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 COURT OF APPEALS OF MICHIGAN

BRIEF IN OPPOSITION

MICHAEL D. HOMIER
Counsel of Record
LAURA J. GENOVICH
KEITH T. BROWN
FOSTER SWIFT COLLINS & SMITH, PC
1700 East Beltline Avenue NE, Suite 200
Grand Rapids, MI 49525
(616) 726-2200
mhomier@fosterswift.com

Counsel for Respondent

131154

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

State and federal courts agree that the availability of a process through which interested persons may recover surplus sale proceeds following a property tax foreclosure sale prevents a taking. In accordance with *Rafaeli, LLC v. Oakland County*, 952 N.W.2d 434 (Mich. 2020) and *Nelson v. City of New York*, 352 U.S. 103 (1956), the Michigan Legislature adopted such a process, which requires claimants to file a one-page notice of intent form by July 1 following the foreclosure.

Petitioners failed to timely file the notice of intent, so the state trial court denied their motion for turnover of the surplus proceeds. The intermediate state appellate court affirmed, and the state supreme court denied Petitioners' request for review.

I. Did the lower court properly determine that no taking occurred?

II. Does Michigan law adequately protect Petitioners' due process rights?

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INTRODUCTION

Nearly seventy years ago, this Court held in *Nelson v. City of New York* that no taking occurred when former property owners failed to follow a statutory process for claiming surplus proceeds from a tax foreclosure sale. This Court has consistently upheld that longstanding precedent, most recently in *Tyler v. Hennepin County.*

The Michigan Legislature has created a statutory process for claiming proceeds arising from a tax foreclosure sale that is even more protective of claimants' interests than the process this Court upheld in *Nelson*. Michigan's process requires claimants to file a one-page notice of intent by the July 1 following the foreclosure.

In the statute's first effective year, Petitioners failed to follow this process, then claimed that the process violates the state and federal constitutions. The Michigan Court of Appeals rejected their arguments in full. The Michigan Supreme Court denied leave to appeal.

Now, Petitioners ask this Court to decide issues of state law and overrule decades of precedent, insisting that caselaw conflicts exist where, in fact, this Court's decisions and historical practice are fully harmonious.

For the reasons that follow, this case provides a poor vehicle to review issues this Court has already addressed and that Michigan and the judiciary are faithfully following.

This Court should deny the Petition.

STATEMENT OF THE CASE

The Petition arises from property tax foreclosures in Muskegon County, Michigan, in 2021. The Muskegon County Circuit Court entered a Judgment of Foreclosure on February 24, 2021, in response to property tax delinquencies Petitioners owed, respectively, for real property Petitioners owned in Muskegon County.

Under Mich. Comp. Laws § 211.78t(2), enacted pursuant to Michigan's Public Act 256 of 2020, Petitioners were required to submit a notice of their intent to claim an interest in any surplus proceeds from the foreclosure sale of the Property by July 1, 2021:

> 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.

(Emphasis added.)

The County Treasurer notified each Petitioner of the July 1 deadline in two clear, unambiguous written notices. App. 1a-3a.

Without dispute, Petitioners did not file the notices of intent by July 1. The County Treasurer subsequently sold Petitioners' properties at properly noticed auctions pursuant to Michigan's General Property Tax Act, 1893

Mich. Pub. Acts 203, as amended, MCL 211.1a *et seq.* (GPTA), on August 16, 2021. There is no dispute that the County Treasurer correctly followed the statutory procedure set forth in the GPTA. Pet. App. 5a.

Many months later, beginning in December 2021 and ending in late March 2022, Petitioners each filed a "Notice of Intention to Claim Interest"—the notice that was due on July 1, 2021, under the statute. *Id.* Then, in May 2022, each Petitioner filed a motion in state court "to disburse remaining proceeds from tax foreclosure sale." *Id.* Each motion failed to disclose that Petitioners had not timely filed the required notice of intent on or before July 1, 2021. Nonetheless, each Petitioner demanded disbursement of the surplus proceeds resulting from that sale. In each case, the County Treasurer promptly notified each Petitioner that their notice was untimely. *Id.*

Despite failing to comply with the July 1 deadline, Petitioners filed a joint reply to their individual motions and argued that they should receive surplus proceeds from the foreclosure sale because the notice deadline, which expired before the foreclosure sale, allegedly violated their due process rights. *See* Pet. App. 5a.

The circuit court denied the motions, and Petitioners jointly appealed to the Michigan Court of Appeals. Petitioners argued that Section 78t is not the exclusive means for recovering excess proceeds under Michigan law; that the timeframe for pursuing a claim under Section 78t is harsh and unreasonable under state law; that Section 78t violates Petitioners' procedural and substantive due process rights; and that Section 78t impinged on Petitioners' vested property rights under the state and federal takings clauses.

In a unanimous published[1] decision, the Michigan Court of Appeals affirmed the circuit court's decision and rejected each of the Petitioners' arguments, holding that Section 78t comports with the state and federal constitutions. Pet. App. 2a. The Court of Appeals explained that Section 78t "has several salient features, including pre-sale notice by the foreclosing government; a clear explanation of the former owner's rights and responsibilities; and an express deadline by which the former owner must respond." *Id.* The Court of Appeals rejected Petitioners' argument that Section 78t is not the exclusive remedy to recover proceeds under state law, relying on the statutory text itself. Pet. App. 7a-10a; Mich. Comp. Laws § 211.78t(11) (providing that Section 78t "is the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under the laws of this state").

Purely as a matter of state law, the Court of Appeals held that Section 78t's timelines are not harsh or unusually reasonable. Pet. App. 10a-14a. The Court of Appeals noted that Petitioners received several notices involving foreclosure, including after their property had been foreclosed, "informing them that their property may be sold for more than the amount that they owed to the FGU; anyone who had an interest in the property before the foreclosure had a right to file a claim for remaining proceeds; and notice of an intent to claim excess proceeds had to be submitted before July 1, 2021." Pet. App. 13a. The "burden" of the notice of intent, the Court of Appeals

1. Published decisions of the Michigan Court of Appeals are binding on future panels of that court and lower state courts. Mich. Ct. R. 7.215(J).

held, "was minimal and required only ordinary knowledge and diligence." *Id.*

Regarding due process, the Court of Appeals determined that Section 78t complies with this Court's precedent, relying on *Matthews v. Eldridge*, 424 U.S. 319, 332, 334 (1976). Pet. App. 14a-18a. The Court of Appeals noted that former property owners are provided with pre-deprivation notice of foreclosure and then given several months to file a one-page form to claim their interest in the surplus proceeds. So, "[i]f the statutory scheme is followed by the former owner and FGU, there will be no constitutional deprivation[.]" Pet. App. 16a. The Court of Appeals noted that the FGU *must* timely provide all required notices and *must* pay out proceeds to any person who is entitled to them. *Id.* The Court of Appeals acknowledged that some states do not require former property owners to file a notice of intent to claim proceeds, but that the existence of alternative systems did not render Michigan's chosen system constitutionally deficient. Pet. App. 17a.

