No. 24-858

In the
Supreme Court of the United States

KARI BEEMAN, et al.,
Petitioners,

v.

MUSKEGON COUNTY TREASURER,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MICHIGAN COURT OF APPEALS

BRIEF OF AMICI CURIAE ALABAMA ASSOCIATION OF REALTORS, THE CATO INSTITUTE, THE ILLINOIS POLICY INSTITUTE, FATIMA HOWARD & DONALD FREED IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Alabama Association of REALTORS® (AAR) is a statewide association made up of over 18,000 members located across Alabama. AAR represents realtors' interests and advocates for private property rights throughout the state.

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files amicus briefs.

The Illinois Policy Institute (IPI) is a nonpartisan, nonprofit public policy research and education organization that promotes personal and economic freedom through free markets and limited government. As the strongest voice for taxpayers in Illinois, its focus includes budget, tax, and good

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[1] In compliance with Rule 37.6, no counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amici curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

government policies. Moreover, IPI's Center for Poverty Solutions evaluates housing policy along with the disparate impact Illinois' high property taxes have on the state's low-income residents. Illinois still allows the unconstitutional practice at issue and is the only state to do so without any limitation.

Fatima Howard is a private citizen from Michigan's Macomb County who suffered the same fate as Petitioners. Her case is on appeal before the United States Court of Appeals for the Sixth Circuit and will be argued on March 20, 2025 before a three-judge appellate panel at the Potter Stewart United States Courthouse in Cincinnati, Ohio.

Donald Freed is a property owner from Alma, Michigan who was the first to secure federal relief from Michigan's unconstitutional *General Property Tax Act* after more than seven years of litigation. *Freed v. Thomas*, 81 F.4th 655 (6th Cir. 2023); *Freed v. Thomas*, 976 F.3d 729 (6th Cir. 2020).

SUMMARY OF THE ARGUMENT

This Court has fittingly explained that taxpayers "must render unto Caesar what is Caesar's," but the government is entitled to "*no more*." *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 647 (2023). The Caesar in this case is the Muskegon County Treasurer, and he is unfortunately trying to extract "more." A taxpayer's failure to contribute his or her share into the public fisc cannot be the basis to avoid the demands of the Fifth Amendment's Takings and Just Compensation Clauses. *Id.* But that is what the Muskegon County Treasurer has been urging. Using state law codified at M.C.L. § 211.78t (known simply as "78t" in Michigan), the Treasurer has conflated the "opportunity" obligations under due process via the Fourteenth Amendment, *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 315 (1950), with the "self-executing" obligation to actually pay "just compensation" under the Fifth Amendment, *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 315 (1987). And that confusion is creeping outward across the country.

Treasurers in Michigan are leading in the wrong direction down a shadowy path, trying to chart new ways to keep their ill-gotten gains after *Tyler* ended the decades of wrongful profiteering. Given their unfortunate success in convincing Michigan's appellate panels to reject a challenge to 78t, other states like Alabama and Illinois are looking towards Michigan as their polestar with like-kind legislative

schemes. *See* Ala. Code § 40-10-28 (2023); Ill. H.B. 3569 (2025-2026 Sess.). This Court should end these governments from going down this darkened unconstitutional path. Amici implore this Court to grant the Petition in this important case to correct the mistakes that the respective "Caesars" are making—or about to make—after *Tyler*. Government officials who take surplus proceeds cannot forgo their constitutional obligation to immediately pay just compensation by merely providing an *opportunity* to possibly effectuate later payment of only a portion of what the Fifth Amendment requires. *Knick v. Twp. of Scott*, 588 U.S. 180, 190 (2019) ("compensation must generally consist of the total value of the property when taken, plus interest from that time"). Allowing deficient processes like 78t to flourish in rendering inadequate compensation due to the "mischief" of *Nelson* revives profiteering by governments unfaithful to what the Fifth Amendment fully requires. Perhaps intentionally, states have mixed up due process obligations with the requirements to pay just compensation. This case is a perfect vehicle to correct this mistake.

