

No. 25-487

In the
Supreme Court of the United States

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

v.

MICHIGAN,
Respondent.

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

**REPLY IN SUPPORT OF THE PETITION
FOR A WRIT OF CERTIORARI**

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INTRODUCTION

The State's brief in opposition seeks to place this case outside the question expressly reserved in *DeVillier v. Texas*¹ by assuring the Court that Michigan law merely "channels" takings claims through a statutory process while preserving constitutional adjudication for a later day. That assurance is falsely asserted. As the example §78 order in the Appendix demonstrates, Michigan's statutory regime does not *defer* Fifth Amendment review; it *forecloses* it. Once relief is awarded under Mich. Comp. Laws § 211.78t, the State requests Michigan courts to enter final, claim-preclusive orders barring all further claims "under any other legal theory" and declaring the matter "fully and finally resolved." App. 3a. There is no second step.

By requiring property owners to proceed under §78t before raising a Fifth Amendment claim, and then treating §78t relief as claim-preclusive, Michigan ensures the Takings Clause is adjudicated at no point in the process. This Court has rejected regimes that condition the availability of a Fifth Amendment claim on the prior completion of state compensation procedures. *Knick v. Twp. of Scott*, 588 U.S. 180 (2019).

That operational reality collapses the State's vehicle-based objections and squarely presents the

¹ *DeVillier v. Texas*, 144 S. Ct. 938 (2024)

constitutional question *DeVillier* left open: whether a State may declare a statutory compensation scheme exclusive and thereby prevent any court from adjudicating what the Fifth Amendment itself requires. Unlike *DeVillier*, there is no alternative state claim that could supply full just compensation and allow the Court to avoid that question. Michigan has foreclosed direct constitutional claims and substituted a statute that, as applied, defines the entirety of compensation and bars all further review.

This Reply confirms the State's error in arguing this case is either premature or abstract. Michigan has a concrete scheme in which the Takings Clause's protections are rendered a black-hole nullity by design. That result cannot be reconciled with *DeVillier*, *Knick*, or this Court's repeated recognition that the duty to provide just compensation arises from the Constitution itself, *First English Evangelical Lutheran Church v. Cnty. of Los Angeles*, 482 U.S. 304, 315 (1987), and may not be displaced by statute. The petition warrants review.

ARGUMENT

I. This Case Squarely Presents the Question Reserved in *DeVillier*

The State's threshold contention, that this case does not present the question reserved in *DeVillier*, misstates both the holding of *DeVillier* and the posture of this case. *DeVillier* declined to reach the

self-executing question because Texas state law supplied an independent, judicially enforceable cause of action that could provide full just compensation. Here, the Michigan Supreme Court did *the opposite*. It declared a statutory process to be the “exclusive mechanism” for recovery and barred direct federal constitutional claims altogether. The question *DeVillier* avoided – whether the Takings Clause itself authorizes a claim when the State mandates reliance on an inadequate statutory substitute – is therefore unavoidable here.

The State attempts to recast the issue as one of simple remedial sequencing, suggesting that constitutional claims are merely deferred. That is dually wrong. First, it violates this Court’s directive of federal supremacy of our federal Constitution. And second, it is refuted by how Michigan’s regime actually operates in real-world practice. As shown by the example order reproduced in the Appendix regarding one of the *Hathon* class members, once proceeds are distributed under Mich. Comp. Laws § 211.78t, courts enter final, claim-preclusive orders, *at the State’s request*, barring “any other legal theory” and declaring the matter “fully and finally resolved.” App. 2a-3a.² In reality, there is no “later stage” at

² Petitioners’ §78t motion has been stayed by the local state court pending outcome of this pending petition. However, this Court is not being asked to review Mich. Comp. Laws § 211.78t’s constitutionality; it’s being asked whether the Takings Clause is directly enforceable *especially* in circumstances where the State structures a scheme preventing any constitutional adjudication.

which any other court adjudicates whether the compensation paid satisfies the Fifth Amendment. This is not a case about timing; it is a case about federal claim foreclosure.