Regarding Petitioners' takings claim, the Court of Appeals specifically rejected Petitioners' arguments that Section 78t violated *Tyler* and *Nelson*. Pet. App. 18a-23a.

The Michigan Supreme Court denied Petitioners' subsequent application for leave to appeal to that court. Petitioners now seek a writ of certiorari.

REASONS FOR DENYING THE PETITION

I. The Petition Advances No Proper Grounds for a Writ of Certiorari Under Rule 10.

A. The Michigan Supreme Court and the Sixth Circuit are in lockstep.

The Petition alleges no real conflict between the decision below and other state or circuit decisions. Moreover, where the Petition sees dissonance, there is in fact harmony. Indeed, the Michigan courts and the Sixth Circuit agree on the material issues. And even if the Court is interested in conducting further review of the questions presented, this case is not a good vehicle. This Court should deny the Petition.

1. Michigan has brought its law into compliance with this Court's decisions.

State law predominates in takings matters. *See Hall v. Meisner*, 51 F.4th 185, 196 (6th Cir. 2022). And in Michigan, the various levers of government are faithfully adhering to constitutional norms and this Court's precedents. First, the Michigan Supreme Court decided *Rafaeli* three years before this Court issued its decision in *Tyler*. *Rafaeli* was issued before the Sixth Circuit's decision in *Hall*, which held that Michigan's prior system violated the federal Takings Clause. 51 F.4th 185.[2] In short, on the issue of whether Michigan's old system complied with constitutional standards, the Michigan Supreme Court and the Sixth Circuit (in cases closely resembling *Tyler*) agreed that it did not.

2. This Court denied cert in *Hall*. 143 S. Ct. 2638 (2023).

Section 78t arises out of and responds directly to *Rafaeli*. The *Rafaeli* Court explained that to prevent a taking, there must be a process to claim an interest in surplus proceeds under the GPTA. In other words, *Rafaeli* was Michigan's *Tyler*, decided three years before this Court tackled nearly the same issue.

At the time *Rafaeli* was decided, the GPTA offered no process for claiming an interest in surplus proceeds. *Rafaeli* determined that a FGU was not permitted to automatically retain surplus proceeds from the subsequent sale of the property at a foreclosure auction (even if the foreclosure process had been followed), but it did not consider or decide whether surplus proceeds may be forfeited by a property owner by failing to comply with a process once such process was put in place. Michigan's Takings Clause provides, in relevant part, that "[p]rivate property shall not be taken for public use without just compensation therefore being first made *or secured in a manner prescribed by law*." Mich. Const. art. X, § 2.; *Rafaeli*, 952 N.W.2d at 447. (emphasis added).

Based upon that language, the Michigan Supreme Court invited the state legislature to create a process through which property owners (and other interested parties) could secure their surplus proceeds as prescribed by law:

> Nothing in our holding today prevents the Legislature from enacting legislation that would require former property owners to avail themselves of certain procedural avenues to recover the surplus proceeds. *See*, *e.g.*, *Nelson*, 352 U.S. at 110 & n.10, 77 S.Ct. 195. We only

> hold that the Legislature may not write this constitutionally protected vested property right out of existence. *See Munn v. Illinois*, 94 U.S. 113, 134, 24 L. Ed. 77 (1876) ("A person has no property, no vested interest, in any rule of the common law. . . . Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature, *unless prevented by constitutional limitations*.")

Rafaeli, 952 N.W.2d at 474 n.108.

After *Rafaeli* (but before *Hall* and *Tyler*), the Michigan Legislature adopted Senate Bills 676 and 1137, which created Section 78t, a simple process through which former owners may claim remaining proceeds. Minutes from the relevant Michigan Senate Finance Committee meetings reflect that Pacific Legal Foundation, including both the organization's legal policy director and Petitioners' Counsel of Record in this case, supported the adoption of Senate Bills 676 and 1137. App. 4a-15a.

Since its adoption, the state and its subdivisions have implemented the new law in good faith. The Michigan Supreme Court held that *Rafaeli* applies retroactively, *Schafer v. Kent County*, No. 164975 (Mich. July 29, 2024), and Michigan's appellate courts have universally held that Section 78t comports with Michigan takings jurisprudence and with *Tyler*. Michigan counties are settling pre-*Rafaeli* claims. Section 78t is now the exclusive state law mechanism for former owners and interest holders

to claim proceeds from property tax foreclosure sales in Michigan occurring after July 2020. Section 78t requires any claimant[3] to file a notice of intent by the July 1 immediately following the effective date of the foreclosure of the property.

2. The Sixth Circuit has found Section 78t constitutional.

The Sixth Circuit has found no error with Michigan's approach. After Petitioners filed the current Petition, that court directly addressed the constitutionality of Section 78t—the same issue presented here.

