No. 25-487

In the Supreme Court of the United States

LYNETTE HATHON, ET AL., PETITIONERS

v.

MICHIGAN

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Should this Court decide in the first instance whether the Takings Clause provides a stand-alone cause of action against a State that has provided a remedy for compensation and the state courts dismissed the case on independent procedural grounds, without prejudice to pursuing that remedy, and expressly declined to address the federal questions presented?

PARTIES TO THE PROCEEDING

Petitioners Lynette Hathon and Amy Jo Denkins are individuals who previously owned real property in Shiawassee County, Michigan. Respondent is the State of Michigan's Department of Treasury in its role (at the time of the tax foreclosure) as Foreclosing Governmental Unit under Michigan Compiled Laws § 211.78 et seq.

RELATED CASES

- *Hathon* v. *State of Michigan*, Michigan Supreme Court, Docket No. 168233, Order issued March 20, 2025

- *Hathon* v. *State of Michigan*, Docket No. 374332, Michigan Court of Appeals, Order issued February 20, 2025

- *Hathon* v. *State of Michigan*, Docket No. 19-000023-MZ, Michigan Court of Claims, Order issued January 15, 2025

- *Hathon* v. *State of Michigan* (consol. with *Schafer* v. *Kent Cnty.*), Michigan Supreme Court, Docket No. 165219, Opinion issued July 29, 2024

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The consolidated opinion of the Michigan Supreme Court in *Schafer* v. *Kent County* and *Hathon* v. *State of Michigan*, Nos. 164975 and 165219, issued July 29, 2024, is reported at 515 Mich. 1; ___ N.W.3d ___ (2024).

An order of the Michigan Supreme Court dated March 20, 2025, granting peremptory reversal and remanding with instructions to dismiss without prejudice, is reported at 17 N.W.3d 686 (Mich. 2025) (mem.). An order denying reconsideration dated May 22, 2025, is reported at 20 N.W.3d 592 (Mich. 2025) (mem.).

The opinion of the Michigan Court of Appeals, consolidated for decision with *Breiner* v. *State*, issued December 1, 2022, is reported at 1 N.W.3d 336 (Mich. Ct. App. 2022).

An opinion and order of the Michigan Court of Claims dated February 22, 2021, denying the applicability of 2020 PA 256 and certifying an amended class, is unreported but is available at 2021 WL 1247922. The order of the Michigan Court of Claims dated March 19, 2021, denying reconsideration, is also unreported but is available at 2021 WL 9968322.

An order of the Michigan Court of Claims dated February 25, 2025, denying the State's motion to dismiss without prejudice and granting class certification, is unreported and not available on Westlaw or LexisNexis.

An order of the Michigan Court of Claims entered on second remand from the Michigan Supreme Court following the March 20, 2025 order granting peremptory reversal, dated September 8, 2025, dismissing the action without prejudice, is unreported and is not available on Westlaw or Lexis.

JURISDICTION

The State agrees that this Court has jurisdiction to consider the petition, but it notes that the State Supreme Court did not address the federal constitutional claims, and thus those issues are not joined.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Mich. Comp. Laws § 211.78*l* provides:

> (1) If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property shall not bring an action, including an action for possession or recovery of the property or any interests in the property or of any proceeds from the sale or transfer of the property under this act, or other violation of this act or other law of this state, the state constitution of 1963, or the Constitution of the United States more than 2 years after the judgment of foreclosure of the property is effective under section 78k. Nothing in this section authorizes an action not otherwise authorized under the laws of this state. An action to recover any proceeds from the sale or transfer of property foreclosed for nonpayment of real property taxes under this act must be brought as provided under section 78t.

