No. _____

In the
Supreme Court of the United States

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

v.

STATE OF MICHIGAN,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

During the last Term, this Court in *DeVillier v. Texas* (No. 22-913) granted certiorari to decide whether the Takings Clause itself authorizes a property owner to sue a State directly for just compensation when the legislature has not created a statutory cause of action. The Court ultimately declined to resolve the question because Texas law supplied an independent state common-law remedy, thus leaving for another day the central issue of whether the Takings Clause is judicially enforceable on its own terms. That question is now ripe. The Michigan Supreme Court has declared that the Fifth Amendment itself provides no cause of action in Michigan and barred inverse condemnation in full, requiring property owners to rely solely on a statutory scheme that affirmatively withholds and denies full just compensation. The federal question avoided in *DeVillier* is now squarely presented.

The question presented is:

Whether the Takings Clause of the Fifth Amendment is a self-executing stand-alone claim that permits property owners to sue a State directly for just compensation when the State otherwise mandates reliance on an inadequate statutory remedy.

PARTIES TO THE PROCEEDING

Petitioners (plaintiffs-appellees below) are Lynette Hathon and Amy Jo Denkins individually and as class representatives. Respondent (defendant-appellant below) is the State of Michigan.

RELATED PROCEEDINGS

Hathon v. State of Michigan, No. 168233, (Mich. Mar. 20, 2025)

Hathon v. State of Michigan, No. 374332, (Mich. Ct. App. Feb. 20, 2025)

Hathon v. State of Michigan, No. 19-000023-MZ, (Mich. Ct. Claims. Jan. 15, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Lynette Hathon and Amy Jo Denkins seek a writ of certiorari to review the order/judgment of the Michigan Supreme Court.

OPINIONS BELOW

The order/judgment of the Michigan Supreme Court (App. 1a-2a) is available at 17 N.W.3d 686 (Mich. 2025). The Michigan Supreme Court's order denying reconsideration (App. 1a-2a) is published at 20 N.W.3d 592 (Mich. 2025). The Michigan Court of Appeals' order (App. 4a-5a) denying relief to the State is unpublished. The trial court's opinion (App. 6a-19a) is also unpublished.

JURISDICTION

The Michigan Supreme Court entered its judgment on March 20, 2025, App. 1a-2a, and denied a timely motion for rehearing on May 22, 2025, App. 20a-21a. On July 30, 2025, Justice Kavanaugh extended the time to petition for a writ of certiorari to and including October 19, 2025. This Petition raises federal questions under the Fifth Amendment to the United States Constitution. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the Constitution provides, in relevant part, "nor shall private property be taken for public use without just compensation." U.S. Const. amend. V.

INTRODUCTION

For a $5,200 tax debt, Lynette Hathon and her daughter lost their modest home and more than $60,000 in equity. Michigan not only kept their money; it also declared the Constitution itself off-limits as a source of a remedy. This Petition asks whether a State may self-legislate the Fifth Amendment out of existence. The answer is simple: it cannot.

This Court has repeatedly held that the Takings Clause is self-executing. E.g. *First English Evangelical Lutheran Church v. Cnty. of Los Angeles*, 482 U.S. 304, 315 (1987). A property owner acquires an "irrevocable right to just compensation immediately upon a taking" and "it is the existence of the Fifth Amendment right," not a statutory provision, "that allows the owner to proceed directly to" court. *Knick v. Twp. of Scott*, 588 U.S. 180, 191-192 (2019). This means that neither "statutory recognition" nor "a promise to pay" was ever necessary to make just compensation enforceable. *First English*, 482 U.S. at 315.

But Michigan ignored this solemn constitutional obligation and did the opposite: it barred property owners from ever invoking the Constitution directly, requiring them to proceed only under its inadequate statutorily-created administrative process provided by Mich. Comp. Laws § 211.78t, even though that statute fails to fulfill core components of "just compensation." By barring constitutional actions altogether and because *Will v. Mich. Dep't of State Police* foreclosed the forum against the State in federal court, the decision relegates the Takings Clause to a "poor relation" of the Bill of Rights, precisely what this Court rejected in *Knick*. 588 U.S. at 189.

This Court should grant the Petition to reaffirm the Fifth Amendment's constitutional command.

STATEMENT OF THE CASE

Petitioners Lynette Hathon, and her daughter Amy Jo Denkins, were co-owners of a modest residential dwelling located on Michigan Avenue in Owosso (Shiawassee County), Michigan. The two-story family residence built in 1935 was jointly held by them as their home. County tax records reflected that the property had a fair market value of approximately $67,398 in 2017.