The arguments raised in *Howard v. Macomb County*, 133 F.4th 566 (6th Cir. 2025), are substantially similar to those raised in this case. In a unanimous opinion by Chief Judge Sutton, joined by Judges Moore and Ritz, the Sixth Circuit sided with the respondent county and upheld the constitutionality of Section 78t. The Sixth Circuit held that Michigan's "new law corrected the constitutional deficiencies of the old one." *Id.* at 568. As Chief Judge Sutton summarized, "[u]ntil a few years ago, Michigan did not follow" historical constitutional practice on these issues, "[b]ut recently, its own Supreme Court, *Rafaeli*, 952 N.W.2d at 454–60, together with the federal courts,

3. A claimant is not solely a former "owner," but any "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." Mich. Comp. Laws § 211.78t(12). This could include someone with a mortgage or lien on the property or someone who held a contingent interest in the property, not just the former fee title owner.

see Tyler, 598 U.S. at 638–45; *Hall*, 51 F.4th at 189–96, established that the State had no right to keep residual from its foreclosure sales—the amount of the sale that exceeded the property owner's debt." *Howard*, 133 F.4th at 570.[4]

According to *Howard* (and as discussed in Section II, *infra*), historical practices demonstrate that states "may require owners to follow a statutory process for obtaining a surplus[.]" *Id.* Thus, "Michigan now does what *Nelson* and *Tyler* and background historical practices allow." *Id.*

Accordingly, this case is not a good vehicle for reviewing the issues raised in the Petition. Michigan's new process is working, and the state courts and the Sixth Circuit are addressing what issues may exist. At the time of this writing, there are no actual conflicts that need this Court's attention. This Court should deny the Petition.

II. The Lower Court's Decision Faithfully Abides by this Court's Harmonious Takings Precedents.

The Petition also fails to allege that the lower court's decision is out of step with the decisions of other state courts of last resort, other circuit decisions, or with this Court's precedents. Instead, the Petition attempts to find tension between *Tyler* and *Nelson*. But again, where Petitioners see conflict, there is harmony. There is no conflict between *Nelson* and this Court's other takings (or due process) decisions. This Court rejected Petitioners'

4. On May 19, 2025, the Sixth Circuit denied a petition for rehearing en banc in *Howard*. No judge requested a vote on the petition for rehearing. App. 16a-17a.

claims in *Tyler* just two years ago. No Justice questioned *Nelson* in that case. In the meantime, Michigan has not skirted this Court's precedents: it has faithfully abided by them.

A. *Tyler* and *Nelson* preclude Petitioners' claims.

Petitioners argue that the new process in Section 78t violates the Just Compensation Clause of the Fifth Amendment. Petition, 12. But as the Sixth Circuit recently held in *Howard*, Petitioners' argument "faces two problems[:]" first, ["t]he new law [Section 78t] corrected the constitutional deficiencies of the old one;" second, Petitioners "did not take advantage of that process." *Howard*, 133 F.4th at 568. This Court squarely decided this issue in *Tyler* and *Nelson*. Simply put, this Court has long held that states may adopt mandatory processes with which former property owners must comply before securing their surplus proceeds, and a former property owner who fails to comply with the process cannot sustain a takings claim.

Section 78t creates the process contemplated by this Court in *Tyler* and *Nelson*: it requires former property owners to avail themselves of certain procedural avenues to recover surplus proceeds. It does not "absolutely preclude an owner from obtaining the surplus proceedings of a judicial sale[.]" *Tyler*, 598 U.S. at 644 (cleaned up). So, it does not "write [the] constitutionally protected vested property right out of existence." *See Rafaeli*, 952 N.W.2d at 460 n.108. Although the Petition suggests that Michigan's approach is controversial, Michigan's process is similar to (but more protective of Petitioners' vested interest than) the process in *Nelson*, which this Court upheld as constitutional.

This Court succinctly summarized *Nelson* and other related cases in *Tyler*:

> There New York City foreclosed on properties for unpaid water bills. Under the governing ordinance, a property owner had almost two months after the city filed for foreclosure to pay off the tax debt, and an additional 20 days to ask for the surplus from any tax sale. *Id.*, at 104–105, n.1. No property owner requested his surplus within the required time.
>
> . . . We rejected this belated argument. *Lawton* had suggested that withholding the surplus from a property owner always violated the Fifth Amendment, but there was no specific procedure there for recovering the surplus. *Nelson*, 352 U.S., at 110. New York City's ordinance, in comparison, 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." Ibid. (citing *New York v. Chapman Docks Co.*, 1 App. Div. 2d 895, 149 N.Y.S. 2d 679 (1956)). Had the owners challenging the ordinance done so, "a separate sale" could have taken place "so that [they] might receive the surplus." 352 U.S., at 110. The owners did not take advantage of this procedure, so they forfeited their right to the surplus. Because the New York City ordinance did not "absolutely preclud[e] an owner from obtaining the surplus proceeds of a judicial sale," but instead simply defined the process through which the owner

> could claim the surplus, we found no Takings Clause violation. *Ibid.*[5]

Tyler, 598 U.S. at 643–644.

Just like the ordinance in *Nelson*, Section 78t provides the deadline by which notice of a claim to surplus proceeds must be submitted—a concept that was absent in Michigan before *Rafaeli* and for which Section 78t was explicitly created to provide, consistent with Michigan's Takings Clause ("[p]rivate property shall not be taken for public use without just compensation therefore being first made *or secured in a manner prescribed by law*") and the Fifth Amendment's Takings Clause. *See Nelson*, 352 U.S. at 109–10 (finding no Takings Clause violation where the local government defined a process through the owner could claim their surplus).

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5. *Howard* recently summarized *Nelson* this way:

> 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.

133 F.4th at 570.

Yet Section 78t provides even more protection to claimants. It requires seven notices spread throughout the process. And it gives former owners an additional three months *after* their property has been foreclosed to preserve the interests, something entirely absent from the ordinance in *Nelson*. *See Nelson*, 352 U.S. at 104 n.1.

In short, Petitioners failed to file the required notice by July 1, and thus under this Court's existing caselaw, "no Takings Clause violation" occurred when the County Treasurer denied their claims. *Tyler*, 598 U.S. at 644.

B. *Nelson* is entirely in line with this Court's Takings Precedents.

Petitioners argue that *Nelson* is out of line with this Court's precedents, including *Knick v. Twp. of Scott*, 588 U.S. 180 (2019), under the Just Compensation Clause. But those decisions do not conflict in any meaningful way. *Nelson*, as discussed, provides that states and local governments may establish processes through which former property owners and interested parties may claim surplus proceeds. *Knick* simply holds that the doors to federal courts are open to those denied just compensation *after a taking occurs*. The two cases are ultimately consistent: if a former property owner complies with state and local laws related to claiming proceeds but sees their claim denied anyway, federal courts can step in.