ARGUMENT

When certain governments have previously foreclosed on property for non-payment of property taxes, they have kept all the "surplus" proceeds, even when the proceeds of the auction sale vastly exceed the total taxes due. Petitioners are all former property owners who lost their property for the non-payment

of a small tax debt. When the final numbers are crunched, small unpaid tax bills later balloon into final tax obligations consisting of thousands of dollars after late fees, interest, and penalties are imposed. Even still, when these properties sell at public tax-sale auctions, many generate substantial surpluses. For years, government officials have kept these monies to pad their budgets. Cash-hungry treasurers have become glutinous on the retention of these funds. Sarah Alvarez, *Foreclosed for the Cost of an iPhone. That's Life in Wayne County*, MICH. PUB. RADIO, May 17, 2018, *available at* http://olcplc.com/s/zRA9. Many are still trying even today. See *Bowles v. Sabree*, 21 F.4th 539, 556 (6th Cir. 2024) (Michigan's Wayne County must stop "dragging its feet" and "pay up"). Such "theft" practices should have ended after *Tyler* held that keeping surplus proceeds is a taking. But unfortunately, Caesar had other nefarious ambitions and yearned to find a way of escaping the affirmative constitutional obligation to immediately pay "just compensation" for what was taken.

Those faithless states have landed on *Nelson v. City of New York*, 352 U.S. 103 (1956), as their escape plan. There, a property owner brought a due process claim—not a takings claim—regarding the foreclosure of liens for potable water charges that had been unpaid for years. The City foreclosed, "acquired title," sold the property for more than the liens, and "retain[ed] all the proceeds." *Id.* at 106. Such would today be a taking under *Tyler*. When the question of

a taking was raised solely in a reply brief, the Court responded by observing *in dicta* that "we do not have here a statute which absolutely precludes an owner from obtaining the surplus proceeds of a judicial sale" and "nothing in the Federal Constitution prevents this where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings." *Id.*

Grabbing upon this short off-handed language in *Nelson*, states like Michigan have enacted what they deem "adequate-steps" schemes to avoid "just compensation" payment responsibilities. But some of those schemes, like 78t, are nothing more than designed-to-fail Rube Goldberg processes that, while theoretically navigable, are purposefully laced with legal tripwires so Caesar will never need to return what is not his.

Consider the stark differences between two real-world examples of takings procedures in Michigan. When a local government needs a piece of land to build an expansion of a public road, the government can use the normal condemnation (i.e. quick-take) processes. Under this Fifth Amendment–compliant process, a government that needs to turn private property into public property has the duty to self-activate initial proceedings so that a court can determine the amount of just compensation that is required to be paid. M.C.L. § 213.55(1). A private property owner is entitled to participate in this process. Regardless whether the owner of the private

property is involved or not, each owner still receives court-ordered payment of just compensation. M.C.L. §§ 213.55(7); 213.57(1); 213.63; 213.65.

But when it comes to the taking of surplus proceeds in Michigan, the 78t process is designed to be purposely backwards and turned on its head. First, before the property is even sold at the tax auction, 78t initially requires the former property owner, rather than the government, to initiate the process. This is done by the former property owner "notify[ing] the foreclosing governmental unit using a form prescribed by the department of treasury" with supporting documentation on or before "the July 1 immediately following the effective date of the foreclosure of the property." M.C.L. § 211.78t(2). The form must be notarized and contain various pieces of required information and documentation. One slip or missed date and the Michigan treasurer deems his obligation to pay just compensation as waived, keeping the windfall. Billy Binion, *She Underpaid a Property Tax Bill. So the Government Seized Her Home, Sold It—and Kept the $102,636 Profit,* REASON, July 26, 2024, *available at* http://olcplc.com/s/pvtQ.

Even if the notice is properly and timely filed, more than six months can pass before the treasurer sends his first responsive notice. M.C.L. § 211.78t(3). Following that notice, 78t then places the burden on the takings victim to draft and file "a motion" with the foreclosing court solely between February 1 and May 15 with a slew of requirements. M.C.L. § 211.78t(3).