Mich. Comp. Laws § 211.78t provides:

> (9) After the foreclosing governmental unit responds to a claimant's motion [for distribution of remaining proceeds] under this section, the court shall set a hearing date and time for each property for which 1 or more claimants filed a motion under this section and notify each claimant and the foreclosing governmental unit of the hearing date at least 21 days

before the hearing date. At the hearing, the court shall determine the relative priority and value of the interest of each claimant in the foreclosed property immediately before the foreclosure was effective. The foreclosing governmental unit may appear at the hearing. The burden of proof of a claimant's interest in any remaining proceeds for a claimant is on the claimant. The court shall require payment to the foreclosing governmental unit of a sale commission equal to 5% of the amount for which the property was sold by the foreclosing governmental unit. The court shall allocate any remaining proceeds based upon its determination and order that the foreclosing governmental unit pay applicable remaining proceeds to 1 or more claimants consistent with its determination under this subsection. An order for the payment of remaining proceeds must not unjustly enrich a claimant at the expense of the public. If a claimant indicated in the motion that the claimant or an entity in which the claimant held a direct or indirect interest purchased the property under section 78m or if the claimant indicated in the motion that the claimant held a direct or indirect interest in the property at the time the motion was filed, the order must require remaining proceeds to be applied to any unpaid obligations payable to a tenant at the time the foreclosure was effective or any unpaid civil fines relating to the property owed at the time the foreclosure was effective for violation of an ordinance authorized by section 4l of the home

rule city act, 1909 PA 279, MCL 117.4l, in the local tax collecting unit in which the property is located. The order must provide for the payment of any unpaid amounts not otherwise payable to another claimant owed by a claimant to satisfy a state, federal, or local tax collecting unit tax lien on the property immediately preceding the effective date of the foreclosure under section 78k if the lien had priority over the claimant's interest in the property. The order also must provide that any further claim by a claimant under this act relating to the foreclosed property is barred.

* * *

(11) This section is the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under the laws of this state. A right to claim remaining proceeds under this section is not transferable except by testate or intestate succession.

(12) As used in this section:

(a) "Claimant" means a person with a legal interest in property immediately before the effectiveness of a judgment of foreclosure of the property under section 78k who seeks pursuant to this section recognition of its interest in any remaining proceeds associated with the property.

(b) "Remaining proceeds" means the amount equal to the difference between the

amount paid to the foreclosing governmental unit for a property due to the sale or transfer of the property under section 78m and the sum of all of the following:

(i) The minimum bid under section 78m.

(ii) All other fees and expenses incurred by the foreclosing governmental unit pursuant to section 78m in connection with the forfeiture, foreclosure, sale, maintenance, repair, and remediation of the property not included in the minimum bid.

(iii) A sale commission payable to the foreclosing governmental unit equal to 5% of the amount paid to the foreclosing governmental unit for the property.

INTRODUCTION

This petition should be denied for multiple threshold reasons independent of the merits. The Michigan Supreme Court resolved this case on independent and adequate state-law grounds, did not decide the federal question Petitioners present, and expressly directed Petitioners to pursue state-law remedies for compensation. Petitioners have not meaningfully pursued those remedies, the validity of which was not adjudicated below. Indeed, the Michigan Supreme Court dismissed Petitioners' claims without prejudice so they could invoke the statutory process the Michigan Legislature enacted to address takings claims arising precisely in these circumstances. As a result, there is no final federal issue for this Court to review, and the petition presents an exceptionally poor vehicle for certiorari.

The Michigan Supreme Court confirmed in its March 20, 2025 interlocutory order that challenges to the adequacy or application of Michigan's post-*Rafaeli* statutory framework are premature unless and until claimants first pursue relief under Michigan Compiled Laws § 211.78t. (Pet. App. 3a) (citing favorably *In re Muskegon Cnty. Treasurer for Foreclosure*, 20 N.W.3d 337 (Mich. Ct. App. 2023), appeal denied, 515 Mich. 972 (2024), cert. denied, 2026 WL 79623 (Jan. 12, 2026).

The court expressly declined to adjudicate whether that remedy satisfies the Fifth or Eighth Amendments. (Pet. App. 2a–3a.) Those questions were not properly before the court then and are not properly before this Court now.

Michigan's statutory framework was enacted to provide a comprehensive, context-specific resolution of surplus-proceeds claims following tax foreclosure. After the Michigan Supreme Court in *Rafaeli* held that the prior regime violated the Michigan Constitution by denying access to surplus proceeds altogether, the Legislature adopted a remedial scheme that provides notice, procedures, priority rules, and a single forum for adjudicating all competing claims to any remaining equity. That framework has not been found constitutionally inadequate, either on its face or as applied.

Because the decision below rests entirely on state-law grounds and leaves any constitutional questions unresolved and unripe, this Court lacks a final federal question to review. Petitioners' effort to recast a state-law procedural ruling as a constitutional denial of compensation cannot supply jurisdiction or justify certiorari as there is no final merits judgment on the federal question posed here.