Petitioners' alleged "conflict" between *Nelson* and *Knick* therefore suffers from a faulty premise: no just compensation is owed if there is no taking. Indeed, " . . . unlike the state laws at issue in *Knick*, Michigan's procedures for collecting the surplus do not compensate

the property owner for a taking." *Howard*, 133 F.4th at 572. Instead, "[t]hey *prevent* a taking from happening in the first place." *Id*. *Knick* becomes relevant only if Petitioners had complied with the statutory process—which they failed to do—and if their motions were subsequently denied.

Rejecting the same alleged tension between *Nelson* and *Knick* raised in the present Petition, Chief Judge Sutton explained as follows in *Howard*:

> 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. Section 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 Section 1983. That is all that *Knick* guarantees.

Id.

Still, like Petitioners, Howard "separately claims that *Knick* cut back on *Nelson*." *Id.* But "the two cases address distinct issues." *Id.* As Chief Judge Sutton explained, "*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." *Id.* In the end, Chief Judge Sutton stated that "[i]t 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." *Id.*

Tyler and *Knick* were decided approximately four years apart. Eight Justices sat on both cases. Five Justices were in the majority in both cases. Both were authored by the Chief Justice. And *Tyler* wholeheartedly reaffirmed *Nelson*'s central holding: states can create a mandatory process through which former property owners may recover their equity following a foreclosure sale, and former owners forfeit the right to recover that equity if they fail to follow the process. *Tyler*, 598 U.S. at 643–646.[6]

In sum, any argument that *Nelson* is out of line with *Knick* wholly lacks merit.

Moreover, as the Petition acknowledges, no court has held that *Nelson*'s Takings Clause holding is mere dicta. This Court should not find differently.

Nelson's conclusion that no taking occurred when the petitioners failed to comply with New York City's

6. Pacific Legal Foundation represented the petitioners in *Tyler*.

claim process and therefore forfeited their rights to any remaining proceeds was essential to resolving the case and carries precedential weight. The *Nelson* appellants directly challenged the City's retention of surplus proceeds and property as a violation of due process and a taking without just compensation under the Fourteenth Amendment, citing *United States v. Lawton*, 110 U.S. 146 (1884). The Court addressed this claim head-on, ruling that the Constitution did not preclude the City's actions where adequate notice and procedural opportunities were provided, distinguishing *Lawton* because the New York statute allowed surplus recovery through timely action. 352 U.S. at 109–110. This holding was necessary to reject the appellants' constitutional challenge and affirm the lower court decision. Far from being a hypothetical or incidental remark, the takings ruling was a core component of the decision, not dicta.

Petitioners claim that *Hall* treated *Nelson*'s takings commentary as nonbinding. But *Hall* does no such thing. *Hall* interpreted Michigan's prior system (where former property owners had no means of obtaining their surplus) and the system present in *Nelson*. In other words, *Hall* merely explained (as *Tyler* did) that the petitioners in *Nelson* forfeited their rights to recover proceeds when they failed to take timely action. 51 F.4th at 195–196. Petitioners' assertion that *Nelson's* Taking Clause holding is dicta is without merit.

C. This Court should not reconsider or overrule *Nelson*.

Because it was recently upheld in *Tyler*, *Nelson* is entitled to deference under stare decisis. "Precedent is

a way of accumulating and passing down the learning of past generations, a font of established wisdom richer than what can be found in any single judge or panel of judges." Neil Gorsuch, *A Republic, If You Can Keep It* 217 (2019). "*Stare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Janus v. Am. Fedn. of State, Cnty., and Mun. Emps., Council 31*, 585 U.S. 878, 916 (2018). The Court considers five factors when examining whether to overturn precedent: "the nature of their error, the quality of their reasoning, the 'workability' of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance." *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 268 (2022).

1. *The nature of the error.* This Court reaffirmed *Nelson* just two years ago in *Tyler*. State and federal courts have not questioned *Nelson* for almost seventy years.

2. *The quality of the reasoning.* Petitioners' argument again revolves around an imaginary conflict between *Nelson* and *Knick*, which does not exist, as discussed.

3. *The "workability" of the rules.* The *Nelson* rule is simple: foreclosing governments must offer a process through which former property owners may obtain surplus proceeds following a foreclosure sale. The simplicity of the rule allows for experimentation amongst the states, a central tenet of the federal system. *See generally* Jeffrey S. Sutton, *51 Imperfect Solutions,*

States and the Making of American Constitutional Law (2018); *see also* Jeffrey S. Sutton, *Who Decides? States as Laboratories of Constitutional Experimentation* (2022).

4. *The disruptive effect on other areas of the law.* The Petition makes no argument that *Nelson* disrupts other areas of the law.

To the extent the Petition argues that there can be no legitimate forfeiture of remaining proceeds under any circumstances, Petitioners are ignoring the broader legal framework. Michigan and federal law permit waivers and forfeitures of constitutional and statutory rights in various contexts, as long as specific procedures are followed. Criminal defendants waive their right to a jury trial and to self-incrimination if they enter a knowing, intelligent, and voluntary plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). Suspects in criminal cases may waive their rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), if law enforcement follows specific procedures. The Michigan Court of Appeals hears appeals as of right (and appeals by leave granted) only if an appellant follows a specified procedure and submits proper documents within a specified time period. *See* Mich. Ct. R. 7.204, 7.205. The federal courts do the same. Fed. R. App. P. 3, 4. None of these waivers or forfeitures of known rights run afoul of constitutional standards. In each case, both the government and the private party must adhere to a prescribed process. Michigan imposes no greater requirement here.

5. *Absence of concrete reliance.* Michigan's foreclosure system relies on a concrete and reliable series of deadlines to (1) get tax-deficient property back on tax rolls to

promote economic development,[7] and (2) ensure all potential claimants for remaining proceeds may receive timely and equitable payments following a sale if they follow simple statutory procedures. The notice of intent requirement is central to all of this. Filing a notice of intent to claim remaining proceeds triggers a requirement that the FGU sell the property at fair market value, instead of a much lower statutorily defined "minimum bid." In other words, the notice of intent serves to ensure that former property owners and other claimants have an opportunity to recover their full remaining equity.

