21 days of the sale. If a sale is canceled under this subsection, the foreclosing governmental unit may offer the property to the next highest bidder and convey the property to that bidder under this subsection, subject to the requirements of this subsection for the highest bidder. Not more than 14 days after payment to the foreclosing governmental unit of all amounts required by the highest bidder or the next highest bidder under this subsection, the foreclosing governmental unit shall convey the property by deed to the person bidding the minimum bid, or if a bid is greater than the minimum bid, the highest amount above the minimum bid, or the next highest bidder if the sale to the highest bidder is canceled and the next highest bidder pays the amount required under this section to purchase the property. The deed must vest fee simple title to the property in the person bidding the highest amount above the minimum bid, unless the foreclosing governmental unit discovers a defect in the foreclosure of the property under sections 78 to 78l or the sale is canceled under this subsection or subsection (5). If this state is the foreclosing governmental unit within a county, the department of treasury is responsible for conducting the sale of property under this subsection

and subsections (4) and (5) on behalf of this state. Before issuing a deed to a person purchasing property under this subsection or subsection (5), the foreclosing governmental unit shall require the person to execute and file with the foreclosing governmental unit an affidavit under penalty of perjury. If the person fails to execute and file the affidavit required by this subsection by the date payment for the property is required under this section, the foreclosing governmental unit shall cancel the sale. An affidavit under this section must indicate that the person meets all of the following conditions:

(a) The person does not directly or indirectly hold more than a minimal legal interest in any property with delinquent property taxes located in the same county as the property.

(b) The person is not directly or indirectly responsible for any unpaid civil fines for a violation of an ordinance authorized by section 4l of the home rule city act, 1909 PA 279, MCL 117.4l, in the local tax collection unit in which the property is located.

* * *

(8) A foreclosing governmental unit shall deposit the proceeds from the sale of property under this section into a restricted account designated as the "delinquent tax property sales proceeds for the year _____". The foreclosing governmental unit shall direct the investment of the account. The foreclosing governmental unit shall credit to the account interest and earnings from account investments. The foreclosing governmental unit shall use proceeds in that account only for the following purposes in the following order of priority:

(a) For each property that was sold or transferred for an amount equal to or greater than the minimum bid, the delinquent tax revolving fund created pursuant to section 87b or 87f by the county in which the property is located must be reimbursed for all taxes, interest, penalties, and fees on each property that was transferred or sold that year.

(b) For each property that was sold or transferred for an amount equal to or greater than the minimum bid, fees incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, and remediation of foreclosed property and the administration of this act, including costs for the defense of title actions and other legal expenses, must be paid up to the amount for which the property was sold on a property-by-property basis.

(c) Payments to claimants of remaining proceeds for the year ordered under section 78t and any other payments ordered under section 78t must be paid on a property-by-property basis.

(d) For each property that was sold or transferred for an amount less than the minimum bid or that was not sold or transferred, the delinquent tax revolving fund created pursuant to section 87b or 87f by the county in which the property is located must be reimbursed for all taxes, interest, penalties, and fees.

(e) For each property that was sold or transferred for an amount greater than the minimum bid, fees incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed

property or the administration of this act for the year but not paid under subdivision (b) must be paid.

(f) For each property that was sold or transferred for an amount less than the minimum bid or that was not sold or transferred, fees incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed property or the administration of this act, including costs for the defense of title actions and other legal expenses, for the year must be paid.

(g) Any fees incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed property or the administration of this act, including costs for the defense of title actions and other legal expenses, for any prior year that have not been paid or reimbursed from a prior year's delinquent tax property sales proceeds must be paid.

(h) If the foreclosing governmental unit is this state, any remaining balance must be transferred to the land reutilization fund created under section 78n. If the foreclosing governmental unit for a county is this state, not later than September 30 of the second calendar year after foreclosure, the department of treasury shall, subject to subparagraph (xiii), submit an electronic report to the house and senate committees with jurisdiction over taxation that includes, for each county, all of the information described in subparagraphs (i) to (xii), as follows:

(i) The total number of properties that were ordered foreclosed at the judicial hearing for that foreclosure and not redeemed.

(ii) The sum of the minimum bids for the properties described in subparagraph (i).

(iii) The total number of properties sold to a governmental entity under subsections (1) and (4).

(iv) The sum of the minimum bids for the properties described in subparagraph (iii).

(v) The total amount paid for the properties described in subparagraph (iii).

(vi) The total number of properties sold under subsections (2) and (5).

(vii) The sum of the minimum bids for the properties described in subparagraph (vi).

(viii) The total amount paid for the properties described in subparagraph (vi).

(ix) The total amount of all taxes, penalties, interest, fees, and costs owed on properties described in subsection (1).

(x) The total amount paid for all properties described in subparagraphs (iii) and (vi).

(xi) The total amount of remaining proceeds paid to persons holding a legal interest in the property described in subparagraphs (iii) and (vi).

(xii) The remaining net amount after subtracting the amount described in subparagraph (xi) from the difference of the amounts described in subparagraphs (x) and (xi).

(xiii) The reporting requirement provided for in this subdivision does not apply after December 31, 2025.