After more time passes, the treasurer is then required to counter-file an additional notice with certain information. M.C.L. § 211.78t(7). Assuming the local court schedules the motion timely and correctly (which is not guaranteed in busy Michigan trial courts) and assuming there are no other issues, the local court would then set a hearing where "the burden of proof of a claimant's interest in any *remaining proceeds* for a claimant is on the claimant." That amount of "remaining proceeds" is the surplus proceeds *minus* "a sale commission equal to 5% of the amount for which the property was sold by the foreclosing governmental unit." M.C.L. § 211.78t(9). This "commission" is imposed for selling *the government's own property,* even though the minimum bid at the prior auction already included *all* the expenses of the auction sale. M.C.L. § 211.78m(16)(c). The 78t scheme fails to provide the former property owner any of the required interest for the delay in payment as the Fifth Amendment (per *Knick*) requires. No attorneys' fees are required to be paid by the treasurer for the claimant's work carrying the legal water to effectuate what ends up being, at best, only a *partial* amount of the just compensation owed under the Fifth Amendment.

The Muskegon County Treasurer argues that this woefully deficient process, with its improperly-shifted burden and inadequate just-compensation payment, fully precludes any available Fifth Amendment remedy under *Nelson*. Amici urge that this cannot be what *Nelson* ever meant to provide; *Knick* confirms it.

588 U.S. at 194 ("plaintiffs may bring constitutional claims under §1983 'without first bringing any sort of state lawsuit, even when state court actions addressing the underlying behavior are available.'"). But if that was what *Nelson* held, it should be overruled as Petitioners correctly suggest.

In Michigan, the effect of the misunderstanding of *Nelson* has snowballed. Relying on the published decision by the Court of Appeals in this case, Michigan has effectively ended all takings challenges to 78t in its courts. And treasurers have capitalized on the decision. Many cases affecting dozens of claimants have already relied on the lower court's opinion in this case to deny taking and due process claims. *See In re Montcalm Cnty. Treasurer for Foreclosure*, No. 366025, 2024 WL 5049108, at *1 (Mich. Ct. App. Dec. 9, 2024) (denying five claimants, including two estates); *In re Calhoun Cnty. Treasurer for Foreclosure*, No. 367801, 2024 WL 4958277, at *3 (Mich. Ct. App. Dec. 3, 2024) (eight claimants); *In re Berrien Cnty. Treasurer for Foreclosure*, No. 366509, 2024 WL 4468770, at *4 (Mich. Ct. App. Oct. 10, 2024) (15 claimants, including four estates and five trusts); *In re Allegan Cnty. Treasurer for Foreclosure*, No. 365754, 2024 WL 4438645, at *2 (Mich. Ct. App. Oct. 7, 2024) (upholding confiscation even though owner died approximately one year before foreclosure and estate not set up until after July 1 deadline); *In re State Treasurer for Foreclosure*, No. 365005, 2024 WL 3995365, at *3 (Mich. Ct. App. Aug. 29, 2024) (three claimants); *In re Manistee Cnty. Treasurer*, No.

363723, 2024 WL 2981520, at *3 (Mich. Ct. App. June 13, 2024) (two claimants); *In re Ingham Cnty. Treasurer*, No. 363797, 2024 WL 3074373, at *1 (Mich. Ct. App. June 20, 2024) (four claimants); *In re Osceola Cnty. Treasurer*, No. 363873, 2024 WL 3074371, at *4 (Mich. Ct. App. June 20, 2024) (two claimants, including one estate); *In re Alger Cnty. Treasurer for Foreclosure*, No. 363803, 2024 WL 4174925, at *6 (Mich. Ct. App. Sept. 12, 2024) (two claimants, including estate of woman who died around the time of foreclosure); *In re Barry Cnty. Treasurer for Foreclosure*, No. 360920, 2024 WL 386939, at *3 (Mich. Ct. App. Feb. 1, 2024); *In re Hillsdale Cnty. Treasurer for Foreclosure*, No. 362826, 2023 WL 9007044, at *2 (Mich. Ct. App. Dec. 28, 2023) (two claimants). That is a constitutional travesty. And interested amici from Michigan's sister states like Alabama and Illinois are just as concerned, because the misunderstanding is continuing to spread to other states.

The error's spread should be ended. Granting the Petition will benefit more than just the current Petitioners. Everyone will benefit from properly interpretating and correctly applying the self-executing protections provided by the Fifth Amendment for these circumstances and ending the misunderstanding that *Nelson* is causing within Michigan and beyond.

CONCLUSION

For the foregoing reasons and those presented by Petitioners, Amici respectfully urge the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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