D. Michigan's process is in line with historical practice.

Moreover, Section 78 is consistent with nearly a century of case law across the country. As early as the mid-nineteenth century, South Carolina, Maine, Oregon, and New York "required property owners to request the surplus and show their entitlement to it." *Howard*, 133 F.4th at 571; 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). Washington required property owners to "file with the [state court] clerk a waiver of all objections" to the

7. Mich. Comp. Laws § 211.78(1) states, in part: "The legislature finds that there exists in this state a continuing need to strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes." Based upon this finding, the GPTA carefully balances various interests, protecting individual property rights and encouraging local governments to combat blight and economic deprivation by returning tax-delinquent property to the tax rolls.

sale to receive surplus proceeds. Wash. Rev. Code § 367(5) (1881). West Virginia's 1870 constitution required owners to "file[]" a "claim" in "the Circuit Court which decreed the sale[] within two years thereafter." W. Va. Const. art. IX, § 6 (1870). Minnesota required owners to "appl[y]" in order to receive their surplus within three months after the sale. Minn. Gen. Stat. ch. 81, tit. II, § 35 (1867). South Carolina held surplus for five years from the date of the sale to be refunded to "any person or persons conclusively proving . . . that they are entitled to said surplus . . . on account of their former ownership." S.C. Rev. Stat. tit. III, ch. XV, art. IV, § 357 (1894).

Petitioners cite no state laws that "required the government to return the surplus immediately to the former property owner without any requirement that the owner cooperate with the State." *See Howard*, 133 F.4th at 571. Petitioners also cite no state law "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." *Id.*

Thus, Petitioners offer no compelling basis for this Court to depart from its affirmance of *Nelson* in *Tyler*.

III. Section 78t Affords Sufficient Procedural Due Process.

Petitioners argue that Section 78t violates procedural due process. Specifically, Petitioners contend that Section 78t runs afoul of the three-factor test from *Matthews v. Eldridge*, 424 U.S. 319 (1976), which examines (1) the private interest affected by the official action; (2) "the risk of an erroneous deprivation of such interest through

the procedures used, and the probative value, if any, of additional or substitute procedural safeguards;" and (3) the government's "interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335. This Court should find Petitioners' argument unpersuasive.

Petitioners' argument rests on the unsupported premise that Section 78t is intended to serve the government's interest in withholding just compensation from private property owners in the form of surplus proceeds. Pet. 29–30. Petitioners provide no evidence or reasoning to substantiate this claim. Further, their arguments under the *Matthews* factors collapse when the foreclosure sale procedure is examined in its entirety.

The foreclosure sale process takes more than three years, and former property owners are given several notices, which are sufficient to satisfy due process. Indeed, prior to the Judgment of Foreclosure, the GPTA requires seven attempts to provide notice of the foreclosure proceeding. Mich. Comp. Laws § 211.78b; 211.78c; 211.78f(1)-(4); 211.78g(2); 211.78i(1), (3); 211.78i(2), (5). These include at least two notices by first-class mail, two notices by certified mail, a notice by recording, a notice by publication, and a personal visit to the foreclosed property. The state circuit court must enter its Judgment of Foreclosure by March 30 and on March 31, when the possibility of redemption expires and fee simple title vests in the FGU. Mich. Comp. Laws 211.78k.

Accordingly, by March 31 of the third tax year following the delinquency, the claimant knows that there

will eventually be a foreclosure sale. Between March 31 and July 1, the FGUs also provide additional notices that further advise the claimant of their responsibility to claim surplus proceeds by July 1. Auction sales of the property occur between July 1 and the first Tuesday in November. Mich. Comp. Laws § 211.78m. By January 31 of the fourth tax year after the delinquency, the FGU must provide notice indicating the sale price and identifying the surplus. The claimant then has between February 1 and May 15 to file a motion in the proper circuit court to collect the previously reserved surplus proceeds. Mich. Comp. Laws § 211.78t(3).

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time in a meaningful manner." *Matthews*, 424 U.S. at 333. Here, due process requires an FGU to provide reasonable and meaningful notice of Petitioners of their right to claim surplus proceeds and to provide them an opportunity to do so. In this circumstance, as illustrated above, Section 78t provides more than enough notice to satisfy due-process standards. And the County Treasurer undisputedly followed every procedural requirement to effectively foreclose the properties and provide notice of the deadline for claiming an interest in the surplus proceeds.

The content of the notice was sufficient to inform Petitioners of their statutory rights. The notice states that the property might be sold for more than the total amount due and that any person with an interest in the property at the time of the foreclosure "has a right to file a claim for **REMAINING PROCEEDS** pursuant to MCL 211.78t." *Id.* The notice continues in boldfaced font: "**In order to make a claim, you must take action no later than JULY**

1, 2021. . . . You must submit the completed Form 5743 by **CERTIFIED MAIL OR PERSONAL DELIVERY** to The Muskegon County Treasurer, 173 E Apple Ave, Ste 103, Muskegon, MI 49442 no later than **July 1, 2021.**" App. 1a. Petitioners do not explain how this clear language fails to give adequate notice of the July 1 deadline.

Petitioners argue that 78t does not provide enough time to file a notice of intent, and Petitioners contend that it does so before a former owner or interested party knows how much money is at stake. But Petitioners do not explain why it is prejudicial to their rights that the *amount* of surplus proceeds be known before the notice of intent to claim the proceeds must be filed. Additionally, the notice of intent is a single-page form. *Contra Todman v. Mayor & City Council of Baltimore*, 104 F.4th 479, 489 (4th Cir. 2024) (explaining that a winding, confusing form with small print obstructed by a seal was too complicated). The notice under Section 78t requires the applicant to provide their name, contact information, and information identifying the real property at issue. As the decision below correctly noted, the procedure is "minimally burdensome." Pet. App. 23a.

Regarding timing, by March 31 of the third year, the former property owner is aware that a foreclosure sale will occur. Potential claimants have three months, or about 90 days, to file a notice of intent to claim surplus proceeds. In a multitude of settings, the deadline to file a claim, appeal, or other matter is much shorter. By way of example, Michigan requires appeals as of right in criminal cases to be filed within 42 days after the entry of particular orders. Mich. Ct. R. 7.204. The federal system requires a notice of appeal in a criminal case to be filed within 14 days. Fed. R. App. P. 4(b)(1)(A).

