No. 25-203

IN THE

Supreme Court of the United States

JOHANNA MCGEE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JACQUELINE MCGEE, *et al.*,

Petitioners,

v.

ALGER COUNTY TREASURER, *et al.*,

Respondents.

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

ALGER COUNTY TREASURER AND IRON COUNTY TREASURER RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

The Michigan legislature enacted a statutory process for foreclosed property owners to claim and receive any applicable surplus from the tax-foreclosure sales of their former properties. That process has been challenged on unlawful takings and due process grounds and has been adjudicated to survive constitutional muster under both the Michigan Constitution and the U.S. Constitution.

Petitioners failed to comply with this statutory process. The trial court therefore denied Petitioners' individual requests for surplus proceeds. The Michigan Court of Appeals affirmed rejecting Petitioners' constitutional challenges to the statutory scheme based on the court's precedent in *Muskegon County Treasurer v. Beeman*, 20 N.W.2d 337 (Mich. Ct. App. 2023) and refusing Petitioners' request to declare a "conflict opinion" that disagreed with *Muskegon*. Petitioners sought but were denied discretionary review by the Michigan Supreme Court.

I. Did the Court of Appeals err in concluding that Petitioners' arguments were foreclosed based on *Muskegon* such that no unlawful taking occurred where Michigan's statutory process for recovering surplus proceeds from a tax foreclosure sale is consistent with, and provides even more protection than, the type of process found to comply with the Takings Clause in *Nelson v. City of New York*, 352 U.S. 103 (1956), and where this Court endorsed *Nelson* in *Tyler v. Hennepin County*, 598 U.S. 631, 644 (2023), explaining that consistent with the Takings

Clause, states are free to "define[] the process through which [a former] owner [may] claim the surplus" and that if the former owner does not comply with the enacted process, the state may keep the surplus.

II. Did the Court of Appeals err in concluding that Petitioners' arguments were foreclosed based on *Muskegon* such that Petitioners were not denied due process where the court, citing *Muskegon, supra,* 20 N.W.2d at 347, observed that Petitioners actually sought a process different from that enacted by the Michigan Legislature and that such considerations are "policy questions for the Legislature, not legal ones for the Judiciary" which is in keeping with *Nelson's* pronouncement that "a state statute is the responsibility of the state legislature and not of the courts." *Nelson*, 352 U.S. at 110-11.

TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cited Authorities

Page

Constitutional Provisions

Statutes

Cited Authorities

Page

Page

Page

Rules

INTRODUCTION

It is a "basic principle that the State's power to tax . . . is justified by the protection, opportunities and benefits the State confers" on its citizenry as result of that taxation. *Allied-Signal, Inc. v. Dir., Div. of Tax'n*, 504 U.S. 768, 778 (1992) (citation and internal quotation marks omitted). To that end, "[p]eople must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property." *Jones v. Flowers*, 547 U.S. 220, 234 (2006). If, however, there is a surplus from a tax foreclosure sale, then "[t]o withhold the surplus from the owner would be to violate the fifth amendment to the constitution and to deprive him of his property without due process of law or to take his property for public use without just compensation." *Nelson v. City of New York*, 352 U.S. 103, 109-10 (1956). Said differently, the power to tax cannot go beyond what is owed and thus a former property owner cannot be absolutely "preclude[d] . . . from obtaining the surplus proceeds of a judicial sale." *Id.* at 110.

In keeping with *Nelson's* admonition, the Michigan Supreme Court held in *Rafaeli, LLC v. Oakland County*, 952 N.W2d 434, 440 (Mich. 2020), that the defendants' retention and subsequent transfer of surplus proceeds from the tax-foreclosure sale resulted in an unconstitutional taking of the plaintiffs' properties under Article 10, § 2 of the Michigan Constitution, thereby entitling the plaintiffs to just compensation in the form of "surplus proceeds." In response to *Rafaeli*, Michigan's legislature added § 211.78t to the General Property Tax Act ("GPTA"), Mich. Comp. Laws §§ 211.1 *et seq.* Section 78t provides a mechanism for foreclosed property owners to claim and receive any

applicable surplus from the tax-foreclosure sales of their former properties.

But long before any foreclosure sale, property owners are given multiple opportunities to pay overdue property taxes, as Michigan follows a three-year tax foreclosure process, during which time taxpayers can resolve their debt through payment plans and assistance programs. Under the GPTA, if taxes are not paid by February 28, they become delinquent and are turned over to the county treasurer on March 1, with fees and interest beginning to accrue. *See* Mich. Comp. Laws § 211.78a(2). If taxes remain unpaid for a full year, and after several notices to the property owner, the property is forfeited on March 1st of the second year to the county treasurer – the Foreclosing Governmental Unit ("FGU"). *See* Mich. Comp. Laws §§ 211.78b, 211.78c, 211.78f, and 211.78g(1). Once the property is forfeited, the FGU can petition the circuit court to initiate judicial foreclosure proceedings, but the delinquent taxpayer has until March 31 of this third year to redeem the property by paying all back taxes, interest, and fees. If the property is not redeemed, the owner loses all rights, and the property is sold at a public auction. *See* Mich. Comp. Laws §§ 211.78i(2), 211.78j, 211.78k(5), 211.78(6).

Just as the forfeiture and foreclosure processes provide opportunities to prevent loss of the property, Michigan's GPTA provides the former property owner an opportunity to prevent the loss of any surplus proceeds from the foreclosure sale by way of Mich. Comp. Laws 211.78t; specifically, by mailing a single-page form – Form 5743 – in accordance with the statute by July 1 of the year of foreclosure to the FGU. *See* Mich. Comp. Laws

§ 211.78t(2). This means that any claimant is provided with a fixed three-month period to comply with the July 1 statutory deadline because foreclosure judgments are entered no later than March 31 of any given year. *See* Mich. Comp. Laws §§ 211.78t(5), 211.78t(6).

Here, over the course of the three-year foreclosure process, each Petitioner failed to take advantage of opportunities to retain their individual properties, and each likewise failed to properly take advantage of the three-month process for receiving any surplus proceeds from the foreclosure sales despite undisputed notices of how to obtain such proceeds. As a result, in an effort to avoid their own failures but nonetheless receive surplus proceeds, each Petitioner challenged the constitutionality of § 211.78t as violating both due process and the guarantee against the taking of property without just compensation. On appeal, the Michigan Court of Appeals rejected the constitutional challenges brought by Petitioners based on Michigan Court Rules 7.215(C)(2) and (J)(1) which require that, under the rule of stare decisis, a court of appeals panel must follow the rule of law established by a previously published decision; in this case, *Muskegon v. Beeman, supra.* Although Michigan Court Rule 7.215(J)(2) provides a mechanism by which the court could have declared its decision a conflict opinion thereby setting forth a procedural means by which the prior decision need not be followed, the court expressly declined Petitioners' requests to do so. The Michigan Supreme Court then declined discretionary review.