STATEMENT OF THE CASE

A. Michigan's tax-foreclosure system and legislative reform

Michigan law provides for the foreclosure and sale of tax-delinquent property after extended periods of nonpayment, judicial foreclosure, and public notice. Under the law implemented in 1999, surplus proceeds from tax-foreclosure sales were retained by the government. In *Rafaeli, LLC* v. *Oakland County*, 952 N.W.2d 434 (Mich. 2020), the Michigan Supreme

Court held that complete retention of surplus equity violated the Michigan Constitution.

In response, the Michigan Legislature enacted 2020 Public Act 256, codified at Michigan Compiled Laws § 211.78t, establishing a comprehensive statutory mechanism through which former property owners and other interest holders may recover surplus proceeds following tax foreclosure. The statute specifies notice requirements, priority rules, timing, and procedures for adjudicating all claims to surplus proceeds within the foreclosure action itself providing context-specific finality—a bookend to Michigan's delinquent property tax collection law.

As the Michigan Supreme Court has since explained, § 211.78t is "the remedy" for administering claims alleging the unconstitutional taking of surplus proceeds in the tax-foreclosure context. *Schafer* v. *Kent Cnty.*, ___ N.W.3d ___, 515 Mich. 1, 50–51 (Mich. 2024).

B. Proceedings below

Petitioners are former property owners whose property was foreclosed for unpaid taxes and sold at public auction. (Pet. App. 22a.) Petitioners filed suit in the Michigan Court of Claims asserting state and federal Takings Clause and Excessive Fines Clause claims, styled now as a purported "direct" constitutional action under the Fifth Amendment. (Pet. App. 32a–34a.)

Respondent argued that the relevant claims are governed by 2020 PA 256, which provides the statutory mechanism for certain takings claims and applies retroactively. See *Schafer*, ___ N.W.3d at ___; 515 Mich at 18; Cf. Pet. App. 2a. The Michigan Court of Claims rejected this argument—indeed, it rejected application of that statute to these claims at all—and certified a class. *Schafer* v. *Kent Cnty.*, ___ N.W.3d ___; 515 Mich at 18. Ultimately, the State obtained interlocutory review. *Hathon* v. *State*, 990 N.W.2d 876 (2023) (order granting leave to appeal and directing supplemental briefing).

C. The Michigan Supreme Court's decisions

1. The merits opinion

In its initial decision in this case, the Michigan Supreme Court emphasized that claimants seeking surplus-proceeds recovery must pursue the statutory remedy under § 211.78t, rather than attempting to bypass it through independent legal actions. *Schafer*, ___ N.W.3d at ___; 515 Mich. at 50–51. Critically, the court did not decide whether § 211.78t satisfies the Fifth Amendment or the Eighth Amendment. Nor did it hold that the Takings Clause is or is not "self-executing" against the State. Instead, it resolved the case on state-law grounds concerning remedial exclusivity and proper procedure.

2. Proceedings on remand and the March 20, 2025 Order.

On remand, the Michigan Court of Claims—the court in which Petitioners filed their original action—again declined to dismiss the action so that Petitioners could pursue their remedy under § 211.78t and instead allowed this litigation to proceed outside that statutory framework. (Pet. App. 18a.) The State again obtained interlocutory review. (Pet. App. 2a–3a.) In a March 20, 2025 order, the Michigan Supreme Court reversed, holding:

- Michigan Compiled Laws § 211.78t provides the exclusive mechanism for adjudicating claims to surplus proceeds following tax foreclosure;
- The Court of Claims lacked authority to create or supervise an alternative remedial process, including class wide litigation;
- Claims for interest, attorney fees, or constitutional challenges to the statutory scheme were premature until claimants first utilized the statutory process; and
- Petitioners' claims were dismissed without prejudice to pursue relief under § 211.78t, alongside any other potential claimants arising in this tax foreclosure context.

(Pet. App. 2a–3a.)

The court emphasized that constitutional challenges to the statute's adequacy could not be

addressed until the statutory remedy had been invoked and applied; those matters were not yet ripe for the Michigan Supreme Court to review, here, and as a result those arguments were not decided. (Pet. App. 2a–3a.) Petitioners sought reconsideration.