Petitioners' examples of other contexts with longer periods for claiming money are inapplicable here. Michigan's Uniform Unclaimed Property Act, Mich. Comp. Laws § 567.241(1), involves property that is not subject to liens or other interests, and the property remains under the "ownership" of its owner because no other person or entity has any rights to the property. In contrast, surplus proceeds from a foreclosure sale arise after a former property owner fails to pay taxes owed to a taxing authority, and additional claimants, such as judicial lienholders and secured parties, often have competing interests in those proceeds. And in the eminent domain context, the public body must deposit the estimated just compensation at the time the complaint is filed. Mich. Comp. Laws § 213.55(5). The money is deposited for the benefit of the property owner, not for a potentially larger group of interested parties that have potential claims to the proceeds from the foreclosure sale. Such a system in the foreclosure sale context would lead to untold numbers of claims, over any stretch of years, even after the proceeds are paid out.

Petitioners' argument regarding the government's "direct pecuniary interest in the outcome" is also unpersuasive. Petitioners cite a series of cases in which a government official had a direct financial interest. Pet., 30; *see*, *e.g.*, *Tumey v. Ohio*, 273 U.S. 510, 535 (1927) (a mayor also serving as a judge had a direct pecuniary interest in the outcome of cases because his salary was paid in part by fees and costs levied by his acting as a judicial officer). Here, county treasurers are more akin to the officials in *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 250 (1980), where there was no "realistic possibility that the assistant regional administrator's judgment will be

distorted by the prospect of institutional gain as a result of zealous enforcement." County treasurers "perform[] no judicial or quasi-judicial functions." *Id.* at 247. They "hear[] no witnesses" and do not rule on "disputed factual or legal questions." Instead, they act more "akin to that of a prosecutor or civil plaintiff," which this Court has distinguished sharply from a mayor personally profiting through a dual appointment as a judge. *Id.*

Furthermore, *Marshall* upheld a procedure that allowed an agency to impose fines that reimbursed enforcement expenses. While doing so, it noted that "[a] scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions." *Id.* at 249–50. Here, Petitioners do not argue that individual government officials receive a financial or other benefit from proceeds left unclaimed under the statutory scheme—and indeed, they do not. Additionally, if a former property owner or other interested party follows Section 78t, they have the right to appeal in state court or to file a complaint in federal court if a court denies them what they are properly owed.

Regarding the second *Matthews* factor, the risk of erroneous deprivation is minimal. When former property owners and other interested parties follow the statutory procedure, the County does not object. In fact, it cannot do so. *See* Mich. Comp. Laws § 211.78t(11).

Petitioners place much weight on the fact that the statute of limitations for takings claims under Michigan law is six years and under federal law it is three years.

While accurate, these timeframes are irrelevant here. As Petitioners explain at length, Section 78t does not prevent a former property owner from filing a takings claim in either federal or state court. *See Knick*, 588 U.S. 180.

The third *Matthews* factor also weighs against Petitioners' argument. The timeline created by the GPTA regarding judgments of foreclosure, foreclosure sales, and claims for surplus proceeds is a flowing stream that protects a variety of interests. The seven required notices help protect property owners and other interested parties. The process protects various local units that may be owed taxes, like libraries and school districts. And it protects other creditors who have interests in the property.

Without clear deadlines and a final "cutoff" date for claiming proceeds, the system becomes unworkable. For instance, under Section 78t, an interested party may timely file a claim for surplus proceeds from a foreclosure sale. If the circuit court approves the claim, the FGU would disburse the proceeds to the claimant. Years later, however, another party with an equally valid claim could emerge and seek the same proceeds. This subsequent claimant would either receive nothing, as the funds are depleted, or the FGU would be compelled to pay beyond the sale's available proceeds, creating an untenable financial burden on local government. Such a scenario underscores the necessity of a structured deadline for claims to ensure equitable and administrable distribution of surplus proceeds.

The GPTA provides another critical rationale for setting the claim deadline prior to the foreclosure sale: the filing (or absence) of a notice of intent affects the price

for which a local unit of government may purchase the property. Section 78m provides as follows in part:

> If a city, village, township, or city authority does not purchase that property **and 1 or more Petitioners 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.**

Mich. Comp. Laws § 211.78m(1) (emphasis added). Thus, if a notice of intent is filed, a local unit must pay the greater of the minimum bid[8] or the fair market value of

8. "Minimum bid is the minimum amount established by the foreclosing governmental unit for which property may be sold or transferred[.]" Mich. Comp. Laws § 211.78m(16)(c). "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,

the property—but if a notice of intent is not filed, then the local unit can pay just the minimum bid. This section is designed to ensure that claimants get a fair return of their equity; if they file a notice of intent, then a local unit must pay fair market value (rather than just the tax due), creating a larger surplus. But if potential claimants do not intend to demand payment of that equity, then the local unit (being a taxpayer-funded public body) can pay less for the property. Foreclosure sales begin in August, so it is logical that notices of intent from former owners and interest holders is due July 1. The statute deftly balances the interests of the FGU, local units, and former owners and interest holders by requiring notices to be filed before the sale.

Petitioners complain that the July 1 deadline is just 92 days after the effective foreclosure date of March 31. This, too, promotes a legitimate governmental interest while also protecting prospective claimants. A FGU is more likely to have (or be able to find) a valid address for the former interest holders shortly after the foreclosure, making it more likely that the claimant will receive the notice. If the deadline were a year or more in the future, the FGU might not be able to obtain a current address for the claimant, or the claimant might by that time have moved and not read any notices published in the local newspaper. The July 1 deadline also allows claimants to confirm their current address with the FGU before the property is sold.

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personal service, legal, personnel, outside contractor, and auction expenses." *Id.*

Further, the form itself is one page and requires minimal effort and knowledge to complete. The website to find the form is included in the notices. And Michigan has a variety of free or low-cost legal services available to the elderly, poor, and sick.

This process is hardly novel. Michigan law frequently contemplates future interests, even when the value is incalculable or the future interest has not vested. A person or business can have an interest in future revenue streams, accounts receivable, and other contingency interests for which a dollar value is currently unknown. Not knowing the *value* of an interest, or having an interest that is not yet vested, does not mean the interest does not exist. In fact, Michigan law routinely allows parties to assign future contract rights, future insurance proceeds, and other future interests in proceeds. *See* Mich. Comp. Laws § 440.2210 (assignment of rights under the Uniform Commercial Code); *see Jawad A Shah, MD, PC v. State Farm Mut. Auto. Ins. Co.*, 920 NW2d 148 (Mich. Ct. App. 2018) (insured patients can freely assign accrued, unpaid insurance claims); *see Merrill v. Grant*, 73 N.W.2d 254 (Mich. 1955) (in which debtors assigned proceeds from future sale of home to pay a debt to their attorney).