This Petition therefore comes to the Court with no independent analysis by the Michigan Court of Appeals when adjudicating Petitioners' constitutional challenges.

And the factual basis for the denial of surplus proceeds to each Petitioner rests upon their own individual failures to comply with statutory requirements. Thus, to the extent that the Court is inclined to review the constitutionality of Section 78t, it should not be by way of this Petition.[1]

STATEMENT OF THE CASE

This Petition arises from two separate appeals consolidated by the Michigan Court of Appeals given that each appeal involved challenges to the process set forth in Mich. Comp. Laws § 211.78t for a former property owner to seek surplus proceeds from the tax-foreclosure sale.

A. Petitioner Johanna McGee, as personal representative of the Estate of Jacqueline McGee ("McGee Petition").

Petitioner Johanna McGee, as personal representative of the Estate of Jacqueline McGee ("Estate"), sought to recover surplus proceeds from the sale of the property formerly owned by her mother, Jacqueline, who fell

1. The Michigan Court of Appeals decision in *Muskegon* is pending before this Court in *Beeman v. Muskegon County*, No. 24-858, as is *Koetter v. Manistee County Treasurer*, No. 24-1095, and on petition for writ of certiorari to the Sixth Circuit is *Howard v. Macomb County*, No. 25-451, which raise issues of whether § 211.78t survives constitutional muster under due process and takings grounds. In addition, the Court granted writ of certiorari to the Sixth Circuit in *Pung v. Isabella County*, No. 25-95 in a case challenging Section 211.78t under the Fifth Amendment's Takings Clause as well as under the Eighth Amendment's prohibition against excessive fines clause, arguing that under either Amendment, compensation should be determined by the fair market value of the foreclosed property.

behind on her 2018 property taxes ("McGee Property"). The Alger County FGU followed Michigan's three-year statutory process for collection of delinquent property taxes on the McGee Property. (Pet App 48a-51a) When no attempt at repayment was made, on June 1, 2020, the Alger County FGU filed a petition for judicial foreclosure of the forfeited property with the circuit court. (Pet App 44a-47a) On or about January 19, 2021, the Alger County FGU filed with the Clerk of Court Proof of Service of the Notice of Show Cause Hearing and Notice of Foreclosure Hearing, Proof of Publication and Proof of Personal Service as required by Mich. Comp. Laws § 211.78k(1). (Pet App 45a) A Judgment of Foreclosure was entered on February 17, 2021. (Pet App 44a-47a) At the time the Judgment became effective, Marquette General Hospital, Inc., held a judgment lien of record on the property in the original amount of $17,223.33 and another in the amount of $50,940.05. (*See* Alger Response to Application for Leave to Appeal, Mich. Supreme Ct., No. 167712 (Nov. 21, 2024))

A Notice of Foreclosure was then issued stating, among other things, that "[a]s of March 31, 2021, the property described below has been **FORECLOSED** by order of the Alger County Circuit Court due to unpaid 2018 and/or previous years taxes. This property is now owned by the **Alger County Treasurer**." (Pet App 52a (emphasis in original)) The Notice of Foreclosure further informed the former property owner that

> This property may later be sold or transferred for more than the total amount due 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.

(Pet App 52a (emphasis in original))

The **CLAIMS FOR REMAINING PROCEEDS** notification explained that "[a]ny 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 realized from the sale or transfer of this property. Remaining proceeds are those proceeds left over, if any, after the total amount due the Foreclosing Governmental Unit is paid." (Pet App 53a) Then, in all capital letters, the notice informed that "YOU MUST SUBMIT A NOTICE OF INTENTION TO CLAIM INTEREST IN FORECLOSURE SALES PROCEEDS FORM 5743 TO THE ALGER COUNTY TREASURER **NO LATER THAN JULY 1, 2021**." (Pet App 53a (emphasis in original)) The website to access Form 5743 was provided, www.miTaxNotice.com/form5743, as was the optional choice of contacting the Alger County Treasurer. (Pet App 53a) Immediately thereafter, conspicuously stated was that "the completed Form 5743" must be submitted by "CERTIFIED MAIL OR PERSONAL DELIVERY to The Alger County Treasurer, 101 Court St, Munising, MI 49862 no later than **July 1, 2021**. (Pet App 53a (emphasis in original)) Also included was the website to view the "claims process [as] described in MCL 211.78t, and an explanation that an attorney is not required in order to file Form 5743 but if one is desired, the website and telephone number to the State Bar of Michigan's "legal resource and referral" is provided. (Pet App 53a-54a)

The Treasurer held a Public Land Sale Auction, at which the McGee Property was sold for the winning

bid, which was $38,250.00. At the time of the sale, the amount of unpaid taxes, interest, and fees for the McGee Property totaled $6,012.29, which included a minimum bid of $3,599.79, a statutory sales recovery fee of $1,912.50, and attorney fees in the amount of $500.00. Therefore, the amount of surplus proceeds of the sale was $32,237.71. (Pet App 4a-5a)

Despite multiple reminders, one year after the Judgment of Foreclosure was entered, on February 25, 2022, which was over one year since Jacqueline's death on February 7, 2021, the Estate filed its Notice of Intention to Claim Interest in Foreclosure Sales Proceeds ("Notice of Intent"). The Notice of Intent was over seven months past the statutory due date. (Pet App 5a) Three months later, on May 20, 2022, the Estate filed an unverified Motion to "Disburse Remaining Proceeds from Tax Foreclosure Sale" ("Motion to Disburse") in the circuit court. (Pet App 5a) The Motion to Disburse solely consisted of 11 paragraphs and a "wherefore" clause. (Pet App 59a-60a)

Some two months later, on July 13, 2022, the Estate filed a "Supplemental Brief Relating to the Claim of the Estate of Jacqueline Helen McGee" ("Supplemental Brief"). (*See* Alger Response to Application for Leave to Appeal, Mich. Supreme Ct., No. 167712 (Nov. 21, 2024)) In the Supplemental Brief, the Estate argued in complete nonconformity with its Motion to Disburse. That is, in the Motion to Disburse, the Estate requested that the court "enter an Order directing the Alger County Treasurer to turnover Remaining Proceeds of $32,737.71 to Claimant . . . within 21 days of this [c]ourt's order as required by MCL § 211.78t(10)." (*Id.*) But in the Supplemental Brief, the Estate argued that the very statute upon which its claim

relied – "2020 Public Act 256 ('P.A. 256') (MCL 211.78t)" – "is unconstitutional." (*Id.*) The Estate also argued that Michigan's Death Savings provision, Mich. Comp. Laws § 600.5852, saved its otherwise untimely claim. (*Id.*)