3. Denial of reconsideration

On May 22, 2025, the Michigan Supreme Court denied Petitioners' motion seeking reconsideration. (Pet. App. 20a.) The denial left intact the court's determination that § 211.78t exclusively governs the claims made in this context and that the federal constitutional questions posed here had not yet been adjudicated. (Pet. App. 2a–3a.)

D. Current posture

As a result of the Michigan Supreme Court's rulings, Petitioners have not been denied compensation, nor has any court determined that Michigan's statutory remedy is constitutionally adequate or inadequate, on its face or as applied. Petitioners instead seek this Court's review of a case resolved on independent state-law grounds, in which the asserted federal constitutional issues remain unripe, undeveloped, and unadjudicated.

REASONS FOR DENYING THE PETITION

I. The decision below rests on independent state-law grounds, resolves no constitutional issue, and leaves Petitioners' federal claims unripe.

This case fails at the threshold. The Michigan Supreme Court resolved it exclusively on state-law grounds, expressly declined to adjudicate the federal constitutional questions Petitioners press here, and dismissed the action without prejudice so Petitioners could pursue the statutory remedy Michigan law provides. That disposition leaves no final federal issue for this Court to review.

The Michigan Supreme Court held that Michigan Compiled Laws § 211.78t "creates a controlling and structured system for adjudication of tax-foreclosure surplus claims" and that the Court of Claims "lacked authority to create or supervise an alternative remedial process" outside that framework, which state law provided for state circuit court resolution within the tax foreclosure action from which it arose. (Pet. App. 2a.) See also Mich. Comp. Laws § 211.78t(6) (requiring claims be resolved in "the circuit court in the same proceeding in which a judgment of foreclosure" was entered). In doing so, the court did not decide whether § 211.78t satisfies the Fifth or Eighth Amendments, whether the Takings Clause is "self-executing," or whether Petitioners are constitutionally entitled to interest or fees, or any other as applied constitutional challenges to the statute. To the contrary, the court expressly disclaimed reviewing these issues:

> 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.

(Pet. App. 2a–3a.)

The court did not hold that the Takings Clause is "self-executing" (or that it is not), did not evaluate the adequacy of the statutory remedy, and did not adjudicate to finality the merits of any federal constitutional claim. (Contra. Pet. 10–11, 13–14; App. 2a–3a, n.1.) Instead, the court resolved this case on a narrow, sufficient state-law ground: Michigan law provides an exclusive statutory mechanism for recovering surplus proceeds following tax foreclosure, and Petitioners' claims cannot proceed outside that framework. As the court explained, "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." (Pet. App. 3a.) The court therefore remanded solely for "entry of an order dismissing the plaintiffs' claims without prejudice," allowing Petitioners to pursue the state-law remedy within the circuit court foreclosure action. (*Id.*)

That holding rests on independent and adequate state-law grounds. This Court lacks jurisdiction to review state-court judgments that do so. See *Michigan* v. *Long*, 463 U.S. 1032, 1041 (1983); *Coleman* v. *Thompson*, 501 U.S. 722, 729–30 (1991). The Michigan

Supreme Court left no doubt that its decision addressed only state-law questions of remedial exclusivity and procedural posture. A court cannot be said to have decided a federal question it expressly declined to reach. See *Long*, 463 U.S. at 1044 (review appropriate only where a state decision "fairly appears to rest primarily on federal law").

Equally important, Petitioners' federal theory is unripe. The Michigan Supreme Court twice held that constitutional challenges to § 211.78t cannot be adjudicated unless and until the statutory remedy has been invoked and applied. (Pet. App. 1a–3a; 20a–21a.) Yet Petitioners have pursued this appeal outside the statutory remedy. (See Pet. 5–7, 10–11.) They sought Michigan Supreme Court review concerning the statutory remedy under Michigan Compiled Laws § 211.78t, and its application to their claims, without first invoking it or having it applied by a trial court to their claims—akin to seeking an advisory opinion. The Michigan Supreme Court declined to issue such a determination. This petition thus implicates *Long*, and Petitioners cannot manufacture a federal question by reframing a state-law procedural holding as a constitutional denial. (Pet. 10–11.)