Likewise, many state and federal statutes and rules require a person to take action or claim an interest before the exact value of the claim is known:

- ***Tax refunds.*** A taxpayer forfeits his or her income tax refund if a tax return is filed too late, even though the tax refund is the taxpayer's property. 26 U.S.C. § 6511(a) (taxpayer must file federal income tax return within three years of due date

to receive refund); Mich. Comp. Laws § 205.27a(2) (a taxpayer must file Michigan income tax return within four years of due date to receive refund).

- ***Receivership claims.*** The Michigan Receivership Act requires creditors to file a claim if the receiver concludes that "receivership property is likely to be sufficient to provide a distribution to creditors," even though the amount of any prospective distribution is unknown. Mich. Comp. Laws § 554.1030. Unless the court orders otherwise, "a claim that is not submitted timely is not entitled to a distribution from the receivership." *Id.*

- ***Bankruptcy claims.*** A creditor in a bankruptcy case must file a proof of claim before knowing whether any money will be available to pay creditors. Fed. R. Bankr. Pro. 3002. A claim that is not timely filed is barred.

- ***Statutes of limitations.*** Every statute of limitations requires a claim to be filed by a certain date, even if the extent or amount of damages is unknown.

In sum, 78t complies with the requirements of procedural due process, and this Court should deny the Petition.

CONCLUSION

The County Treasurer respectfully requests that this Court deny the Petition.

Respectfully submitted,

Michael D. Homier
Counsel of Record
Laura J. Genovich
Keith T. Brown
Foster Swift Collins
& Smith, PC
1700 East Beltline Avenue NE,
Suite 200
Grand Rapids, MI 49525
(616) 726-2200
mhomier@fosterswift.com

Counsel for Respondent

APPENDIX

TABLE OF APPENDICES

APPENDIX A — NOTICE OF FORECLOSURE OF THE MUSKEGON COUNTY CIRCUIT COURT, DATED MARCH 31, 2021

MUSKEGON COUNTY CIRCUIT COURT

Dated March 31, 2021

NOTICE OF FORECLOSURE

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

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

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

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

Property County: Muskegon

Parcel ID #: 07-009-300-0001-00

Reference#: 61-18-00172

Street Address: 5770 RUSSELL RD, TWIN LAKE

Legal Description: DALTON TOWNSHIP SEC 9 T11N R16W N 20 RDS OF NW 1/4 OF SW 1/4

Extra Info About This Property:

Appendix A

CLAIMS FOR REMAINING PROCEEDS

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

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

You must submit the completed Form 5743 by **CERTIFIED MAIL OR PERSONAL DELIVERY** to The Muskegon County Treasurer, 173 E Apple Ave, Ste 104, Muskegon, MI 49442 no later than **July 1, 2021**.

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

Appendix A

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

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

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

Muskegon	61-18-00172

APPENDIX B — MEETING MINUTES OF THE SENATE COMMITTEE ON FINANCE, DATED JULY 22, 2020

THE SENATE
COMMITTEE ON FINANCE
SENATOR JIM RUNESTAD
CHAIR

MEMBERS:	7500 BINSFELD
SEN. ARIC NESBITT,	BUILDING
VICE CHAIR	P.O. BOX 30036
SEN. KEVIN DALEY	LANSING, MICHIGAN
SEN. JON BUMSTEAD	48909-7536
SEN. CURTIS S. VANDERWALL	PHONE:
SEN. STEPHANIE CHANG,	(517) 373-1758
MINORITY VICE CHAIR	FAX:
SEN. BETTY JEAN ALEXANDER	(517) 373-0938

COMMITTEE MEETING MINUTES

July 22, 2020

A meeting of the Senate Committee on Finance was scheduled for Wednesday, July 22, 2020, at 12:00 noon, in the 403 Room of the Capitol Building.

The agenda summary is as follows:

1. Testimony regarding SB 676 (Sen. Lucido).

2. Testimony regarding SB 891 (Sen. Runestad).

3. Reported HB 4851 (S-1) (Rep. Hoitenga) with recommendation and immediate effect.

Appendix B

The Chair called the meeting to order at 12:42 p.m. He instructed the Clerk to call the roll. At that time, the following members were present: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander, a quorum was present.

The Chair entertained a motion by Sen. Nesbitt to adopt the meeting minutes from June 24, 2020. Without objection, the minutes were adopted.

The Chair invited Sen. Lucido to summarize SB 676.

The Chair invited the following individuals to present testimony via Zoom regarding SB 676:

Christina M. Martin, Pacific Legal – Support

Daniel J. Dew – Pacific Legal – Support

Catherine McClary, Michigan Association of County Treasurers – No Position

Mary Balkema, Michigan Association of County Treasurers – No Position

The Chair summarized SB 891.

The Chair invited the following individuals to present testimony via Zoom regarding SB 891:

Christina M. Martin, Pacific Legal – Support

Daniel J. Dew – Pacific Legal – Support

Appendix B

Catherine McClary, Michigan Association of County Treasurers – No Position

Mary Balkema, Michigan Association of County Treasurers – No Position

The Chair brought up HB 4851 (S-1) and invited Joe Vicente, of Rep. Hoitenga's office to summarized the bill.

The cards were read of those individuals not wishing to present testimony regarding HB 4851:

Alex Houseman, Michigan Realtors Association – Support

The Chair entertained a motion by Sen. Nesbitt to adopt the (S-1) version of HB 4851. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley, VanderWall, Chang and Alexander

Nays: None

Pass: Sen. Bumstead

The motion prevailed and the (S-1) was adopted.

The Chair entertained a motion by Sen. Nesbitt to report HB 4851 (S-1) to the floor with recommendation that it pass. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the bill was reported.

The Chair moved to recommend immediate effect for HB 4851 (S-1). Without objection, immediate effect was recommended.

There being no further business before the committee, the Chair moved to adjourn the meeting. Without objection, the committee was adjourned at 1:07 p.m.