At the circuit court hearing on the Estate's Motion to Disburse, the Estate relied solely on its argument that the Death Savings Provision of Mich. Comp. Laws § 600.5852 applied in order to make the Estate's notice of intent timely under Mich. Comp. Laws 211.78t. (*See* Alger Response to Application for Leave to Appeal, Mich. Supreme Ct., No. 167712 (Nov. 21, 2024)) Specifically, the Estate argued that "this court does not have to address the constitutionality [of Section 211.78t], but can apply the just [*sic*] savings provision, MCL 600.5852. . . . [T]he Court does not necessarily have to address the infirmity of the statute because of the savings provision, and the Estate should be entitled to recover proceeds in this case." (*Id.*)

On September 27, 2022, the Alger County Circuit Court issued its Order denying the Estate's Motion to Disburse and declined to address the constitutional issues even though the court held that the Death Savings Provision did not apply. (Pet App 6a) In an Order dated June 20, 2023, the Estate was granted leave to appeal the circuit court's September 27, 2022, Order. (Pet App 6a) On September 12, 2024, the Court of Appeals affirmed the circuit court "[o]n the basis of [the Court of Appeals'] published decision in *In re Barry Co Treasurer for Foreclosure*, ___ Mich App ___; ___NW3d ___ (2024) (Docket No. 362316)[2], and

2. *In re Barry* held that the Death Savings Clause of Mich. Comp. Laws § 600.5852(1) does not apply to save an otherwise untimely notice of intent. *Barry*, ___ N.W.3d ___, 2024 WL 994990,

In re Muskegon Co Treasurer for Foreclosure, ___ Mich App ___; ___ NW3d ___ (2023) (Docket No 363764)." (Pet App 3a) The Estate sought and was denied discretionary review by the Michigan Supreme Court. (Pet App 31a)

B. Petitioner Lillian Joseph ("Joseph Petition").

Lillian Joseph owned property in Iron County. She failed to pay property taxes on that property and forfeited the property to the Iron County Treasurer for the total amount of the unpaid delinquent taxes, interest, penalties and fees. This default in tax payments prompted the initiation of a tax foreclosure procedure by FGU, the Iron County Treasurer, in accordance with Mich. Comp. Laws § 211.78 *et seq.* (Pet App 6a)

On or about May 28, 2020, the Iron County FGU filed a petition identifying the parcels of property forfeited under § 211.78g for unpaid 2018 and prior year's taxes. It is undisputed that Joseph received notice but did not remit payment for the delinquent taxes, nor did she avail herself of payment opportunities offered to her by statute, thereby setting in motion the subsequent proceedings. (Pet App 6a)

The final Judgment of Foreclosure, entered on February 19, 2021, included a detailed notice regarding the specific deadline regarding Joseph seeking surplus proceeds, if any, from the tax foreclosure sale of her property – *i.e.*, the notice including instructions for

*5. The Estate does not seek review of the Court of Appeals' decision rejecting the Estate's attempt to apply the Death Savings Clause.

completing and delivering Form 5743 to the FGU under the statute. (Pet App 6a-7a)

On April 23, 2021, the FGU issued a Notice of Foreclosure through Title Check, a company contracted for such services. The Notice of Foreclosure, like the Judgment of Foreclosure included detailed language directing its recipient how and where to send in their claim, if any, for surplus proceeds: "Must submit the completed form by certified mail or personal delivery to Iron County Treasurer, 2 South Sixth Street, Suite 12, Crystal Falls, Michigan, 49920-1413, no later than July 1, 2021." There is no dispute that Joseph received these notices. (*See* Iron County Appeal Brief, Michigan Ct. of Appeals, No. 363804 (Oct. 30, 2023))

On June 29, 2021, Joseph submitted Form 5743 but she failed to adhere to either of the two statutorily mandated alternative methods for delivery, as plainly stated in the notice. The receipt from the United States Postal Service clearly indicates that Jospeh sent Form 5743 via priority mail. Compounding this error was that the envelope containing Joseph's claim form did not bear the correct address as provided in the notice as it omitted the suite number – Suite 12. (*Id.*)

The combination of the incorrect method of delivery and omission of the suite number on the envelope of the claim form, along with the fact that Joseph mailed the form on June 29, 2021, resulted in the form not being received by the FGU on the statutorily mandated date of July 1. The Treasury office, where Joseph's claim should have been directed, is situated in the 1950 annex of the Iron County Courthouse with three or four other offices. All

of the mail for the entire courthouse complex is routinely delivered by a postal worker to a central room within the Iron County Courthouse. There it is placed by the postal worker into a designated lockbox for each specific suite. Mail for the Iron County Treasurer is placed by a postal worker into a lockbox specifically for Suite 12. Only the Treasurer's office has a key to the lockbox for Suite 12. (*Id.*) When mail is not addressed to a specific suite, is mislabeled, or is misdirected to a different suite, as in this case, it must be rerouted and sorted by the courthouse staff. Given the significance of the July 1, 2021, deadline for claims submissions to the Treasury, the lockbox for Suite 12 – which is specifically designated for the Treasury – undergoes thorough checks four-to-five times a day. (*Id.*)

The Iron County FGU concedes that Joseph's Form 5743 reached the courthouse complex on July 1st; however, because Joseph omitted the suite number that she was directed to provide, the FGU did not receive the form until July 2, 2021. The FGU discovered the envelope containing Joseph's claim form in a mail slot designated for general mail and sorting by courthouse staff. Mindful of the July 1 statutory deadline as well as the statutorily mandated method of delivery, on July 13, 2021, the FGU sent Joseph a letter informing her that her claim had been rejected as being untimely and improperly delivered:

> On July 2, 2021 my office received your form 'Notice of Intention to Claim Interest in Foreclosure Sales Proceeds (#5743)' by Priority Mail Express. The statutory deadline was 'by July 1 in the year of foreclosure.'

> In addition, this document was not sent by 'certified mail, return receipt requested or by personal service' as mandated by the statutory requirement. As a result, I cannot proceed with any suspected remaining proceeds after the public auction(s) of your former property.
>
> If you disagree, you may schedule a hearing, file a motion, file a notice of hearing and file a proof of service of the interested parties under case file I-20-6007-CZ to have the court review the issue.

