

No. _____

In the Supreme Court of the United States

LYNETTE HATHON and AMY JO DENKINS,
Individually and on Behalf of All Others Similarly Situated,
Petitioners,

v.

STATE OF MICHIGAN,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Brett M. Kavanaugh, Associate Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

1. Pursuant to Supreme Court Rules 13.5 and 30.1, Petitioners LYNETTE HATHON and AMY JO DENKINS respectfully request a 60-day extension of time, that extends to and includes Monday, October 20, 2025, within which to file a petition for a writ of certiorari. The Michigan Supreme Court issued its dispositive order on March 20, 2025. A copy is attached as Exhibit A. It later denied a timely motion for reconsideration via an order issued on May 22, 2025. A copy of the order is attached as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1257(a).

2. Absent an extension, a petition for a writ of certiorari would be due on August 20, 2025. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. Petitioners respectfully request an extension of time to file a petition for a writ of certiorari.

4. In *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631 (2023), this Court held that retaining surplus proceeds from a tax foreclosure sale constitutes a taking under the Fifth Amendment, requiring just compensation.

5. Similarly, in *Rafaeli, LLC v. Oakland County*, 952 N.W.2d 434 (Mich. 2020), the Michigan Supreme Court recognized such retention as a taking under the Michigan Constitution.

6. The payment of just compensation was required immediately and automatically by the United States Constitution upon the taking “[b]ecause of ‘the self-executing character’ of the Takings Clause ‘with respect to compensation.’” *Knick v. Twp. of Scott*, 588 U.S. 180, 192 (2019) (quoting *First English Evangelical Lutheran Church of Glendale v. Cnty. of Los Angeles*, 482 U.S. 304, 315 (1987)).

7. The State of Michigan and its treasurer failed that obligation.

8. In Michigan, the State, rather than county officials, conducted the unconstitutional foreclosure process in eight of Michigan’s 83 counties, and is protected from traditional federal constitutional claims under 42 U.S.C. § 1983 per *Will v. Michigan Dep’t of State Police*, 491 U.S. 58 (1989).

9. The Michigan Supreme Court failed to recognize the federal law mandates that it must provide the constitutional remedy. See *DLX, Inc. v. Kentucky*,

381 F.3d 511, 528 (6th Cir. 2004) (holding that states must provide a judicial remedy for federal Takings claims “notwithstanding sovereign immunity”).

10. The Michigan Supreme Court’s decision in this case denied Petitioners a complete remedy under state law, as the *General Property Tax Act*, M.C.L. § 211.78t, imposes procedural barriers and limits recovery, leaving Petitioners with an inadequate remedy for the State Treasurer’s unconstitutional retention of surplus proceeds.

11. The Michigan Supreme Court’s over-reliance on M.C.L. § 211.78t’s limited statutory process and insufficient remedy contravenes *DLX*’s mandate, creating a split with the Sixth Circuit’s view that state courts must remedy federal Takings violations.

12. This case presents the question left unresolved in *Devillier v. Texas*, 601 U.S. 285 (2024): whether property owners have a direct cause of action under the Takings Clause of the Fifth Amendment when state remedies are inadequate or unavailable.

13. Unlike *Devillier*, where Texas provided a robust and full state-law remedy, Michigan’s framework inadequately ensures and fails to provide full just compensation for Petitioners, particularly against the state as a sovereign entity.

14. This gap creates a significant constitutional issue, as Petitioners are barred from federal relief under § 1983 and face an incomplete state remedy, potentially leaving them without any avenue to vindicate their Fifth Amendment rights.

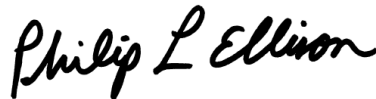
15. Petitioners assert that review is warranted to clarify whether the Takings Clause is self-executing in such circumstances, resolving a critical question for property owners nationwide.

16. A sixty (60) day extension would allow Petitioners sufficient time to fully prepare the needed petition for filing. Additionally, undersigned counsel has a number of other pending matters with proximate due dates that will interfere with counsel's ability to file the petition on or before the current due date.

Wherefore, Petitioners respectfully request that an order be entered extending the time to file a petition for a writ of certiorari to and including Monday, October 20, 2025.