For the same reason, Petitioners' assertion that the decision below "conflicts with this Court's precedent" (Pet. 2–3, 9–10) presupposes a holding authorizing a freestanding cause of action against a State regardless of existing state-law remedies for that taking—a proposition this Court has expressly declined to adopt. See *DeVillier* v. *Texas*, 601 U.S. 285, 292–93 (2024). No court has adjudicated whether § 211.78t

provides Petitioners just compensation once applied, whether its deductions are constitutionally permissible, or whether Petitioners will suffer any cognizable constitutional injury at all. Granting certiorari would thus require this Court to issue an advisory opinion on a hypothetical challenge to an untested state remedy before this Court reaches the "direct action" question Petitioners assert is ripe for review.

This Court has repeatedly declined such invitations. Claims dependent on contingent or hypothetical future events are not fit for review. *Williamson Cnty. Reg'l Planning Comm'n* v. *Hamilton Bank*, 473 U.S. 172, 186–87 (1985); *Los Angeles* v. *Lyons*, 461 U.S. 95, 101–02 (1983); *Abbott Labs.* v. *Gardner*, 387 U.S. 136, 148–49 (1967). While *Knick* v. *Township of Scott*, 588 U.S. 435 (2019), eliminated the requirement to exhaust state remedies before bringing certain 42 U.S.C. § 1983 takings claims against local governments, it did not abrogate the basic requirement that a constitutional injury be concrete, final, and adjudicated. Nor did it address the propriety of direct claims under the Fifth Amendment against a State in lieu of an existing state-law remedy.

DeVillier v. *Texas* likewise offers Petitioners no support. (Pet. 12–15.) To the contrary, *DeVillier* confirms that the absence of a freestanding federal cause of action does not amount to a denial of just compensation where state law provides a mechanism for obtaining it. Michigan has done precisely that. The Michigan Supreme Court did not deny compensation; it directed Petitioners to the forum and process the Legislature established for resolving such claims. Until

Petitioners pursue that remedy and a court adjudicates its sufficiency, there is no ripe federal issue for this Court to decide. (See Pet. App. 2a–3a.)

Finally, prudential concerns reinforce denial here. Had the Michigan Supreme Court reached the constitutional merits without application of § 211.78t, it would have issued an advisory opinion without the benefit of factual development or trial-court review. Petitioners now ask this Court to do exactly what the state court refused to do—evaluate the adequacy of a statutory remedy in the abstract and in the first instance. This Court should decline that invitation.

In sum, Petitioners' challenge is structurally flawed. Their facial attack on Michigan's statutory remedy is speculative—even a successful challenge to a discrete provision would not dismantle the remedial framework as a whole.[1]

And in any event, Petitioners do not arrive at this Court following denial of just compensation. They seek federal review of an untested statutory scheme, based on assumed inadequacies and procedural preferences, without application or state-court adjudication in the first instance. That is not a proper basis for certiorari.

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[1] Michigan law presumes severability: "If any portion of an act or the application thereof is found invalid, the remaining portions shall not be affected thereby unless the court determines that the valid portions are so essentially and inseparably connected with the invalid portions that they cannot be separated." Mich. Comp. Laws § 8.5; see also *Blank* v. *Dep't of Corr.*, 611 N.W.2d 530, 540 (Mich. 2000) (lead opinion) (applying § 8.5 and emphasizing presumption that remaining statutory provisions remain operative).

II. No circuit split exists regarding direct Fifth Amendment action where a State is a party and state law provides a compensation mechanism.

Petitioners' circuit split claim is illusory. The Michigan Supreme Court did not reject a "direct" Fifth Amendment action on the merits; it declined to entertain one at this stage because Michigan law supplies a remedial mechanism that must be pursued first. That procedural holding does not conflict with any federal appellate decision.

Petitioners principally rely on *Fulton* v. *Fulton County Board of Commissioners*, 148 F.4th 1224 (11th Cir. 2025), (Pet. 14–15), but that reliance is misplaced. *Fulton* arose in the local-government context and did not address—much less reject—a State's ability to channel compensation claims through an exclusive statutory remedy administered in its own courts. *Id.* at 1236–38. Michigan's courts face no such constraints and routinely adjudicate compensation claims against the State, including claims arising from tax foreclosures, within the statutory framework § 211.78t establishes.