(*Id.*)

On August 4, 2021, the property was sold for $27,500.00. After satisfaction of the delinquent taxes, interest, penalties and fees, the surplus proceeds remaining amounted to $21,255.15. On February 28, 2022, Joseph, represented by counsel, filed a motion in circuit court seeking the disbursement of surplus proceeds. (Pet App 7a)

A hearing was held on March 30, 2022, on the motion. The circuit court placed its opinion on the record as to Joseph's challenge to the constitutionality of 211.78t as well as her argument that she substantially complied with the statute sufficient for her claim to be recognized and surplus proceeds to be awarded. The court concluded that Section 78t is constitutional on its face and as applied, and rejected Joseph's "substantial compliance" argument stating, among other things, that Joseph's argument would lead to "all sorts of exceptions you could carve out, to the legislature's procedural requirements, and I'm

not – I'm not prepared to do that. And the law says this is the procedure, there's a reason for it." (*See* Iron County Appeal Brief, Michigan Ct. of Appeals, No. 363804 (Oct. 30, 2023))

The circuit court then allowed the parties to present and examine witnesses at the hearing. Ultimately, on April 26, 2022, the circuit court entered an order denying Joseph's motion to disburse surplus proceeds. In an Order dated June 20, 2023, the Court of Appeals granted Joseph's application for delayed leave to appeal the circuit court's April 26, 2022, Order. (Pet App 6a) On September 12, 2024, the Court of Appeals affirmed the circuit court "[o]n the basis of [the Court of Appeals'] published decision in . . . *In re Muskegon Co Treasurer for Foreclosure*, ___ Mich App ___; ___ NW3d ___ (2023) (Docket No 363764)." (Pet App 3a) Joseph sought and was denied discretionary review by the Michigan Supreme Court. (Pet App 32a)

C. Michigan's Revised GPTA.

In 1999, the Michigan Legislature essentially rewrote the tax foreclosure process of the GPTA. The legislature found that the new process was needed "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[,]" and that the new process thus served "essential public purposes and functions." Mich. Comp. Laws § 211.78(1). The new provisions established a three-year process that allows property owners to satisfy their tax debt and thus avoid losing their property to foreclosure.

1. Michigan's Three-Year Tax Foreclosure Process.

Year one: on March 1 of each year, taxes levied in the immediately preceding year that remain unpaid are returned to the county treasurer as delinquent.[3] Mich. Comp. Laws § 211.78a(2). Two statutorily mandated notices are then sent via "first-class mail, address correction requested, to the person to whom a tax bill for property returned for delinquent taxes was last sent or to the person identified as the owner of property returned for delinquent taxes," as well as "to a person entitled to notice of the return of delinquent taxes under section 78a(4), and to a person to whom a tax certificate for property returned for delinquent taxes was issued" under the former GPTA, as shown on the current records of the county treasurer. Mich. Comp. Laws § 211.78b.

The "first notice" is sent "on or within 60 days before the June 1 immediately succeeding the date that unpaid taxes are returned to the county treasurer as delinquent under section 78a." *Id.* Among other things, the "first notice" informs that, "unless those unpaid delinquent taxes, interest, penalties, and fees are paid on or before the March 31 immediately succeeding the entry in an uncontested case of a judgment foreclosing the property under Section 78k, absolute title to the property shall vest in the foreclosing governmental unit." Mich. Comp. Laws § 211.78b(f). The "first notice" also provides a statement

3. As used in Sections 78b to 79a, "'taxes' includes interest, penalties, and fees imposed before the taxes become delinquent and unpaid special assessments or other assessments that are due and payable up to and including the date of the foreclosure hearing[.]" Mich. Comp. Laws § 211.78a(1).

of "the person's rights of redemption and notice that the rights of redemption will expire on the March 31 immediately succeeding the entry in an uncontested case of a judgment foreclosing the property under section 78k." Mich. Comp. Laws § 211.78b(g). The "second notice" is sent "on or within 60 days before the September 1 immediately succeeding the date that unpaid taxes are returned to the county treasurer as delinquent under section 78a[.]" Mich. Comp. Laws § 211.78c. The "second notice" is sent to the same persons named in the "first notice" and provides the same information regarding the effects of a judgment of foreclosure and right to redeem. Mich. Comp. Laws §§ 211.78c(g), (h).

Year two: "[N]ot later than the February 1 immediately succeeding the date that unpaid taxes were returned to the county treasurer for forfeiture," the county treasurer "shall send a notice by certified mail, return receipt requested, to the person to whom a tax bill for property returned for delinquent taxes was last sent and, if different, to the person identified as the owner of property returned for delinquent taxes as shown on the current records of the county treasurer and to those persons identified under section 78e(2)." Mich. Comp. Laws § 211.78f(1). Among other things, the notice informs that unless the delinquent taxes are paid by a certain date, foreclosure proceeds will commence, and the rights of redemption will also expire that date. Mich. Comp. Laws §§ 211.78f(1)(g), (h). A county treasurer may also insert one or more additional notices by publication circulated in the county where the property is located. Mich. Comp. Laws § 211.78f(4). If the delinquent taxes remain unpaid or if a payment plan has not been sought and agreed to, on March 1, the property forfeits to the

county treasurer. Mich. Comp. Laws § 211.78g(1). *See also* Mich. Comp. Laws § 211.78q. "Not more than 45 days after property is forfeited", the county treasurer must record a forfeiture certificate with the county register of deeds "specifying that the property has been forfeited to the county treasurer and not redeemed and that absolute title to the property and any equity associated with an interest in the property will vest in the foreclosing governmental unit on the March 31 immediately succeeding the entry of a judgment foreclosing the property under section 78k[.]" Mich. Comp. Laws § 211.78g(2). The forfeiture certificate gives notice to persons who record their interest after the forfeiture certificate is recorded. *Id.* The forfeiture of the property means that the FGU may then seek a judgment of foreclosure in accordance with the GPTA if the property is not redeemed, which happens in year three. Mich. Comp. Laws § 211.78(6)(b).

Year three: Once the property is forfeited, "[n]ot later than June 15 in each tax year," the FGU[4] files in the circuit court of that county a petition "listing all property forfeited and not redeemed to the county treasurer under section 78g to be foreclosed under section 78k for the total of the forfeited unpaid delinquent taxes, interest, penalties, and fees." Mich. Comp. Laws § 211.78h(1). After a search "to identify persons with a property interest in the property" the FGU "determine[s] the address reasonably calculated to apprise each person with a property interest in a forfeited property of the show cause hearing under section

4. The FGU (Foreclosing Governmental Unit) in a county is the county treasurer unless the county opted out thereby making the FGU the State of Michigan. Mich. Comp. Laws § 211.78(6). Here, the FGU in both Alger County and Iron County is the respective county treasurer.