July 30, 2025

Respectfully submitted,



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EXHIBIT A

Order

Michigan Supreme Court
Lansing, Michigan

March 20, 2025

Elizabeth T. Clement,
Chief Justice

168233 & (15)

Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

LYNETTE HATHON and AMY JO DENKINS,
Individually and on Behalf of All Others Similarly
Situating,
Plaintiffs-Appellees,

v

SC: 168233
COA: 374332
Ct of Claims: 19-000023-MZ

STATE OF MICHIGAN,
Defendant-Appellant.

By order of March 14, 2025, we stayed proceedings in the Court of Claims. On order of the Court, the application for leave to appeal the February 25, 2025 order of the Court of Appeals and the motion for peremptory reversal are again considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we grant the motion and REVERSE the Court of Claims' order denying the defendant's motion for summary disposition and granting the plaintiffs' motion for recertification, and we REMAND this case to that court for entry of an order denying certification and dismissing the plaintiffs' claims without prejudice. The stay of proceedings in the Court of Claims is dissolved.

As this Court previously held in this case, "MCL 211.78t creates a controlling and structured system for adjudication of tax-foreclosure disputes as the exclusive means of obtaining surplus proceeds." *Schafer v Kent Co*, ___ Mich ___, ___ (July 29, 2024) (Docket Nos. 164975 and 165219), slip op at 35. Indeed, the statute expressly states that "[t]his section is the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under the laws of this state." MCL 211.78t(11). This mechanism works within the confines of existing tax-foreclosure lawsuits filed in circuit court by the foreclosing unit of government without claimants having to file a counterclaim or initiating a new lawsuit against any person or entity. Thus, the circuit court that presided over the tax-foreclosure action retains jurisdiction over post-foreclosure proceedings under MCL 211.78t. This means that the Court of Claims' exclusive jurisdiction over claims against the state of Michigan under MCL 600.6419(1)(a) is not implicated with respect to claims for remaining proceeds under MCL 211.78t. The Court of Claims lacks authority to create a new mechanism for processing claims to these proceeds or to certify a class for

that purpose, and it erred by doing so.¹ For a claimant to preserve their right to claim remaining proceeds under MCL 211.78t, they must initiate the statutory process by providing the foreclosing unit of government notice of their intent to seek remaining proceeds by March 31, 2025, using a form prescribed by the Department of Treasury.² See MCL 211.78t, (6); *Schafer*, ___ Mich at ___; slip op at 39-42.

We do not retain jurisdiction.

¹ We take no position as to the merits of the plaintiffs' assertion that they are also entitled to recover interest and attorney fees or their claim that the sales commission under MCL 211.78t(9) is unconstitutional. However, litigation of these claims is premature. Properly notified claimants must first utilize the statutory process provided by MCL 211.78t for recovery of remaining post-foreclosure sale proceeds before challenging the adequacy of or the application of that process as applied to them. See, e.g., *In re Petition of Muskegon Co Treasurer for Foreclosure*, ___ Mich App ___ (October 26, 2023) (Docket No. 363764), lv den ___ Mich ___ (2024); *Nelson v City of New York*, 352 US 103; 77 S Ct 195; 1 L Ed 2d 171 (1956).

² The Department of Treasury has made the required forms available online. See Michigan Department of Treasury, *Auctions and Claimants* <<https://www.michigan.gov/taxes/property/forfeiture-foreclosure/county/auctions-and-claimants>> (accessed March 20, 2025) [<https://perma.cc/J6UN-JVLM>].



p0319

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

March 20, 2025

Clerk

EXHIBIT B

Order

Michigan Supreme Court
Lansing, Michigan

May 22, 2025

Megan K. Cavanagh,
Chief Justice

168233 (21)

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

LYNETTE HATHON and AMY JO DENKINS,
Individually and on Behalf of All Others Similarly
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Plaintiffs-Appellees,

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SC: 168233
COA: 374332
Ct of Claims: 19-000023-MZ

STATE OF MICHIGAN,
Defendant-Appellant.

_____/

On order of the Court, the motion for reconsideration of this Court's March 20, 2025 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).



a0519

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

May 22, 2025

Clerk