Date Adopted by Committee: 09/02/2020

APPENDIX C — MEETING MINUTES OF THE SENATE COMMITTEE ON FINANCE, DATED SEPTEMBER 30, 2020

THE SENATE
COMMITTEE ON FINANCE
SENATOR JIM RUNESTAD
CHAIR

MEMBERS:	7500 BINSFELD
SEN. ARIC NESBITT,	BUILDING
VICE CHAIR	P.O. BOX 30036
SEN. KEVIN DALEY	LANSING, MICHIGAN
SEN. JON BUMSTEAD	48909-7536
SEN. CURTIS S. VANDERWALL	PHONE:
SEN. STEPHANIE CHANG,	(517) 373-1758
MINORITY VICE CHAIR	FAX:
SEN. BETTY JEAN ALEXANDER	(517) 373-0938

COMMITTEE MEETING MINUTES

September 30, 2020

A meeting of the Senate Committee on Finance was scheduled for Wednesday, September 30, 2020, at 12:00 noon in Room 403 of the Capitol Building.

The agenda summary is as follows:

1. Reported SB 1137 (S-2) (Sen. Runestad) with recommendation and immediate effect.

2. Reported SB 676 (S-1) (Sen. Lucido) with recommendation and immediate effect.

Appendix C

3. Reported SB 1076 (Sen. MacGregor) with recommendation and immediate effect.

4. Testimony regarding SB 1105 (Sen. VanderWall).

5. Testimony regarding SB 1106 (Sen. Daley).

6. Reported SB 1053 (S-1) with recommendation and immediate effect.

The Chair called the meeting to order at 12:08 p.m. He instructed the Clerk to call the roll. At that time, the following members were present: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander, a quorum was present.

The Chair entertained a motion by Sen. Nesbitt to adopt the meeting minutes from September 23, 2020. Without objection, the minutes were adopted.

The Chair brought up SB 1137 and SB 676 (Sen. Lucido) and summarized the bills.

The Chair invited the following individuals to present testimony regarding SB's 1137 and 676:

Steven Liedel, MI Association of County Treasurers – Support

Catherine McCleary, Washtenaw County Treasurer, via Zoom – Support

Appendix C

Daniel Dew, Pacific Legal Foundation – via Zoom – Support

Denna Bosworth, Michigan Association of Counties – Neutral

Judy Allen, Michigan Townships Association – Neutral, SB 1137

Chris Hackbarth, Michigan Municipal League – Neutral, SB 1137

The Chair entertained a motion by Sen. Nesbitt to adopt the (S-2) version of SB 1137. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the (S-2) was adopted.

The Chair entertained a motion by Sen. Nesbitt to report SB 1137 (S-2) to the floor with recommendation that it pass. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the bill was reported.

Appendix C

The Chair moved to recommend immediate effect for SB 1137 (S-2). Without objection, immediate effect was recommended.

The Chair entertained a motion by Sen. Nesbitt to adopt the (S-1) version of SB 676. The vote was as follows:

> Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander
>
> Nays: None

The motion prevailed and the (S-1) was adopted.

The Chair entertained a motion by Sen. Nesbitt to report SB 676 (S-1) to the floor with recommendation that it pass. The vote was as follows:

> Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander
>
> Nays: None

The motion prevailed and the bill was reported.

The Chair moved to recommend immediate effect for SB 676 (S-1). Without objection, immediate effect was recommended.

The Chair invited Sen. MacGregor to summarize SB 1076.

The Chair invited the following individuals to present testimony regarding SB 1076:

Robin Lott, Michigan Treasury, Fostering Futures Scholarship, via Zoom – Support

The Chair entertained a motion by Sen. Nesbitt to report SB 1076 to the floor with recommendation that it pass. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the bill was reported.

The Chair moved to recommend immediate effect for SB 1076. Without objection, immediate effect was recommended.

The Chair invited Sen. VanderWall and Sen. Daley to summarize SB's 1105 and 1106.

The Chair invited the following individuals to present testimony regarding SB's 1105 - 1106:

Laura Sherman, MI Energy Innovation Business Council, via Zoom – Neutral

Rachel Richards, Michigan Department of Treasury, via Zoom – No Position

Steve Levitas, Pine Gate Renewables, via Zoom – No Position

Stephanie Dohn, Southern Current, via Zoom – Support

Carolee Smith, Consumers Energy, via Zoom – Support

Dan Papineau, Michigan Chamber – Support

Chris Hackbarth, Michigan Municipal League – No Position

Judy Allen, Michigan Townships Association – No Position

Denna Bosworth, Michigan Association of Counties – Oppose

Ed Rivit, Michigan Conservative Energy Forum – Support

The cards were read of those individuals not wishing to present testimony regarding SB's 1105 – 1106:

Mike Johnston, Michigan Manufactures Association – Support

Winston Feehley, DTE – Support

Abigail Wallace, Michigan Environmental Council – Oppose

Matt Patton, Detroit Regional Chamber – Support

Jim Murray, Coalition for Community Solar Access – Support

Chuck Lippstreau, Michigan Agri-Business Association – Support

Jeff Cobb, Michigan Association of School Boards - Oppose

The Chair invited Steve Gilbert, of Sen. Victory's office, to summarize SB 1053.

The Chair entertained a motion by Sen. Nesbitt to adopt the (S-1) version of SB 1053. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the (S-1) was adopted.

The Chair entertained a motion by Sen. Nesbitt to report SB 1053 (S-1) to the floor with recommendation that it pass. The vote was as follows:

Yeas: Chair Runestad, Sen.(s) Nesbitt, Daley, Bumstead, VanderWall, Chang and Alexander

Nays: None

The motion prevailed and the bill was reported.

Appendix C

The Chair moved to recommend immediate effect for SB 1053 (S-1). Without objection, immediate effect was recommended.

There being no further business before the committee, the Chair moved to adjourn the meeting. Without objection, the committee was adjourned at 1:42 p.m.

Date Adopted by Committee: 10/07/2020

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED MAY 19, 2025

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1665

FAYTIMA HOWARD,

Plaintiff-Appellant,

v.

MACOMB COUNTY, MICHIGAN,

Defendant-Appellee.

Filed May 19, 2025

ORDER

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.

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* Judge Davis is recused in this case.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/_____
Kelly L. Stephens, Clerk