(i) If the foreclosing governmental unit is not this state, not later than September 30 of the second calendar year after foreclosure, the foreclosing governmental unit shall, subject to subparagraph (xiii), submit a written report to its board of commissioners and the state treasurer identifying any remaining balance and any contingent costs of title, environmental remediation, or other legal claims relating to foreclosed property as determined by the foreclosing governmental unit. Any remaining balance must be used for costs incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed property, the defense of title actions and other legal expenses, or the administration of this act, or for the payment of claims for remaining proceeds or other amounts ordered under section 78t. The report required under this subdivision must include, in a form determined by the department of treasury, all of the information described in subparagraphs (i) to (xii), as follows:

(i) The total number of properties that were ordered foreclosed at the judicial hearing for that foreclosure and not redeemed.

(ii) The sum of the minimum bids for the properties described in subparagraph (i).

(iii) The total number of properties sold to a governmental entity under subsections (1) and (4).

(iv) The sum of the minimum bids for the properties described in subparagraph (iii).

(v) The total amount paid for the properties described in subparagraph (iii).

(vi) The total number of properties sold under subsections (2) and (5).

(vii) The sum of the minimum bids for the properties described in subparagraph (vi).

(viii) The total amount paid for the properties described in subparagraph (vi).

(ix) The total amount of all taxes, penalties, interest, fees, and costs owed on properties described in subsection (1).

(x) The total amount paid for all properties described in subparagraphs (iii) and (vi).

(xi) The total amount of remaining proceeds paid to persons holding a legal interest in the property described in subparagraphs (iii) and (vi).

(xii) The remaining net amount after subtracting the amount described in subparagraph (xi) from the difference of the amounts described in subparagraphs (x) and (xi).

(xiii) The reporting requirement provided for in this subdivision does not apply after December 31, 2025.

* * *

(16) As used in this section:

(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.

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.

(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.

(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.

(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 78*l*. 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:

(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).

(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 judgement 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.

(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.

(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 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 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 41 of the home rule city act, 1909 PA 279, MCL 117.41, 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 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.

Filed 10/13/23

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

FAYTIMA HOWARD
f/k/a FAYTIMA LEAK,
for herself and all those
similarly situated,
Plaintiffs,

V

MACOMB COUNTY,
by its Board of
Commissioners,
Defendants.

Case No. 23-cv-12595
Hon. Linda V. Parker

CLASS ACTION

_____/

CLASS ACTION AMENDED COMPLAINT

NOW COMES Plaintiff, FAYTIMA HOWARD f/k/a FAYTIMA LEAK, both individually and as a representative of those individuals and entities similarly situated, by and through her attorneys and states as follows:

1. Defendant has illegally seized property in the form of surplus money following tax foreclosure from private individuals and entities without any compensation at all.

2. Michigan law generally allows counties to foreclose on real property in order to satisfy outstanding unpaid property taxes. But Defendant herein abuses this process. It does not foreclose on the

parcel, sell it, keep the amount of outstanding taxes plus reasonable fees, and return the rest to the owner. Rather, it forecloses, sells the property at a reduced amount, and keeps all of the proceeds and surplus for itself. As a result, property owners lose the entire value of their property, which is often orders of magnitude more than the outstanding tax bills.

PARTIES

3. Plaintiff Faytima Howard f/k/a Faytima Leak is named directly and as a proposed class representative by being a former owner of improved real property in Macomb County, Michigan which was foreclosed upon due to a tax delinquency but was injured by the unconstitutional acts or actions of Defendant via its unconstitutional taking of surplus proceeds. Plaintiff currently resides in Macomb County, Michigan.

4. Defendant Macomb County by its Board of Commissioners is a named legal entity formed under and/or existing under the laws of the State of Michigan and is controlled or operated by its duly designated Board of Commissioners.

JURISDICTION

5. This is a civil action brought seeking unpaid "just compensation" and other monetary damages against Defendant for violations of the United States Constitution.

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, which authorizes federal courts to decide cases concerning federal questions; 28 U.S.C. § 1343 and 42 U.S.C. § 1983, which authorizes federal courts to hear and decide civil rights cases; 28 U.S.C. § 2201, which

authorizes declaratory judgments via the Declaratory Judgment Act; and 28 U.S.C. § 1367, which authorizes supplemental state law claims.

7. Venue is proper in this Court as Defendant conducts or has conducted business in the Eastern District of Michigan.

GENERAL ALLEGATIONS
MICHIGAN'S TAX FORECLOSURE PROCESS

8. Like many states, Michigan provides for the taxation of real property in order to finance local governments such as counties, municipalities, and school districts and the collection of delinquent taxes.

9. However, this case involves what happens after the taxation process is completed and surplus money remains after the county is paid in full for all delinquent taxes, interest, penalties, and fees.

10. Defendant administers a foreclosure-and-auction process so that after it regularly sells a parcel at auction (often times for less than its fair market value), it retains the entire amount of the proceeds. Furthermore, even if the sale proceeds exceed the amount of the delinquent taxes – indeed, even if the proceeds far exceed the tax bill – they do not return any of the excess to the property's former owner or provide compensation for that portion of the equity destroyed by underselling the parcel.