For personal reasons that are not directly relevant, they fell behind on property taxes of

$1,483.53. With added interest, penalties, fees, and statutory costs, the total delinquency reached $5,200.

Because Shiawassee County's treasurer refused to act as the foreclosing governmental unit under the *General Property Tax Act*, responsibility for foreclosure proceedings fell to the State. Acting on behalf of the State of Michigan, officials with the Michigan Department of Treasury initiated and completed the in-rem foreclosure proceedings. Title to the property was seized in the name of the State of Michigan, and in August 2018, the home was sold at public auction to a private purchaser for $28,250. The distressed tax auction sale not only destroyed more than $39,000 in Petitioners' equity but also generated surplus proceeds of approximately $23,050 above the outstanding tax debt.

Despite realizing this excess value, the State retained the equity, including the surplus, for its own benefit. No refund of the excess equity was provided to Petitioners. No condemnation proceedings were initiated, and no just compensation was offered. In total, nearly $62,200 of Petitioners' constitutionally protected equity was extinguished or appropriated by the State through this process.

Petitioners' experiences are not unique. They brought suit on behalf of a putative class of similarly situated former property owners in eight Michigan counties – Keweenaw, Luce, Iosco, Mecosta, Clinton, Shiawassee, Livingston, and Branch – where the

State Treasurer, rather than county treasurers who have "opted-out," carries out tax foreclosures. In each instance, the State follows the same process: foreclosing on homes for minor tax debts, auctioning properties at depressed sale prices, and retaining all surplus proceeds beyond the delinquency owed. This practice strips citizens of their equity built over years of ownership, without compensation, and without recourse to any statutory mechanism for recovery.

Foreshadowing the decisions that would later arrive via *Rafaeli, LLC v. Oakland Cnty.*, 952 N.W.2d 434 (Mich. 2020) and *Tyler v. Hennepin Cnty., Minn.*, 598 U.S. 631 (2023), Petitioners sued for a Fifth Amendment taking and an Eighth Amendment excessive fine. Because of the State's sovereign (Eleventh Amendment) immunity from suit in the federal forum, they brought their case in specialized state trial court for claims against the State, the Michigan Court of Claims. And because the State is not amenable to a claim as a person under Section 1983, *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989), Hathon and Denkins asserted a direct Fifth Amendment claim (sometimes called an 'arising under' claim) as well as an inverse condemnation claim grounded in the Fifth Amendment. The Court of Claims certified the matter as a class action.

While their case was pending, the Michigan Supreme Court's decision in *Rafaeli* prompted the Legislature to enact Mich. Comp. Laws § 211.78t. That statute created a new complicated process for

property owners to claim "remaining proceeds" after a foreclosure sale—but only up to 95% of the surplus, without interest or attorney fees. Importantly, the Legislature also declared that 78t is the "exclusive mechanism" for seeking such funds, purportedly foreclosing direct constitutional actions forever. Uniformly, Michigan courts refused takings challenges demanding just compensation. E.g. *In re Muskegon Cnty. Treasurer for Foreclosure*, 348 Mich. App. 678 (2023), *petition for writ of certiorari pending sub nom. Beeman v. Muskegon Cnty. Treasurer*, No. 24-858 (U.S.); see also *Koetter v. Manistee Cnty. Treasurer*, No. 24-1095 (U.S.) (pet. pending); *McGee v. Alger Cnty. Treasurer*, No. 25-203 (U.S.) (pet. pending).

The problem in Michigan is readily apparent. The 78t process defies what the Fifth Amendment minimally requires. First, it does not provide the full compensation that is required for a taking. See *Pung v. Isabella Cnty, Mich.*, No. 25-95 (U.S. cert. granted Oct. 3, 2025). Second, it only returns ninety five percent of surplus proceeds in contravention to what the Fifth Amendment minimally requires, i.e., the return of full surplus proceeds. *United States v. Lawton*, 110 U.S. 146, 150 (1884) ("If he affirms the propriety of selling or taking more than enough of his land to pay the tax and penalty and interest and costs, and applies for the surplus money, *he must receive at least that*." emphasis added). Third, it also denies any *Jacobs*-required interest payment or any attorney

fees recoupment for legal assistance. *Jacobs v. United States*, 290 U.S. 13, 17 (1933).

Likely knowing of its legal shortcomings, the Michigan Legislature mandated that "[a]n 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 § 211.78l(1).