More fundamentally, what Petitioners label a dispute over a "direct action" is, in substance, a disagreement over procedure, not constitutional principle. Michigan already provides a mechanism for recovering surplus proceeds; § 211.78t is "the remedy" for administering claims alleging the unconstitutional taking of surplus equity following tax foreclosure. *Schafer*, ___ N.W.3d at ___; 515 Mich. at 21. Demanding an additional, freestanding constitutional cause of

action either duplicates that remedy or seeks to displace it entirely—detaching surplus-proceeds claims from the context of tax collection, priority rules, competing claimants, and finality.

No federal appellate court has held that a State must recognize a direct Fifth Amendment cause of action outside an existing statutory compensation scheme for claims made against it. Nor has any court held that channeling takings claims through a subject-matter-specific remedial framework violates the Constitution. Petitioners' asserted split thus reflects a disagreement over preferred procedural vehicles, not conflicting constitutional holdings ripe for this Court's review.

III. Petitioners seek to constitutionalize a policy disagreement over state tax-collection remedies.

At bottom, Petitioners ask this Court to constitutionalize a disagreement with Michigan's policy choices governing tax foreclosure and surplus recovery. They identify no adjudicated denial of compensation. Rather than seeking review of a constitutional holding, they ask this Court to intervene before Michigan's statutory remedy has been applied or adjudicated. They insist the Constitution requires their preferred valuation assumptions, procedural mechanisms, and remedial structure—before Michigan's statutory framework has even been applied to their claims and tested in state court.

This Court's precedent rejects that premise. As explained in *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 538–39 (1994), forced sales operate in a distinct market shaped by compulsion, timing, and statutory design. That reality is not an accident or a defect; it reflects the economic and institutional features of state collection systems. The Constitution does not require States to guarantee prices equivalent to voluntary transactions or to eliminate the conditions inherent in foreclosure. (Contra. Pet. 4–6.) Rather, where state law procedures are followed, "a fair and proper price, or a 'reasonably equivalent value,' for foreclosed property is the price in fact received at the foreclosure sale." *BFP*, 511 U.S. at 545. Although *BFP* addressed mortgage foreclosure in the bankruptcy context, its core lesson applies with equal force here: context matters, and federal law does not impose a single valuation metric across state collection regimes. *Id.* at 545 n.10.

BFP and *DeVillier* also offer a broader federalism-based insight Petitioners overlook. Just as federal law does not mandate a uniform valuation standard for state-law foreclosure sales, it likewise does not dictate a one-size-fits-all remedial structure for alleged takings arising from state tax collection. (Contra Pet. 16–20.) See *BFP*, 511 U.S. at 544–45 (confirming that federal bankruptcy laws respect and leave intact market outcomes following state-law foreclosures sales exposed to the market, without federally imposed uniform valuation results or procedures); *DeVillier*, 601 U.S. at 291–92 (underscoring that federal law does not dictate a uniform remedial scheme where a state provides a mechanism for just compensation).

Just as due process protections involving notice turn heavily on facts and circumstances, the Takings Clause does not operate in a vacuum. What the Constitution requires depends on the circumstances—including historical practices, state statutory design, and institutional needs—while balancing the interests of those entitled to notice or other constitutional protections with the practical demands of the system. See *Mullane* v. *Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313–14 (1950) (due process "is not a technical conception with a fixed content unrelated to time, place and circumstances"). Due process requires notice that is reasonable under the circumstances, and "just" compensation is that which is just for the property rights and circumstances at issue. Respondent invokes *BFP* not to transplant its mortgage-foreclosure holding wholesale, but for its core economic and methodological insights—foreclosures involve real properties sold at public auctions shaped by timing, compulsion, and market forces specific to the market in which they transact. This collection practice is historically rooted and market derived, but under the market applicable to the properties and circumstances. Any federal constitutional analysis must proceed with sensitivity to context, historical practice, and institutional design.

That contextual approach is evident in this Court's tax-foreclosure cases. States have long employed tax foreclosure and public sale as core fiscal tools. The Constitution polices only the outer boundary: there must be constitutionally sufficient notice, *Jones* v. *Flowers*, 547 U.S. 220, 234 (2006), and the State may not absolutely preclude an owner from accessing surplus proceeds following a tax foreclosure, *Nelson* v.