19790 WESTCHESTER DR,
CLINTON TWP, MICHIGAN

11. Plaintiff Faytima Howard was the owner of real property commonly known as 19790 Westchester

Drive, Clinton Township, Michigan, being parcel 16-11-09-254-011. ("the Westchester property")

12. On or about February 4, 2022 Defendant successfully petitioned for and seized ownership of the Westchester property through a Judgment of Foreclosure.

13. Defendant sold the Westchester property at a tax auction on or about September 6, 2023 for $499,007.00.

14. The sale price was much greater than any delinquency.

15. Defendant refuses to pay just compensation to Plaintiff for the Westchester property.

16. Defendant Macomb County has seized other parcels of real property from other individuals and entities in the same fashion as the Westchester property.

THE CONDUCT AT ISSUE REFLECTS COUNTY POLICY

17. The actions described herein is the respective voluntary policy, custom, and/or practice of Macomb County, and/or its final policymaker.

18. Defendant had a voluntary policy and/or practice sufficient to impose damages and other relief pursuant to *Monell v New York City Department of Social Services*, 436 U.S. 658 (1978), and its progeny.

19. Specifically, Defendant made the affirmative, voluntary, and discretionary decision to select and designate its own treasurer to act as the Foreclosing Governmental Unit. *See* MCL 211.78(3)–(6).

20. Moreover, the Defendant, either through enactment of laws or regulations, official agency or governmental entity policy, and/or actions taken by an official or officials with final decision-making authority has administered the County's foreclosure and auction process generally, including MCL 211.78m(8), so that after the county sells a parcel at auction, the county retains the entire amount of the proceeds, even if the proceeds exceed the amount of the tax delinquency.

21. According, the actions at issue here were undertaken pursuant to an official county policy for purposes of *Monell*.

22. The actions of Defendant were designed to intentionally or wantonly cause harm due to the utter disregard of constitutionally protected rights.

CLASS ALLEGATIONS

23. This action is brought by Plaintiff, individually and on behalf of all other respective individuals and entities who were subject to the same unconstitutional processes by the Defendant which resulted in a taking of surplus proceeds following foreclosure.

24. Plaintiff seeks certification of the following class:

> All former property owners of property located in Macomb County, Michigan whose properties were sold at a tax-foreclosure sale for more than the amount owed in unpaid taxes, interest, penalties, and fees related to the forfeiture, foreclosure, and sale of their properties. Plaintiff seeks a class period dating back 6 years from the filing of this Complaint through the date of final judgment, or

such longer time as allowed by law. Excluded from the class are any individuals or entities that have been compensated for surplus proceeds.

25. Plaintiff will also seek to extend the class period back to 2013 based upon a separate lawsuit in which Macomb County is a Defendant. *See Fox v Saginaw County, et al*. 19-cv-11887, EDM. *Fox* was filed on June 25, 2019, a class was certified, but the class certification was vacated on April 28, 2023.

26. The number of persons who have been injured by the practices discussed herein is sufficiently numerous to make class action the most practical method to secure redress for the injuries sustained and to provide class wide equitable relief. Upon information and belief the number of aggrieved individuals/entities exceeds 100 in number.

27. There are clear questions [of] fact raised by the named Plaintiff claims common to, and typical of, those raised by the class they seek to represent, including:

a. Macomb County is and has been acting to voluntarily enforce an unconstitutional but locally administered statute which it has willingly assumed to undertake pursuant to its discretion under MCL 211.78;

b. each class member's property, prior to foreclosure, was worth and was sold for more than the total Tax Delinquency owed to the county and/or its treasurer;

c. Defendant kept the excess sales proceeds (i.e. the difference between the tax sale price and the total tax delinquency owed) for the benefit of the county; and

d. Defendant refuses to pay just compensation.

28. There are clear questions of law raised by the named Plaintiff's claims common to, and typical of, those raised by the class they seek to represent, including:

a. whether the defendant committed an unconstitutional taking by refusing to pay just compensation when seizing surplus beyond the amount of unpaid taxes and administrative expenses, costs and interest owed in a tax delinquency, and have appropriated property in the form of excess or surplus money for public use without the payment of just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution; and

b. whether Defendant committed an inverse condemnation by keeping surplus proceeds following tax foreclosure.

29. The violations of law and resulting harms alleged by the named Plaintiff are typical of the legal violations and harms suffered by all class

30. Plaintiff, as class representative, will fairly and adequately protect the interests of the class members of Macomb County and will vigorously prosecute the suit on behalf of the class; and is represented by highly experienced counsel.

31. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice, preventing possible inconsistent or varying adjudications with respect to individual members of the class and/or Defendant. 32. The

Defendant has acted, failed to act, and/or is continuing to act on grounds generally against Plaintiff and all members of the class in the same manner.

33. The violations of law and resulting harms alleged by the named Plaintiff are typical of the legal violations and harms suffered by all class members

COUNT I

TAKING–FIFTH/FOURTEENTH AMENDMENT IN VIOLATION OF 42 USC §1983

34. Plaintiff incorporates the preceding paragraphs as if more fully set forth herein.

35. This claim is being made by Plaintiff Faytima Howard, individually and as class representative, against the Defendant pursuant to 42 U.S.C. § 1983 and § 1988.