After the Court of Claims recertified the *Hathon* class, App. 19a, the State appealed on an emergency interlocutory basis to the Michigan Supreme Court, which issued a two-page order without even permitting class counsel to be heard before ruling. In that decision, Michigan's highest court held that 78t "creates a controlling and structured system for adjudication of tax-foreclosure disputes as the exclusive means of obtaining surplus proceeds" and is, in its view, "the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under the laws of this state" citing Mich. Comp. Laws § 211.78t(11). App. 2a.

Therefore, according to the Michigan Supreme Court, the trial court "lacks authority to create a new mechanism for processing claims to these proceeds or to certify a class for that purpose, and it erred by doing so." *Id.* Yet Hathon and Denkins never asked the Court of Claims *to create* a new mechanism but rather rely upon the already-existing Fifth Amendment mandate for just compensation. App.

31a-32 (inverse condemnation) and 33a-34a (Fifth/Fourteenth Taking claim). Nevertheless, the Michigan Supreme Court held that class members "must initiate the statutory process by providing the foreclosing unit of government notice of their intent to seek remaining proceeds by March 31, 2025, using a form prescribed by the Department of Treasury." App. 3a. It then "remanded the case for entry of an order denying certification and dismissing the plaintiffs' claims without prejudice." *Id.* What the Michigan Supreme Court did defies the protections guaranteed by the Fifth Amendment; as such, this Petition now follows.

SUMMARY OF ARGUMENT

The Michigan Supreme Court has done what this Court has said no State may do: it made a federal constitutional right contingent on state legislation. By declaring the 78t process the "exclusive mechanism" for redress, Michigan extinguished the Takings Clause's self-executing character recognized since *First English, Jacobs,* and *Seaboard*. This Petition presents the question *DeVillier* left open – whether property owners may invoke the Fifth Amendment directly when a State denies a complete remedy. The answer is compelled by text, history, and precedent alike: yes.

REASONS FOR GRANTING THE PETITION

Just one Term ago, this Court granted certiorari in *DeVillier v. Texas* to resolve whether "a person whose property is taken without compensation [may] seek redress under the self-executing Takings Clause even if the legislature has not affirmatively provided them with a cause of action." 144 S. Ct. 938, 939 (2024). After briefing and argument, however, the Court concluded that it need not answer the question because Texas common law independently provided a state-law cause of action for just compensation. *Id.* at 942-943. In the absence of a remediless plaintiff, the Court vacated and remanded.

This case presents the issue that *DeVillier* avoided. Unlike in *DeVillier*, the Michigan Supreme Court has explicitly foreclosed any direct constitutional claim, requiring that property owners proceed exclusively through the statutory procedure codified at Mich. Comp. Laws § 211.78t. This precluded state courts from providing Fifth Amendment just compensation altogether. The 78t process is not an adequate substitute for the Takings Clause: it denies full recovery, withholds constitutionally required interest, effectively prohibits class-wide relief, and imposes governmentally-favorable deductions not permitted by federal law. The question reserved in *DeVillier* is unavoidable here.

In short, Michigan's highest court has effectively declared that the Fifth Amendment itself provides no judicially cognizable claim against the State in Michigan's courts, even when the statutory substitute fails to deliver appropriate "just compensation." That is direct violation of this Court's teaching. "Just compensation is provided for by the Constitution *and the right to it cannot be taken away by statute.*" *Seaboard Air Line Ry. v. United States*, 261 U.S. 299, 304 (1923) (emphasis added). The "self-executing" promise this Court has reaffirmed since *First English* is thus stripped of all meaning. This case offers the Court a clean vehicle to decide the very issue it could not reach in *DeVillier*.

I. The Michigan Supreme Court's Decision Conflicts With This Court's Precedent Holding the Takings Clause to Be Self-Executing

This Court has long recognized that the Takings Clause itself guarantees a right to compensation that exists independent of statutory mechanisms. *First English*, 482 U.S. at 315 ("Statutory recognition was not necessary."); *Knick*, 588 U.S. at 192 (a property owner has an "irrevocable right to just compensation immediately upon a taking"). The duty to compensate is not discretionary; it is a debt imposed by the Constitution itself. As *First English* and *Jacobs* confirm, when the government takes property, a judicially enforceable obligation arises immediately – no legislative permission is required. Courts have