78j and the foreclosure hearing under section 78k[,]" and then "send[s] notice of the show cause hearing under section 78j and the foreclosure hearing under section 78k to those persons, and to a person entitled to notice of the return of delinquent taxes under section 78a(4), by certified mail, return receipt requested, not less than 30 days before the show cause hearing." Mich. Comp. Laws § 211.78i(2).

In addition to this and other procedural safeguards, the GPTA further requires that the FGU or "its authorized representative or authorized agent shall make a personal visit to each property forfeited to the county treasurer under section 78g to ascertain whether or not the property is occupied." Mich. Comp. Laws § 211.78i(3). If the property is occupied, the FGU is then statutorily required to, among other things, "verbally inform" the occupant that the property will be foreclosed and must be vacated unless delinquent taxes are paid, and that agencies or resources are available to "assist in avoiding loss of the property interest and any equity associated with the interest in the property." Mich. Comp. Laws § 211.78i(3)(b). And if appears that the occupant "lacks the ability to understand the information provided," the FGU notifies "the department of health and human services" and/or "provides the occupant with the names and telephone numbers of the agencies that may be able to assist the occupant." Mich. Comp. Laws § 211.78i(3)(c). If the FGU does not personally meet with the occupant, then the FGU "shall place in a conspicuous location on the property a notice that explains" a number of things, including that the property has been forfeited and will be foreclosed if delinquent taxes are not paid , as well as "an explanation of the right of a person with an interest in

the property at the time a judgment of foreclosure of the property is effective . . . **to claim that person's interest in any remaining proceeds pursuant to section 78t6 after a sale or transfer of the property**[.]" Mich. Comp. Laws § 211.78i(3)(d) (emphasis added). If the FGU "is unable to ascertain an address reasonably calculated to apprise a person with a property interest entitled to notice, the FGU "shall provide notice by publication as provided in this subsection and section 78s." Mich. Comp Laws § 211.78i(5). Among other things, the publication must provide "[a]n explanation of the right of a person with an interest in the property at the time a judgment of foreclosure of the property is effective . . . **to claim that person's interest in any remaining proceeds pursuant to section 78t after a sale or transfer of the property[.]**" Mich Comp. Laws § 211.78i(8)(h) (emphasis added).

"If a petition for foreclosure is filed under section 78h," the FGU "shall schedule a hearing not later than 7 days immediately preceding the date of the foreclosure hearing under section 78k to show cause why absolute title to the property forfeited to the county treasurer under section 78g should not vest in the [FGU]." Mich. Comp. Laws § 211.78j(1). At the show cause hearing, the "owner and any person with a property interest forfeited to the county treasurer may appear at the hearing . . . and redeem that property or show cause why absolute title to that property should not vest in the [FGU]." Mich. Comp. Laws § 211.78j(2). If such an owner or person prevails at the show cause hearing, the FGU "shall notify the county treasurer and the county treasurer shall correct the tax roll to reflect that determination." Mich. Comp. Laws § 211.78j(3).

A petition for foreclosure must be filed in the circuit court for the county in which the property lies subject to all of the above notices. Mich. Comp. Laws § 211.78k. After a full hearing with opportunity to be heard, the circuit court must enter a judgment of foreclosure no later than "the March 30 immediately succeeding the hearing with the judgment effective on the March 31 immediately succeeding the hearing" of this third year. Mich. Comp. Laws § 211.78k(5). After foreclosure, and assuming the state, city, village, township, or county where the property is located does not purchase the property, one or more auction sales may commence beginning on the third Tuesday in July immediately succeeding the entry of the judgment of foreclosure. Mich. Comp. Laws § 211.78m(2).

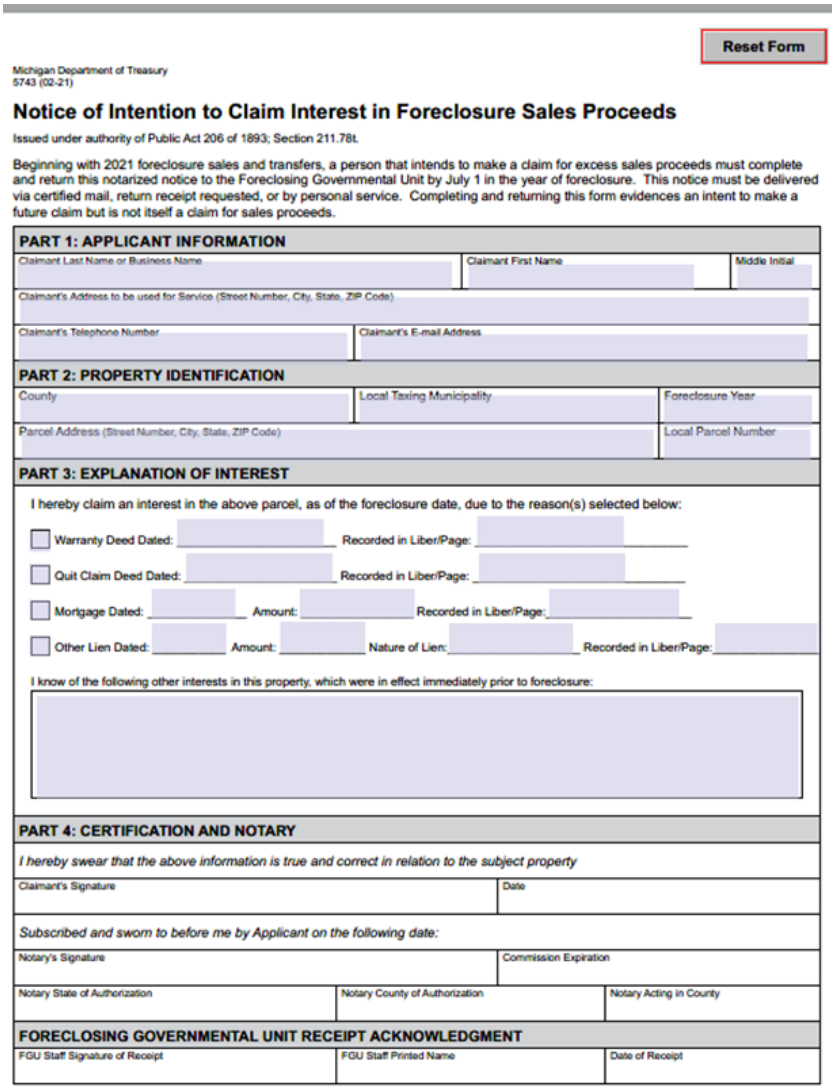
2. Michigan's Three-Month Process for Claiming Surplus Proceeds.