36. The Fifth Amendment, made applicable to the states via the Fourteenth Amendment, is a constitutional provision and right requiring the payment of just compensation upon a taking by the defendant. *See Tyler v Hennepin*, 143 S. Ct. 1369 (2023).

37. The Defendant has taken the Plaintiff's and the class members' property interests in the form of surplus proceeds and have appropriated this property for public use without the payment of just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

38. Defendant has failed to pay just compensation to Plaintiff and those similarly situated.

39. Plaintiff and those similarly situated have been injured and suffered damages.

COUNT II

STATE LAW – INVERSE CONDEMNATION

40. Plaintiff incorporates the preceding paragraphs as if more fully set forth herein.

41. This claim is being made by Plaintiff Faytima Howard, individually and as class representative, against Defendant Macomb County.

42. The Defendant has taken Plaintiffs' property interests in the form of surplus proceeds and has appropriated this property for public use without the payment of just compensation.

43. Defendants has done so without using any direct condemnation processes, including those outlines under the Uniform Condemnation Procedures Act, MCL 213.51, et seq.

44. Defendant has failed to pay just compensation to Plaintiff and other similarly situated.

45. Defendant does not intend to pay Plaintiff just compensation.

46. An inverse condemnation has occurred and Plaintiff and those similarly situated have been damaged.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests;

A. That this matter be certified as a class action naming Plaintiff as class representative and her counsel as class counsel.

B. A declaration that Defendant's conduct is unconstitutional under federal and state constitutions, even if being undertaken

consistent with Michigan's General Property Tax Act;

C. An award of any and all damages available under law as applicable, including but not limited to an award of nominal and punitive damages as is deemed proper against Defendant;

D. An award of interest.

E. An award of attorney fees and expenses as allowed by law;

F. Such other and different relief as is just and equitable.

/s/ Mark K. Wasvary
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Mark K. Wasvary, P.C.
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Dated: October 13, 2023

Excerpts of Transcript of Proceedings
Held on Thursday, March 20, 2025
Pages 17, 24, 25, and 30

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FAYTIMA HOWARD,
Plaintiff-Appellant,
v. Case No. 24-1665
MACOMB COUNTY, MICHIGAN,
Defendant-Appellee.

TRANSCRIPT OF PROCEEDINGS

HELD ON
THURSDAY, MARCH 20, 2025

BEFORE
THE HONORABLE CHIEF JUDGE JEFFREY SUTTON
THE HONORABLE JUDGE KAREN MARY NELSON MOORE
THE HONORABLE JUDGE KEVIN G. RITZ
CIRCUIT COURT JUDGES
.
POTTER STEWART U.S. COURTHOUSE
100 EAST FIFTH STREET
CINCINNATI, OHIO 45202

APPEARANCES

Appearing on behalf of the Plaintiff-Appellant:

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Outside Legal Counsel PLC
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(989) 642-0055

Appearing on behalf of the Defendant-Appellee:

FRANK KRYCIA, ESQUIRE
Macomb County Corporation Counsel
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-AND-

THEODORE W. SEITZ, ESQUIRE
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Recorded By: Valerie J. Morrison
Nageli Deposition & Trial

* * *

MR. KRYCIA: Good morning, Your Honor. Frank Krycia, appearing on behalf of Appellee Macomb County.

* * *

THE COURT: What's your answer to the point you're double dipping on costs? Why—why don't they have a fair point there?

MR. KRYCIA: Because we're not—on this auction, the minimum bid is prepared before the auction. There was a $12 fee for the ad in the newspaper, which was one of the—the required ad, not the other things we do. There was a $20 fee for reserving the parcel in the auction on the website. And there was a $30 fee for recording the deed.

THE COURT: So just to make sure I'm understanding. You've heard his argument.

MR. KRYCIA: Yes.

THE COURT: His argument is you do it—you do an actual cost one and then you just do a flat five percent. And he seems to be saying—I think he's definitely saying the flat five percent has no connection to cost. Can you tell us the five percent does connect to cost or what's your answer to his point?

MR. KRYCIA: First of all, this wasn't raised in his complaint. It was—

THE COURT: Just answer the question.

MR. KRYCIA: But the five percent is—I worked on this auction. We have teams. We have a full staff at the treasurer's office to handle the foreclosure. Several weeks before the auction and several weeks after they are working on this auction. That time is not included.

THE COURT: So it's the cost of the employees in Macomb County?

MR. KRYCIA: This property had significant fire damage. When we auctioned it, the first bidder backed out. The second bidder backed out. The third bidder backed out. We're the legal team. We're trying to enforce the bids. That time that we spent—this bid

actually went down to $275. We had disputes. We had conferences with the bidders and that's where it ended up. That time. But we managed to get 275 for the sale of this property. It took us weeks. The other thing we do is we process the money. You know, the auction company is just like a website, so the property is on there. We handle everything else. We review the bids. We put all the information. When you say advertising, we have a GIS system that the county pays for, and the GIS system is—

THE COURT: What's the rationale of separating out these costs? Am I getting it right that under one provision you charge actual cost to the property owner and the other is just five percent? Have I got it right so far?