II. The State’s “Channeling” Theory Is Factually Incorrect as Applied and Doctrinally Insufficient

The State’s principal vehicle objection depends on a false premise: that §78t merely channels claims through a statutory process while preserving constitutional adjudication for later. The attached §78t order, entered at the conclusion of the statutory process, bars all further claims under ‘any other legal theory’ and declares the matter ‘fully and finally resolved.’ App. 3a. That is not channeling, it’s finality.

Doctrinally, the distinction matters. Channeling presupposes that Michigan courts still remain empowered, after the §78t process, to determine the constitutional minimum given that §78t “remaining proceeds” are not enough. Substitution replaces that determination with a statutory measure and then bars constitutional review. The latter is incompatible with the Court’s repeated recognition that the duty to pay just compensation arises from the Constitution itself and cannot be displaced by statute. The State’s insistence that its statute preserves constitutional claims cannot be reconciled with what it is actually doing under the §78t process when securing provisions containing purported claim-preclusive

orders to be entered at the conclusion of the §78t process.

III. The Case Is Not “Premature”; the Federal Question Is Final and Dispositive

The State repeatedly characterizes the case as premature, relying on language suggesting dismissal “without prejudice.” Labels do not control. Practical finality does. A dismissal ‘without prejudice’ that is followed by a mandatory statutory process culminating in a preclusive final order is functionally indistinguishable from dismissal *with* prejudice. Where, as here, completion of the §78t statutory process triggers an order barring all further claims relating to the taking – including federal constitutional theories – the question appears final.

This Court has never permitted States to evade review by reserving constitutional questions in theory while foreclosing them in practice. Once the statute is treated as the end of the road, the question whether the Constitution authorizes a stand-alone claim is no longer hypothetical. It is decisive.

IV. Michigan’s Regime Conflicts with *Knick* and Confirms the Need for Review

The State’s “channeling” position sits in direct tension with *Knick*. This Court in *Knick* rejected regimes that condition the existence or adjudication of a takings claim on an antecedent pursuit of state

compensation procedures. Michigan is faithless to *Knick*'s directive. It treats the statutory process as fully discharging the constitutional obligation and purports to bar any later independent judicial determination of just compensation. The result is that the Fifth Amendment claim is never adjudicated at all.

The State attempts to avoid *Knick* by asserting that property owners may return later. Again, the example §78t order in the Appendix clearly demonstrates that the State is actively preventing that very thing. Once §78t relief is awarded, state trial courts bar all further claims. App. 3a. A promise of later adjudication that never materializes or could never materialize cannot save a regime that substitutes statutory grace for constitutional command.

V. Adequate & Independent State Grounds Do Not Defeat Review

The State invokes the adequate-and-independent state grounds doctrine, but that does not apply where state law itself forecloses the enforcement of a federal right. Petitioners do not ask this Court to review the amount awarded under a §78t order or to supervise Michigan's foreclosure procedures. They seek to condemn a State declaring a statutory process exclusive and then enforce that exclusivity through preclusive orders that leave no forum to adjudicate just compensation under the

Fifth Amendment. When state law operates to negate constitutional enforcement, the federal question is unavoidable. Where the asserted state-law ground is the mechanism by which the State prevents any adjudication of a federal right, the federal question is not avoided; it is the entire case.

VI. This Is An Ideal Vehicle Being Cleaner and Clearer Than *DeVillier*

Unlike *DeVillier*, there is no alternative state-law cause of action here that could supply full compensation and allow this Court to avoid the constitutional question. The Michigan Supreme Court expressly foreclosed direct constitutional claims and compelled reliance on a statutory scheme that withholds core components of just compensation. In operation, the state statute ends the inquiry. App. 1a-3a. The vehicle problem that prevented a full decision in *DeVillier* is not present. This vehicle is cleaner than *DeVillier* because the Michigan scheme produces a concrete foreclosure of constitutional adjudication.