In response to the Michigan Supreme Court's holding in *Rafaeli* – that the FGU's "retention and subsequent transfer of those proceeds into the county general fund amounted to a taking of plaintiffs' properties under Article 10, § 2 of [Const. 1963]," and the former owners were entitled to just compensation in the form of the return of the surplus proceeds, 952 N.W.2d at 440 – the Michigan Legislature enacted 2020 PA 255 and 2020 PA 256, which were given immediate effect on December 22, 2020. Section 78t, a provision added to the GPTA by 2020 PA 256, provides the statutory means for former property owners, and/or qualifying interest holders[5] to claim and

5. Qualifying interest holders are those "with a legal interest in the property immediately before the effectiveness of a judgment of foreclosure" such as mortgage lenders, judgment creditors, lienholders, or others with a legal claim to the property. *See* Mich. Comp. Laws § 211.78t(12).

receive any applicable "remaining proceeds" from the tax-foreclosure sale. Mich. Comp. Laws § 211.78t. Specifically, section 78t provides that former property owners, and/or other qualifying interest holders, whose property was sold at a tax-foreclosure sale after July 17, 2020, must notify the FGU of their intent to seek "remaining proceeds" by submitting Form 5743 by the July 1 immediately following the effective date of the foreclosure. Mich. Comp. Laws § 211.78t(2). The July 1 deadline falls before the annual auction is held. Thus, the former property owners may not yet know the amount of surplus proceeds at the time Form 5743 is due. But former property owners do know the amount of delinquent taxes that were owed and likely have an idea of the property's worth – *i.e.*, the former property owners are not filing Form 5743 without any basis for doing so. In addition, because foreclosure judgments must be entered by March 31 of the three-year statutory tax foreclosure process, the July 1 deadline allows former property owners and qualified interest holders at least three full months to submit Form 5743.

It is statutorily mandated that 5743 be made publicly available on an internet website maintained by the Michigan Department of Treasury as well as on any internet website maintained by the FGU. Mich. Comp. Laws § 211.78t(2). Form 5743 is a single piece of paper providing specific details as to how the form should be completed and submitted:



Reset Form

Michigan Department of Treasury
5743 (02-21)

Notice of Intention to Claim Interest in Foreclosure Sales Proceeds

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

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

PART 1: APPLICANT INFORMATION

Claimant Last Name or Business Name	Claimant First Name	Middle Initial

Claimant's Address to be used for Service (Street Number, City, State, ZIP Code)

Claimant's Telephone Number	Claimant's E-mail Address

PART 2: PROPERTY IDENTIFICATION

County	Local Taxing Municipality	Foreclosure Year

Parcel Address (Street Number, City, State, ZIP Code)	Local Parcel Number

PART 3: EXPLANATION OF INTEREST

I hereby claim an interest in the above parcel, as of the foreclosure date, due to the reason(s) selected below:

☐ Warranty Deed Dated: _____ Recorded in Liber/Page: _____

☐ Quit Claim Deed Dated: _____ Recorded in Liber/Page: _____

☐ Mortgage Dated: _____ Amount: _____ Recorded in Liber/Page: _____

☐ Other Lien Dated: _____ Amount: _____ Nature of Lien: _____ Recorded in Liber/Page: _____

I know of the following other interests in this property, which were in effect immediately prior to foreclosure:

PART 4: CERTIFICATION AND NOTARY

I hereby swear that the above information is true and correct in relation to the subject property

Claimant's Signature	Date

Subscribed and sworn to before me by Applicant on the following date:

Notary's Signature	Commission Expiration

Notary State of Authorization	Notary County of Authorization	Notary Acting in County

FORECLOSING GOVERNMENTAL UNIT RECEIPT ACKNOWLEDGMENT

FGU Staff Signature of Receipt	FGU Staff Printed Name	Date of Receipt

https://www.michigan.gov/taxes/-/media/Project/Websites/taxes/Forms/Property-Tax/5743.pdf

Specifically, Form 5743 plainly states that it must be notarized and delivered to the FGU by July 1 in the year of foreclosure, and that it "must be delivered via certified mail, return receipt requested, or by personal service acknowledged by the [FGU] or by certified mail, return receipt requested." Mich. Comp. Laws § 211.78t(2).

The FGU is required to offer the foreclosed property at public auction unless the property is sold to the state or itself for fair market value. Mich. Comp. Laws § 211.78m(1), (2). "Not later than the January 31 immediately succeeding the sale" the FGU sends "by certified mail, return receipt requested," a notice to any claimant who claimed an interest in the surplus. *Id.* § 211.78t(3)(i). Among other things, the notice informs the claimant of the "amount of any remaining proceeds" and explains how to "file" "a motion" in the circuit court in which the judgment of foreclosure was effective to claim the surplus in state court. *Id.* § 211.78t(6). The state circuit court sets a hearing for any such motion, at which time the court determines "the relative priority and value of the interest of each claimant in the foreclosed property immediately before the foreclosure was effective." *Id.* § 211.78t(9). The circuit court "allocates any remaining proceeds based on its determination," subject to a "sale commission equal to 5% of the amount for which the property was sold" by the FGU. *Id.*

D. It is Undisputed that the Alger County Treasurer as well as the Iron County Treasurer Complied with Michigan's GPTA when Foreclosing the Properties and when Denying Surplus Proceeds.

Neither Petitioner can dispute that the respective FGU correctly followed Michigan's GPTA when foreclosing

their properties and denying their motions to disburse surplus proceeds, including providing all required notices and opportunities to avoid foreclosure. The entire process from delinquent tax notice to the time of either Petitioner to avail themselves of any surplus proceeds from the tax foreclosure sale was about three and one-half years. Although neither Petitioner flat-out disputes that timeframe, the Petition attempts to characterize the denial of surplus proceeds as some sort of ambush by the respective FGU that violated constitutional guarantees. Both the record as well as the tax-foreclosure process and simple one-page form to recover surplus proceeds, as detailed below, demonstrate that the denial of surplus proceeds to either Petitioner was the result of their own inactions over a three and one-half-year period, and not the result of a constitutionally unsound statutory process.