MR. KRYCIA: The legislature set this up in the—

THE COURT: I—

MR. KRYCIA: But we do spend a significant amount of time on the foreclosure that is not in—and the other thing is the minimum bid has to be determined prior to the auction so that we can post it and publish it. So we don't know what the cost—we know we're going to incur costs, and there is significant costs.

THE COURT: How about the interest point?

MR. KRYCIA: Oh, the interest point is simple, Your Honor. We pay interest.

THE COURT: You do pay interest?

MR. KRYCIA: We pay interest. There is a provision—

THE COURT: From what date? From what date?

MR. KRYCIA: From the date of the—let me explain real quick. Under Michigan law, and this is our opinion of Michigan law, which the treasurer adopted,

when we are holding money—and we don't take the sale proceeds. We put them in a restricted account pursuant to the statute. That's 211.78m(8). We hold those. When somebody files the notice of intent to claim, we know that that's the claimant's money pending the court order. So—

THE COURT: · So it runs from the date of your getting notice?

MR. KRYCIA: Day of getting the money in our account, which we're required to invest. The treasurer invests. So for example, a few weeks ago—

THE COURT: Just to make sure I'm understanding it, we know how this works, that they have to respond. So if someone actually does respond, let's say it's 30 days after the sale, they say, yeah, I'd like the difference. At that point does interest run or does the interest run—now that they've notified you, does the interest run from the date of the sale?

MR. KRYCIA: Date of the sale.

THE COURT: Okay.

MR. KRYCIA: The date we got the money. For example, in this case, we use date of sale, but in this case, we didn't get the money for over two weeks because of all those disputes. So we go from date of sale based on the interest that that account earned. And I think there was—what the state—the ruling or the interpretation is under common law, since we're holding the claimant's money in the restricted account and earning interest on it, the interest follows the claimant's money. So for example, recently, we had a lady that was owed $100,000. And she filed the claim in pro per, by the way. There's a state court administrator forum now for the motion. I notified her that

one of the smaller lienholders filed the claim. She filed her motion three days later. No problems under using this forum in the system. She was owed $100,000, and we held the money for six months and approximately four percent. So that's around $2,000. So she gets a check for what the judge ordered the surplus is plus the interest.

THE COURT: And interest is measured by—

MR. KRYCIA: The rate of return on the account the money is held in. And that's what the Michigan courts under our interpretation the treasurer adopted is that interest follows the principal.

* * *

THE COURT: I don't understand how the fraud arises. You're dealing with someone before foreclosure. And the only reason there's fraud is if it's a new person after foreclosure.

MR. KRYCIA: Or somebody impersonating that person. We foreclose on thousands of parcels, by the way. And the judgment had 1,824 parcels in it. Now, we've only had contact with 866 of those people because they're the ones that the treasurer granted extension agreements on, including this parcel. So we had information on appellant but we didn't have information on the other thousand in the judgment. And 52 properties went to property out of there. So the treasurer managed to work with these people and resolve that but we don't have—we have collectors that go out and meet with some people. That's not a problem. But we're looking at a system that deals with all the people in the judgment.

THE COURT: So forgive me if I don't understand the facts but if the individual plaintiff here had filed the

notice in the timely way, could she have asked for the ability to buy back—to buy the property, to pay off the past taxes at that point if she had filed the notice before the actual sale of the property?

MR. KRYCIA: No, Your Honor. What the individual did is she actually lost the property, and the treasurer agreed to reinstate the redemption period and extend it to the end of May. So she had a signed agreement saying that. The treasurer gave her that which is allowed by law. And then she breached the agreement by failing to pay at all. She was then sent a notice by the treasurer, if you wish to claim the surplus, return this notice form to my office by June 1st—or July 1st, and he sent that notice June 16th. So that's how the process works.

THE COURT: Well, what's the actual difference in this case, between debt and yield?

* * *

MR. KRYCIA: Yes. The difference I'd have to calculate. I think it was about $60,000.

THE COURT: Got it. Okay.

MR. KRYCIA: That's just my estimate.

THE COURT: All right.

* * *

THE COURT: What were they thinking as to why the five percent flat fee when you already get actual cost?

MR. SEITZ: Yeah. A couple of things. So there was some costs that were certainly built into what I think Macomb's counsel references as the minimum bid. And that's always been there. But the five percent was put in. It was, you know, put in. Actually, this legislation had unanimous support and it was put in

frankly to some sort of cost recovery but really to induce the treasurers and others to get the best auction price they can, almost acting like a real estate agent. And so—

THE COURT: Because five—it's five percent of the sale.

MR. SEITZ: Yeah. And there was, actually, a request by some entities that it should be higher.

THE COURT: Capitalist legislators. I really don't think of them as capitalists but—

MR. SEITZ: Yeah. That was—that was the thought. And it was really kind of like a free market entity that said, you know, maybe it should be more than five percent. It should be eight or nine or 10 percent to really induce, you know, the treasurers, these local governmental units to get out there, market the properties, get as much as they can from them because they really are acting as a real estate agent. And if the holders of the property before would have sold the property on the market with a real estate agent, that real estate agent would have been entitled to some sort. So that was I think the reasoning, Your Honor, and I think that's in the record.

THE COURT: Is interest, in fact, paid on this amount from the time of the foreclosure sale if somebody has made a claim that they want to get the surplus?