City of New York, 352 U.S. 103, 109–10 (1956); *Tyler* v. *Hennepin County*, 598 U.S. 631, 639–40 (2023). Those decisions protected constitutional rights but did not prescribe the internal mechanics by which notices, or by which surplus proceeds following the sale, must be distributed or claimed, let alone require a particular federal remedial form divorced from state systems.

To the contrary, *Tyler* emphasized that the existence and scope of a surplus right historically depended on state law, tracing that recognition through English common law and state-specific practices. 598 U.S. at 639–43. And in *Nelson*, this Court upheld a regime that required property owners—before foreclosure—to file an answer in the judicial proceeding, request a separate sale of the property, and later seek any resulting surplus, explaining that New York had not "absolutely preclud[ed] an owner from obtaining the surplus proceeds," but had defined the process by which that surplus could be claimed. 352 U.S. at 110; *Tyler*, 598 U.S. at 644. The constitutional inquiry focused on access to a remedy, not on imposing a particular procedural design—despite the more stringent and fragmented process at issue there.

BFP's reasoning also rests on federalism principles that apply with special force here. In declining to overlay a uniform federal standard on state foreclosure practices through the bankruptcy code, this Court recognized that the several States have spent decades developing "diverse networks of judicially and legislatively crafted rules" governing property and collection law within each State, all rooted in "long established principles" of state common law. *BFP*, 511 U.S. at 541,

543. Absent clear constitutional necessity, federal courts should not disrupt those systems by imposing ex post federal redesigns.

This Court has therefore been cautious in second-guessing state policy choices in taxation and property, lest federal adjudication displace traditional state regulation in areas of historic state authority. See *Levin* v. *Com. Energy*, *Inc.*, 560 U.S. 413, 421 (2010); *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). "[S]tate taxation," this Court has explained, "is a field over which the States have been sovereign from the beginning." *Hibbs* v. *Winn*, 542 U.S. 88, 104 (2004). That caution is especially warranted where, as here, the State has enacted a context-specific statutory remedy for just compensation within this taxing statute, and where state courts stand ready to adjudicate constitutional claims with full awareness of how those remedies fit within the broader tax system.

After *Rafaeli*, *LLC* v. *Oakland County*, 952 N.W.2d 434 (Mich. 2020), held that complete retention of surplus sale proceeds violated the Michigan Constitution, the Legislature enacted Michigan Compiled Laws § 211.78t, and related statutory notices and procedures, throughout its comprehensive taxing law. Together, they establish notice requirements, procedures, priority rules, and provide a single judicial forum to adjudicate all competing claims for remaining sale proceeds. See Mich. Comp. Laws § 211.78t(9), (12)(a). Those design choices reflect legislative judgments about efficiency, finality, fairness, and the administration of the state tax system as a whole—a design intended to provide a process consistent with

constitutional requirements. Petitioners' suggestion that States somehow can "erase" the Takings Clause by statute, (Pet. 18–20), ignores both precedent and Michigan's experience: judicial review and legislative reform have ensured constitutional rights are protected, not erased. The State's Legislature enacted § 211.78t and related provisions to provide a clear, structured process for surplus proceeds claims, including notice and state trial court review and adjudication, and declared that law the exclusive mechanism for recovery.

Even if Michigan's statutory process were shown, as applied, to deny return of just compensation in practice, that claim could be adjudicated in state court and reviewed in the ordinary course—but no such record exists here. Any constitutional challenge to Michigan's remedial scheme would necessarily turn on facts when applied, making Petitioners' facial attack especially ill-suited for certiorari.

Taxes are the "life-blood of the State," and courts should be wary of second-guessing legislative choices in levying and collecting them. *Cunningham* v. *Macon & Brunswick R.R. Co.*, 109 U.S. 446, 448 (1883); *Flint* v. *Stone Tracy Co.*, 220 U.S. 107, 111 (1911). That includes the final step in the state-law process: how to handle claims to surplus proceeds after sale. Michigan's approach reflects the State's role as a laboratory of governance, not a constitutional defect. The Michigan Supreme Court's decision in *Rafaeli* demonstrates not constitutional instability, but the opposite: Michigan's courts and Legislature actively policing and

recalibrating tax-foreclosure law within the State's constitutional framework.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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Dated: JANUARY 2026