Each Petitioner's mischaracterization of the factual background to somehow cast aspersions on the tax-foreclosure process does nothing to save their own missteps. For example, the Estate emphasizes that the Alger County FGU obtained a foreclosure judgment just ten days after McGee's unexpected death on February 21, 2021, and when the 2018 tax debt was not paid by March 31, 2021, the FGU took title for the county. (Pet 7-8) What the Estate ignores is that prior to entry of the foreclosure judgment, McGee was provided with statutorily mandated notices, opportunities for payment plans to avoid the foreclosure, etc., dating from when the delinquency was turned over to the treasurer. Said differently, contrary to what the Petition implies, the foreclosure judgment was neither sudden nor opportunistic. Similarly, the Petition admits that when the Estate got around to "sort[ing] out" McGee's "affairs" after the July 1 deadline for submitting

Form 5743 – which was about six months after McGee's death – the notice of foreclosure provided notice of the right to remaining proceeds and how to submit Form 5743. The Petition then states that "Form 5743 was not enclosed" (Pet 8), somehow implying that the FGU failed to include Form 5743 and/or that the Estate had no idea how to obtain the form. But the record shows that conspicuously provided with the notice of foreclosure were instructions for making claims for remaining proceeds, including instructions that the former property owner "can access Form 5743 by visiting www.miTaxNotice.com/form5743 or by contacting the Alger County Treasurer[,]" and further provided additional information such as how to access the entire claims process, and contacting the State Bar of Michigan for assistance. (Pet App 53a) Any attempt by the Estate to imply that the statutory process for claiming surplus proceeds is something less than transparent or readily made available is defied by the record itself.

The Joseph Petition is likewise misleading. Joseph states that "[t]he Iron County mailroom received Joseph's form on July 1 at 8:17 a.m., and held it for the Treasurer's office, which retrieved it the following day." (Pet 9) This implies that the FGU was somehow derelict in timely retrieving the mail and that is why Joseph's Form 5743 was rejected. Not so. The form was rejected as untimely because Joseph failed to include the suite number to the FGU's office when she addressed the form despite being clearly directed to do so. The lack of a suite number lead to the form not being placed in the FGU's mailbox, but instead in a general mailbox which, unlike the FGU's mailbox, is not checked by the FGU multiple times a day. In addition, Joseph failed to send Form 5743 by certified

mail, return receipt requested, as clearly directed by the form itself. The untimeliness of Joseph's form is due solely to Joseph's failure to follow the statutory requirements; it is not due to any inaction by the FGU or constitutional infirmity of Section 78t.

REASONS FOR DENYING THE PETITION

This Petition presents no circuit split, no conflict with Supreme Court precedent, no unsettled question of federal law, and no other "compelling reasons" for satisfying this Court's review under Rule 10. Instead, the petition is limited to the failures of each Petitioner to timely follow a process for which they had been adequately apprised and had abundant access, the consequences of which they attempt to avoid by way of meritless constitutional challenges.

Section 211.78t is not some sort of legislative fiat as Petitioners would have the Court believe. Instead, Section 78t is the product of careful deliberation by the Michigan Legislature after considered input from those concerned with protecting property rights, including but not limited to the Pacific Legal Foundation. (Resp App 1a-8a, 9/30/2020 Senate Committee on Finance Meeting Minutes) The process that was ultimately passed by the Michigan Legislature in response to *Rafaeli's* pronouncement is one that has been easily followed by former property owners resulting in millions of dollars paid out in surplus proceeds by various Michigan counties. The folly of Petitioners' contention that the process set forth in Section 78t fails constitutional muster is demonstrated by the facts of this case itself. The Estate failed to comply with the statutory deadline for claiming surplus proceeds because the many

notices regarding foreclosure and Form 5743 were simply ignored until it was too late. Joseph, on the other hand, failed to comply with the statutory deadline for claiming surplus proceeds because she failed to follow the clear and plain instructions as to how and where to mail the form. These individual failures show that it's not any constitutional infirmity with the process that results in the denial of surplus proceeds; instead, it's a former property owner's dereliction of the process that results in the denial of surplus proceeds. The Constitution is not a "fix" for such dereliction. The Petition should be denied.

I. The Petition is a Wrongful Attack on *Nelson v. New York City* and *In re Muskegon*.

In an apparent effort to create a basis for this Court's review, Petitioners draw *Nelson v. New York* into this case wrongfully stating that the Court of Appeals' decision turned on *Nelson.* Specifically, the Petition misrepresents the Court of Appeals' decision claiming that, "[b]ased primarily on *Nelson v. City of New York*, the Michigan Court of Appeals holds the County did not take property without just compensation or violate due process." (Pet 10) The Court of Appeals' opinion regarding the actions of the Alger County FGU and the Iron County FGU did nothing of the sort. The court found that it was bound by stare decisis and Michigan Court Rule 7.215 to follow the court's precedent in *Muskegon* on the constitutional issues and found no reason to invoke a conflict resolution panel for purposes of disagreeing with that precedent. (Pet App 15a) Thus, it was *Muskegon* that relied upon *Nelson*; the Court of Appeals in this case simply followed *Muskegon* as it was bound to do.

Moreover, recall that the denial of surplus proceeds to either Petitioner was based on their own individual failures to follow Section 78t's deadline. As such, this Petition comes to the Court with no independent legal analysis of the constitutional issues presented as well as with no factual basis to engage in any meaningful analysis. Under such circumstances, the Court should decline to consider Petitioners' case. *See N. L. R. B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 163-64 (1975) (concluding that, without a developed factual record and "without a lower court opinion on the legal issue" Supreme Court review should be denied); *see also Adams v. Robertson*, 520 U.S. 83, 86-88 (1997) (recognizing that, "[w]ith 'very rare exceptions,'" the Court "will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review") (citations omitted).

Finally, Petitioner's wrongful attack aside, it should not be lost on the Court that Section 78t is less restrictive than the process for claiming surplus proceeds found to be constitutional in *Nelson.* To illustrate, under the New York City statute for claiming surplus proceeds at issue in *Nelson*, a property owner delinquent on his property taxes had up to seven weeks to pay the overdue taxes after the city filed for foreclosure as well as an additional twenty days to file a timely answer in the foreclosure proceeding in which the property owner had to make known his request for surplus proceeds. *Nelson*, 352 U.S. at 104 n.1, 105-06, 110. The owners at issue failed to follow this procedure. *Id.* at 106. New York City therefore kept the surplus proceeds, and the owners sued. This Court ultimately held that the City's actions in retaining the surplus proceeds did not result in an unconstitutional

taking because a process existed for the owners to claim the surplus, and they only failed to receive the surplus due to their own inactions. *Id.* at 106, 110.

Unlike the New York statute, Section 78t does not require property owners to file anything in the actual foreclosure proceeding. Given that many of these property owners have no intention of paying the outstanding taxes or redeeming the property, they may simply ignore the foreclosure process. Under the New York statute, such property owners would be denied surplus proceeds, but under Section 78t, these same property owners who do not participate in the foreclosure process still have three months to submit Form 5743 after the judgment of foreclosure is entered to claim the surplus.