MR. SEITZ: No. Your Honor. It's not required in the statute. So it doesn't—it doesn't say, you know, remaining proceeds is the way Michigan describes it in 78t. It doesn't say remaining proceeds plus interest. That's my view of the plain language of the statute. Now, having—and I'm sorry I'm over time. Having heard from Macomb, and certainly, it's true

for several, you know, probably treasurers or more in the state, these are elected officials, they may themselves, you know—

THE COURT: So there's no state statute that requires the payment of interest?

MR. SEITZ: Not within 78t, Your Honor. I suppose if, you know, you weaved in other statutory provisions but we have not had a decision from any of our courts doing that in Michigan. And our courts have spoken to 78t or, you know, PA256 is what it's called.

THE COURT: But is the general rule what Macomb County claims it's doing, which is doing it from the time of the sale?

MR. SEITZ: It could be, Your Honor, but there's no—there's no case law on that. That hasn't come out in any of the decisions at all.

THE COURT: I'm asking their practices, not what—

MR. SEITZ: Practices, I would say it's hard to tell, Your Honor. We have 83 counties, 83 county treasurers. Some may do that. Many may do that. I don't know offhand, Your Honor.

FILED by Macomb County Circuit Court
2/3/2023 2:12:38 PM
Service, Submitted, and File

022-002098-CH
MACOMB COUNTY

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

Petition for Foreclosure of Certain Parcels of Property Due to Unpaid Taxes, Interest and Fees	No. 2022-002098-CH Hon. Matthew P. Sabaugh

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Gregory J. Everett (pro per)
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TAX FORECLOSURE JUDGMENT

At a session of said Court, held in the City of Mount Clemens, County of Macomb, State of Michigan on February 3, 2023

PRESENT: HONORABLE
MATTHEW P. SABAUGH

The Court having conducted the foreclosure hearing in this matter on February 3, 2023 as required by MCL 211.78k and the proofs in this

matter having been presented and the record being closed, the Court makes the following findings:

This matter was initiated with the filing of a Petition on June 9, 2022. The Petition identified parcels of property forfeited to the Macomb County Treasurer under MCL 211.78g for unpaid 2020 and prior years' taxes and set forth the amount of the unpaid delinquent taxes, interest, penalties, and fees for which each parcel of property was forfeited. The Petition sought a judgment in favor of Petitioner Macomb County Treasurer 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 of property not redeemed on or before March 31, 2023. Before the date of 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(1), for each remaining parcel. At the hearing Petitioner presented testimony establishing that he complied with the requirements for notice in this case.

The Court finds that the Macomb County Treasurer has complied with the requirements of the Tax Reversion Act, MCL 211.78 *et seq.* as amended and all persons having an interest in properties listed in Exhibit 1 admitted at the hearing have been provided actual or constructive notice and an opportunity to be heard.

The Court denies the objection made at the hearing for the reasons stated at the hearing.

The Court finds that Petitioner is entitled to a judgment of foreclosure pursuant to MCL 211.78k(5):

THEREFORE, IT IS ORDERED THAT JUDGMENT IS GRANTED IN FAVOR OF PETITIONER WITH THE FOLLOWING TERMS AND CONDITIONS:

(a) The amount of forfeited delinquent taxes, interest, penalties, and fees set forth in the list of foreclosed property attached to this Judgment as Exhibit 1 is valid, and Judgment of Foreclosure is entered in favor of Petitioner against each parcel of property, separately, for payment of the amount set out against the parcel.

(b) That fee simple title to property foreclosed upon by this judgment will vest absolutely in Petitioner, subject to the limitations in paragraphs (c) and (e) below, without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel plus any additional interest and fees allowed by statute are not paid to Petitioner on or before March 31, 2023 or as otherwise noted in paragraph (f).

(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 the State or Petitioner pursuant to the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 *et seq.,* are extinguished, if all

forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel, plus any additional interest and fees allowed by statute are not paid to Petitioner on or before March 31, 2023 or as otherwise noted in paragraph (f).

(d) That, except as otherwise provided in subdivisions (c) and (e), the foreclosing governmental unit has good and marketable fee simple title to the property, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before March 31, 2023.

(e) 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, 1994 PA 451, MCL 324.101 *et seq.,* (4) interests of a lessee or an assignee of a lessee under an oil or gas lease recorded before the date of filing of the Petition in this action, (5) interests preserved under §1(3) of the Dormant Minerals Act, 1963 PA 42, MCL 554.291(3), and, (6) property assessed pursuant to MCL 211.8(g), if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel plus any additional interest and fees allowed by statute are not paid to Petitioner on or before March 31, 2023 or as otherwise noted in paragraph (f).

(f) The redemption period is extended as indicated for parcels listed on Exhibit 2 to this judgment.

(g) If a parcel is not included on the list attached as Exhibit 1 to this Judgment, it is deemed to have been removed by amendment of the original list of properties attached to the petition as Exhibit 1. The properties removed remain forfeited unless redeemed or if the Petitioner has cancelled the forfeiture on a specific property pursuant to MCL 211.78g. Petitioner may add parcels removed from this action to subsequent foreclosure actions to collect the taxes that remain outstanding, including fees, penalties, and interest that remain unpaid and the taxes remain in full force and effect to the extent they remain unpaid.