long rejected the notion that Congress or a State may condition payment of a constitutional debt on statutory grace. This is because suits for just compensation are "founded upon the Constitution of the United States" itself, *First English*, 482 U.S. at 315, "shouldn't depend on any statute" when "the Constitution requires it," *O'Connor v. Eubanks*, 83 F.4th 1018, 1029 (6th Cir. 2023) (Thapar, J., concurring); *DeVillier v. State*, 63 F.4th 416, 436 (5th Cir. 2023) (Oldham, J., dissenting from the denial of rehearing en banc) (collecting over a century of Supreme Court cases highlighting plaintiffs have a cause of action directly under the Takings Clause). And equally critical, the right cannot be statutorily extinguished either. *Seaboard*, 261 U.S. at 304 ("the right to it cannot be taken away by statute"). Thus from the Magna Carta in 1215 to *Lawton* in 1884 through *Knick* in 2019, the historical practice and this Court have been consistent: a governmental taking is not a hopeful promise awaiting permission – it is a command that executes itself.

In short, the Fifth Amendment's command is not aspirational; it is mandatory. From the Magna Carta, see *Horne v. Dep't of Agric.*, 576 U.S. 350, 358 (2015), to the present day promise that no property may be taken without payment of just compensation, Anglo-American law has long treated compensation not as grace but as an affirmative duty. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322 (2002) (our jurisprudence involving takings "is as old as the Republic"); see also

United States v. Lynah, 188 U.S. 445, 465 (1903) (the Fifth Amendment guarantees that when a taking occurs "it shall be attended by compensation").

Jacobs characterizes the government's obligation as a constitutional promise that is "implied because of the duty to pay imposed by the Amendment," enforceable the moment the taking occurs. *Jacobs*, 290 U.S. at 16. Suits to enforce are "founded upon the Constitution of the United States" itself. *Id.* The text, history, and tradition thus all converge on the same truth: the Takings Clause executes itself.

The Michigan Supreme Court charted an opposite course. It held that Mich. Comp. Laws § 211.78t is the "exclusive mechanism" for property owners to pursue takings-based claims. It rejected direct constitutional claims, disallowed constitutional and class remedies, and compelled owners to rely on an inferior statutory process. Such a holding relegates the Takings Clause to a "poor relation" among constitutional guarantees, exactly what *Knick* condemned.

II. The Decision Below Both Deepens Confirms the Division Highlighted in *DeVillier*

As the *DeVillier* petition catalogued, state and federal courts are split. This case deepens the divide. In some jurisdictions property owners may invoke the

Constitution itself, while in others – like Michigan – they are left remediless. Certain states hold that the Takings Clause creates a cause of action directly enforceable in court. See, e.g., *Benson v. State*, 710 N.W.2d 131 (S.D. 2006); *Henderson v. City of Columbus*, 827 N.W.2d 486 (Neb. 2013); *Manning v. Mining & Minerals Div. of the Energy, Minerals & Nat. Res. Dep't*, 144 P.3d 87, 93 (N.M. 2006) ("The Mannings' claim does not rely at all on congressional action. Rather, the just compensation claim stems directly from the text of the Constitution through the Fifth and Fourteenth Amendments."); *SDDS, Inc. v. State*, 650 N.W.2d 1, 9 (S.D. 2002) ("[T]he remedy [of just compensation found in the Fifth Amendment's Takings Clause] does not depend on statutory facilitation. Because it is a constitutional provision, it is a right of the strongest character."); *Boise Cascade Corp. v. Bd. of Forestry*, 991 P.2d 563, 567 (Or. Ct. App. 1999) ("In short, section 1983 does not provide for the remedy required by the constitution for a taking of property by the state."). Others, including the Fifth, Sixth, and Ninth Circuits, reject that view and require legislative authorization. See *DeVillier*, 63 F.4th 416; *Thomas v. Shipka*, 818 F.2d 496, 499 (6th Cir. 1987) ("in cases where a plaintiff states a constitutional claim under 42 U.S.C. § 1983, that statute is the exclusive remedy for the alleged constitutional violations"); *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704 (9th Cir. 1992).

Since *DeVillier*, the conflict has sharpened to a razor's edge. The Eleventh Circuit has now held that

the Takings Clause "guaranteed the ability to recover 'just compensation' directly under the Constitution," recognizing a self-executing cause of action for damages. *Fulton v. Fulton Cnty. Bd. of Comm'rs*, 148 F.4th 1224, 1234 (11th Cir. 2025). The court reasoned that "our Founders did not do to us what the Greek gods did to Tantalus"; the Constitution "doesn't taunt us by naming these remedies but then holding them out of reach." *Id.* at 1232. The *Fulton* majority thus affirms what this Court has long said – that the right to just compensation under the Fifth Amendment carries with it its own remedy.[1] The now resulting divide between Michigan's and the Eleventh Circuit's views could not be any starker.