II. The Petition Wrongfully Argues that Decisions Based on *Nelson* Conflict with Precedent.

Petitioners also attempt to create a basis for this Court's review by arguing that decisions based on *Nelson* conflict with the Court's decisions in *Knick v. Township of Scott*, 588 U.S. 180 (2019) and *Felder v. Casey*, 487 U.S. 131 (1988). It must be noted at the outset that Petitioners made no mention of this argument and alleged conflict in the law until now. As such, this argument cannot provide a basis for granting the Petition. *See Adams*, 520 U.S. at 86-88. That aside, the argument lacks merit.

As this Court made clear in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), where a process exists for a former property owner to claim any surplus from a foreclosure sale – *i.e.*, so long as the former property owner is not "absolutely preclud[ed] . . . from obtaining the surplus

proceeds of a judicial sale," – there is "no Takings Clause violation" if the former property owner fails to correctly follow the process. *Id.* at 644, *citing Nelson*, 352 U.S. at 110.

Knick guarantees that once a taking has taken place, just compensation may be sought under 42 U.S.C. § 1983 without first exhausting state remedies. 588 U.S. at 191. Unlike the state laws at issue in *Knick*, the procedures in *Nelson*, like the procedures in Section 78t, do not compensate the former property owner with just compensation for a taking; instead, they prevent a taking from occurring in the first instance. Therein lies the difference: in *Knick*, a taking has already occurred; in *Nelson*, no taking has occurred because procedures were in place to prevent it. There is no conflict between *Knick* and *Nelson*; each coexist in protection of Fifth Amendment rights albeit for different reasons. Simply put, Petitioners' attempts to sow confusion fall flat where complete harmony exists. Indeed, had Petitioners correctly followed Section 78t but were nonetheless denied the surplus proceeds, then under *Knick*, they could have brought takings claims under § 1983. But they *didn't follow* Section 78t and *that's why* surplus proceeds were correctly denied. Petitioners argue that a circuit split exists because, according to Petitioners, the Tenth and the Eleventh Circuits follow *Knick* while the Sixth Circuit "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." (Pet 26-28) Petitioners' argument rests upon their unfounded notion that *Knick* and *Nelson* conflict. As set forth above, the cases exist in consonancy.

Petitioners' argument that decisions based on *Nelson* conflict with *Felder* is equally unavailing. In *Felder*, this Court held that a plaintiff need not comply with state notice requirements as a precondition to bringing a claim under 42 U.S.C. § 1983 in state court, because enforcement of state-law pre-suit notice provisions in § 1983 actions "so interferes with and frustrates the substantive right Congress created that, under the Supremacy Clause, it must yield to the federal interest." *Felder*, 487 U.S. at 151. The Court's holding in *Felder* is inapplicable here. There simply is no pre-suit requirement to any litigant filing a lawsuit under § 1983 for alleged deprivation of a constitutional right when surplus proceeds have been denied for failure to follow Section 78t. Any such former property owner is free to file a § 1983 for an alleged wrongful taking, and the claim will not be barred for failure obtain "pre-suit" approval as with the Wisconsin statute in *Felder*; instead, the § 1983 will fail because no unconstitutional taking occurred. Section 78t prevents it. Thus, similar to *Knick*, which ensures that takings claims are ripe for federal court review when the taking occurs without exhausting state remedies, *Felder* does not conflict with *Nelson*.

III. The Petition Wrongfully Argues that Section 78t Violates Due Process.

Although Petitioners argue that the Court of Appeals' decision conflicts with this Court's due process precedent, they also admit that the Court of Appeals rested its decision on *Muskegon*. (Pet 32) As such, because the Court of Appeals provided no independent analysis of the issue, the Court should decline review. *See Sears, Roebuck & Co.*, 421 U.S. at 163-64 (concluding that, without a developed

factual record and "without a lower court opinion on the legal issue" Supreme Court review should be denied). What's more, Petitioners then go on to argue that the court in *Muskegon* "abdicat[ed] [its] judicial responsibility" because it allegedly "shortcircuited the due process analysis[,]" thereby further demonstrating that, to the extent that this Court is inclined to review the issue of whether Section 78t satisfies constitutional due process, it should not be by way of this Petition. (Pet 32)

That aside, Petitioners' arguments lack merit and provide no basis for review. First as to procedural due process, Petitioners take issue with various aspects of the process set forth in Section 78t, such as the three-month window to claim surplus proceeds. But they fail to say why that process does not satisfy due process. In truth, Petitioners seek a means for claiming surplus proceeds that goes on in perpetuity without any required procedures to be followed. Not surprisingly, Petitioners fail to cite anything to indicate that constitutional due process requires such an approach. Indeed, to accept Petitioner's position would be to invite the type of confusion and inconsistency the law seeks to prevent. *See, e.g., Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 537 (1994) (Thomas, J., concurring) (recognizing that the law is aimed at promoting "the clarity of its command and the certainty of its application") (citation and internal quotation marks omitted). As to substantive due process, Petitioners fare no better. This Court has long recognized that the use of substantive due process is precluded when a more specific constitutional provision governs – in this case, the Fifth Amendment. *See Graham v. Connor*, 490 U.S. 386, 395 (1989).

CONCLUSION

This petition is based on Petitioners' individual failures to meet the straightforward statutory deadline for claiming surplus proceeds set forth in Section 78t. Petitioners' constitutional challenges to the statutory process were rejected by the Michigan Court of Appeals based on its prior precedent, for which the panel deciding the appeal expressed its agreement and refused to apply the rule that would have allowed the panel to issue a conflicting opinion. This Petition, therefore, is not an appropriate case to grant Supreme Court review. To be sure, the failure of either Petitioner to receive surplus proceeds lies not with the Michigan Legislature, but instead with their own dereliction of the legislative process.

The Alger County Treasurer and the Iron County Treasurer therefore respectfully request that the Petition be denied.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

Page

APPENDIX A — SENATE COMMITTEE ON FINANCE MEETING MINUTES, SEPTEMBER 30, 2020

THE SENATE
COMMITTEE ON FINANCE
SENATOR JIM RUNESTAD, CHAIR

MEMBERS:
SEN. ARIC NESBITT, VICE CHAIR
SEN. KEVIN DALEY
SEN. JON BUMSTEAD
SEN. CURTIS S. VANDERWALL
SEN. STEPHANIE CHANG, MINORITY VICE CHAIR
SEN. BETTY JEAN ALEXANDER

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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.

Appendix A

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

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

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.

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.

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