(h) Pursuant to Public Acts 255 and 256 of 2020 this Court retains jurisdiction to resolve claims for surplus proceeds from the tax foreclosure auction if any are made under MCL 211.78t.

(i) Pursuant to MCL 211.78k(5)(g) this Judgment is a final order as to all property listed on Exhibit 1 subject to the terms of this Judgment including the extensions of redemption on Exhibit 2 and, unless appealed pursuant to MCL 211.78k(7), shall not be modified or held invalid after March 31, 2023 except by stipulation of the parties with the consent of this Court or by order of this Court.

This is a final order and closes this case.

Seal of County of Macomb, State of Michigan

February 3, 2023 /s/ Matthew P. Sabaugh
Hon. Matthew P. Sabaugh
(P56208)

Macomb County Circuit Judge

Approved:

/s/ Frank Krycia
Frank Krycia (P35383)
Attorney for Petitioner

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

Petition for Foreclosure of Certain Parcels of Property Due to Unpaid Taxes, Interest and Fees	No. 2022-002098-CH Hon. Matthew P. Sabaugh

_____/

TAX FORECLOSURE JUDGMENT

EXHIBIT 1

LIST OF FORECLOSED PROPERTIES

FORFEITURE LIST FOR MACOMB COUNTY
For 2022 Forfeitures of 2020 and prior taxes
All Records
Fees Computed As Of: 03/31/2023

* * *

PARCEL	TAX DUE	INTEREST/ FEES DUE	TOTAL DUE	TAX YEARS DELIN-QUENT
16-11-09-254-011	16,719.74	8,536.48	25,256.22	2020 2019

MANCHESTER ESTATES; MCCP NO. 348; UNIT 11

Property Address: 19790 WESTCHESTER
Owner: LEAK FAYTIMA
19790 WESTCHESTER DR CLINTON TOWNSHIP MI 48038
Taxpayer: LEAK FAYTIMA
19790 WESTCHESTER DR CLINTON TOWNSHIP MI 48038-2387

FILED by Macomb County Circuit Court
2/8/2022 3:41:21 PM
Service, Submitted, and File

2021-002014-CH
MACOMB COUNTY

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

Petition for Foreclosure of Certain Parcels of Property Due to Unpaid Taxes, Interest and Fees	No. 2021-002014-CH Hon. Julie Gatti

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FRANK KRYCIA
(P35383)
Macomb County
Assistant Corporation
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Attorney for Petitioner
One S. Main, 8th Floor
Mt. Clemens, Ml 48043
(586) 469-6346

MANPREET K. GILL
(P77345)
THE SEVA LAW FIRM
Attorneys for M and J
Savaya, LLC
As to Parcel 12-13-15-
304-002
1050 Wilshire Drive,
Suite 335
Troy, MI 48084
(248) 385-5704

TAX FORECLOSURE JUDGMENT

At a session of said Court, held in the City of Mount Clemens, County of Macomb, State of Michigan on February 4, 2022

PRESENT: HONORABLE JULIE GATTI

The Court having conducted the foreclosure hearing in this matter on February 4, 2022 as required by MCL 211.78k and the proofs in this

matter having been presented and the record being closed, the Court makes the following findings:

This matter was initiated with the filing of a Petition on June 9, 2021. The Petition identified parcels of property forfeited to the Macomb County Treasurer under MCL 211.78g for unpaid 2019 and prior years' taxes and set forth the amount of the unpaid delinquent taxes, interest, penalties, and fees for which each parcel of property was forfeited. The Petition sought a judgment in favor of Petitioner Macomb County Treasurer 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 of property not redeemed on or before March 31, 2022. Before the date of 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(1), for each remaining parcel. At the hearing Petitioner presented testimony establishing that he complied with the requirements for notice in this case.

The Court finds that the Macomb County Treasurer has complied with the requirements of the Tax Reversion Act, MCL 211.78 *et seq.* as amended and all persons having an interest in properties listed in Exhibit 1 admitted at the hearing have been provided actual or constructive notice and an opportunity to be heard.

Two objections were filed with the Court. Gregory Everett filed documents and appeared at the hearing claiming to be representing Dream Catchers Organization which he claimed is an organization similar to a corporation and as Mr. Everett is not a licensed attorney he is unable to represent Dream Catcher Organization. The Court finds that the property referred to in that objection, parcels 12-13-29-102-015 and 12-13-29-102-016, are subject to taxation and properly included in this judgment.

The objection filed by M and J Savay LLC regarding parcel 12-13-15-304-002 is moot as the taxes were paid and this parcel is not included in this Judgment.

The Court finds that Petitioner is entitled to a judgment of foreclosure pursuant to MCL 211.78k(5):

THEREFORE, IT IS ORDERED THAT JUDGMENT IS GRANTED IN FAVOR OF PETITIONER WITH THE FOLLOWING TERMS AND CONDITIONS:

(a) The amount of forfeited delinquent taxes, interest, penalties, and fees set forth in the list of foreclosed property attached to this Judgment as Exhibit 1 is valid, and Judgment of Foreclosure is entered in favor of Petitioner against each parcel of property, separately, for payment of the amount set out against the parcel.