For that same reason, this case is also unlikely to recur in a posture more suitable for review. The Michigan Supreme Court has declared §78t the exclusive mechanism for recovery and barred direct constitutional claims, while Michigan trial courts – at the State’s request – enter final, claim-preclusive orders once §78t relief is awarded. As a result, the constitutional question presented here is not one that

will ever predictably reappear in a cleaner posture; absent review now, it may evade review altogether.

In short, no plaintiff who completes the statutory process can ever obtain a merits ruling on whether the compensation paid satisfies the Fifth Amendment. And no plaintiff who has not completed the process may raise the constitutional question at all. Absent action in this case, a doctrinal paradox of the State's own design persists. If the petition is denied, review will be evaded permanently.

VII. The Institutional Stakes Warrant Review

If the Michigan Supreme Court decision below stands, States may define the content of a federal constitutional right by statute and insulate that definition from judicial review through legislation requiring claim-preclusive final orders. The Michigan Supreme Court implicitly accepted a regime where the statute ends constitutional adjudication. That outcome effectively renders the Takings Clause enforceable only at legislative sufferance. The Court reserved the self-executing question in *DeVillier* precisely because it recognized the stakes. This case presents the issue cleanly, finally, and with concrete evidence of the hard bar of any constitutional takings relief. If allowed to stand, Michigan's scheme provides a roadmap for States nationwide to extinguish federal takings claims through statutory exclusivity.

CONCLUSION

The State's opposition rests on a known mischaracterization of Michigan law that is contradicted by its real-world operation and public §78t orders entered at the State's request. The order in the Appendix demonstrates that the channeled statutory process is treated as complete compensation when it is inferior, constitutionally deficient, and then bars constitutional claims once the statutory process concludes. The question reserved in *DeVillier* is therefore squarely, properly, and cleanly presented.

The petition should be granted.

Respectfully submitted,

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APPENDIX A

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF MECOSTA

In the Matter of the Petition of the State Treasurer
for Foreclosure of Certain Parcels of Property Due to
Unpaid 2017 and Prior Years' Taxes, Interest,
Penalties, and Fees.

Case No. 19-24998-CZ
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ORDER FOR DISTRIBUTION OF REMAINING
PROCEEDS PURSUANT TO THE MOTION OF
MICHAEL J. WRIGHT

At a session of said Court, held in the
Mecosta County Circuit Court

Before this Court is the Motion of Michael J. Wright (“Claimant”), seeking distribution of sale proceeds following tax foreclosure and sale of Parcel No. 15 031 006 000. The State Treasurer has filed a response to the motion seeking proceeds. A hearing on the Claimant’s motion was held on October 31, 2025. The Court finds that no other claimant has made a claim for remaining proceeds on this parcel. The Court has considered the parties’ filings and finds that the Claimant has satisfied the statutory requirements to make a claim.

This Court being fully advised in the premises, for the reasons stated on the record, NOW THEREFORE:

IT IS HEREBY ORDERED that the Motion of Michael J. Wright relating to Parcel No. 15 031 006 000 is GRANTED as provided herein.

IT IS FURTHER ORDERED that the State Treasurer, as Foreclosing Governmental Unit (FGU) shall, within 21 days of entry of this Order, distribute remaining proceeds to Claimant in the amount of \$115,233.18 payable to “Michael J. Wright.” Payment shall be sent to Michael J. Wright, 256 Edgar Street, Lakeview, MI 48850.

IT IS FURTHER ORDERED that any further claims with respect to the foreclosure, sale, or remaining proceeds related to the property listed below are barred, including any future claim by a potential claimant, including Michael J. Wright, under MCL 211.78t or any other legal theory relating to the foreclosure and sale of the property, Parcel No. 15 031 006 000 legally described as follows:

SEC 31 T13N ROSW SW 1/4 SE 1/4.

This resolves the last claims of Michael J. Wright and fully and finally resolves all claims relative to the tax foreclosure of the above-listed parcel and its respective sale proceeds. However, this does not resolve the last pending claim for other any other parcels or their respective proceeds.

Dated: 10/31/2025

/s/ Kimberly L. Booher
HON. KIMBERLY L. BOOHER
Circuit Court Judge