(b) That fee simple title to property foreclosed upon by this judgment will vest absolutely in Petitioner, subject to the limitations in paragraphs (c) and (e) below, without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel plus any additional interest and fees allowed by statute are not paid to

Petitioner on or before March 31, 2022 or as otherwise noted in paragraph (f).

(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 the State or Petitioner pursuant to the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 *et seq.*, are extinguished, if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel, plus any additional interest and fees allowed by statute are not paid to Petitioner on or before March 31, 2022 or as otherwise noted in paragraph (f).

(d) That, except as otherwise provided in subdivisions (c) and (e), the foreclosing governmental unit has good and marketable fee simple title to the property, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before March 31, 2022.

(e) 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, 1994 PA 451, MCL 324.101 *et seq.*, (4) interests of a lessee or an assignee of a lessee under an oil or gas lease recorded before the date of filing of the Petition in this action, (5) interests preserved under §1(3) of the Dormant Minerals Act, 1963 PA 42, MCL 554.291(3), and, (6) property assessed pursuant to MCL 211.8(g), if all forfeited delinquent taxes, interest, penalties, and fees foreclosed against the parcel plus any additional

interest and fees allowed by statute are not paid to Petitioner on or before March 31, 2022 or as otherwise noted in paragraph (f).

(f) The redemption period is extended as indicated for parcels listed on Exhibit 2 to this judgment.

(g) If a parcel is not included on the list attached as Exhibit 1 to this Judgment, it is deemed to have been removed by amendment of the original list of properties attached to the petition as Exhibit 1. The properties removed remain forfeited unless redeemed or if the Petitioner has cancelled the forfeiture on a specific property pursuant to MCL 211.78g. Petitioner may add parcels removed from this action to subsequent foreclosure actions to collect the taxes that remain outstanding, including fees, penalties, and interest that remain unpaid and the taxes remain in full force and effect to the extent they remain unpaid.

(h) Pursuant to Public Acts 255 and 256 of 2020 this Court retains jurisdiction to resolve claims for surplus proceeds from the tax foreclosure auction if any are made under MCL 211.78t.

(i) Pursuant to MCL 211.78k(5)(g) this Judgment is a final order as to all property listed on Exhibit 1 subject to the terms of this Judgment including the extensions of redemption on Exhibit 2 and, unless appealed pursuant to MCL 211.78k(7), shall not be modified or held invalid after March 31, 2022 except by stipulation of the parties with the consent of this Court.

This is a final order and closes this case.

Seal of County of Macomb, State of Michigan

February 4, 2022

/s/ Julie Gatti
HON. JULIE GATTI (P54848)
Macomb County Circuit Judge

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

Petition for Foreclosure of Certain Parcels of Property Due to Unpaid Taxes, Interest and Fees	No. 2021-002014-CH Hon. Julie Gatti

_____/

TAX FORECLOSURE JUDGMENT

EXHIBIT 1

LIST OF FORECLOSED PROPERTIES

FORFEITURE LIST FOR MACOMB COUNTY

For 2021 Forfeitures of 2019 and prior taxes
All Records

Fees Computed As Of: 03/31/2022

* * *

Appendix 84a

PARCEL	TAX DUE	INTEREST/ FEES DUE	TOTAL DUE	TAX YEARS DELIN-QUENT
16-11-09-254-011	10,562.16	4,845.80	15,407.96	2019

MANCHESTER ESTATES; MCCP NO. 348; UNIT 11

Property Address: 19790 WESTCHESTER
Owner: LEAK FAYTIMA
19790 WESTCHESTER DR CLINTON TOWNSHIP MI 48038
Taxpayer: LEAK FAYTIMA
19790 WESTCHESTER DR CLINTON TOWNSHIP MI 48038-2387

No.

In The
Supreme Court of the United States

FAYTIMA HOWARD,
Petitioner,
v.
MACOMB COUNTY,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the PETITION FOR A WRIT OF CERTIORARI contains 8,664 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 October 10, 2025.

s/ Christina M. Martin
CHRISTINA M. MARTIN
Counsel of Record
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201
Telephone: (916) 330-4059
CMartin@pacificlegal.org
Counsel for Petitioner

AFFIDAVIT OF SERVICE

SUPREME COURT OF THE UNITED STATES

No. ___

----------X

FAYTIMA HOWARD,

Petitioner,

v.

MACOMB COUNTY,

Respondent,

----------X

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, Ann Tosel, 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 *Petitioner*.

That on the 10th day of October, 2025, I served the within *Petition for a Writ of Certiorari* in the above-captioned matter upon:

Counsel for Respondent
Frank Krycia
Macomb County Corp. Counsel
1 S. Main St., 8th Floor
Mount Clemens, MI 48043-2306
586-469-6346

Served pursuant to 28 U.S.C. § 2403(b)
Dana Nessel
Attorney General
Department of Attorney General
525 W. Ottawa St.
Lansing, MI 48943
(517) 335-7622
miag@michigan.gov

by sending three copies of same, addressed to each individual respectively, through Priority Mail. 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 Next Day 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 10th day of October, 2025.

Ann Tosel

Ann Tosel

Sworn to and subscribed before me
this 10th day of October, 2025.

Mariana Braylovskiy

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