This Court granted review in *DeVillier* precisely because of this sharp division. But Texas avoided the issue when it conceded that it would provide an adequate alternative vehicle. Michigan has now created the opposite scenario: there is an exclusive and intentionally-inadequate "remedy" designed to strip away core and critical elements of Fifth

[1] The majority limited its holding to local governments only because of the Eleventh Amendment's restriction on federal-court jurisdiction. However, this is of no moment. *Fulton* was limited itself to local governments due to Eleventh Amendment considerations of the federal forum, not because the Fifth Amendment cause of action fails against a State in its own courts. Because this case arises from state courts, no such sovereign-immunity barrier exists. Michigan's courts are fully competent to entertain a self-executing federal claim, but erred when it refused to do so.

Amendment just compensation. Property owners here lack any true cause of action that secures the federal constitutional right. And because the State is the defendant, there is no ability to sue under Section 1983 in federal court. *Will*, 491 U.S. at 71. This case therefore makes the conflict complete.

III. The Case Presents Federal Questions of Exceptional Importance

The consequences of the Michigan Supreme Court's *Hathon* decision are sweeping. Michigan's foreclosure system affects thousands of homeowners each year where the State acts as the in-rem foreclosing petitioner. By channeling claims exclusively into Mich. Comp. Laws § 211.78t:

- **It directly violates *Seaboard*'s command.** This Court explained "[j]ust compensation is provided for by the Constitution and the right to it cannot be taken away by statute." 261 U.S. at 304.

- **There is no independent judicial forum.** Claims must return to the very circuit court that foreclosed on the property with strict limits on what the courts can do, eliminating neutral adjudication.

- **Deductions reduce compensation below the constitutional floor.** Mich. Comp. Laws § 211.78t(9) authorizes a "sales commission,"

effectively charging property owners for the government's unconstitutional retention of equity.

- **No interest is awarded.** In direct conflict with *Jacobs*, compensation is limited to less than full surplus accompanied by nearly a year in delays with no interest provided.

- **No class actions are allowed.** Property owners must proceed individually, even where claims are identical and low dollar value. The purposeful result is systemic underenforcement and high cost.

The statute's exclusivity means that property owners have no ability to invoke the Constitution itself. That is not a "remedy" at all. It is precisely the constitutional vacuum that this Court identified as intolerable in *DeVillier*.

Today, dozens of states use tax-foreclosure processes, and many are revising their laws after *Tyler*, and rightly so. If Michigan's inferior and sub-constitutional model is permitted to stand, other states will follow by crafting similar "exclusive" statutory remedies that strip the essential components of just compensation. Thus this case now requires the answer to what *DeVillier* was able to defer, i.e., the recognition that the Fifth Amendment, by its own terms, supplies the cause of action and the

mandatory remedy.

IV. *Hathon* Squarely Presents the Question *DeVillier* Avoided and *Pung* Cannot Resolve.

The Court's recent grant in *Pung v. Isabella Cnty., Mich.* (No. 25-95) ensures consideration of the scope of "just compensation" for claims such as Petitioners.' But *Pung* does not present the unavoidable constitutional question raised here: whether the Takings Clause of the Fifth Amendment is itself self-executing and judicially enforceable when a State declares a statutory scheme to be the "exclusive mechanism" and deliberately withholds full compensation.

In *Pung*, the petitioner challenges the adequacy of combination of only surplus proceeds plus *Jacobs* interest as being the proper measure of required just compensation. This Petition, by contrast, asks antecedent question of whether the Constitution allows a State to bar those affected property owners from invoking the Fifth Amendment remedy at all. Put differently, *Pung* tests "how much" compensation must be paid; *Hathon* tests "whether" the State can prohibit the Takings Clause from being invoked in the first place.

The Michigan Supreme Court's decision in this case did not simply apply the 78t process; it held that 78t is the *exclusive* mechanism and that no

constitutional claim exists independently. That ruling is a direct repudiation of this Court's teaching in *First English*, *Jacobs*, *Knick*, and *Seaboard*, which held that just compensation is guaranteed by the Constitution and cannot be erased by statute. The question presented here is thus not subsumed within *Pung*; it is prior to it.

For that reason, this case is not redundant of *Pung* but complementary to it. At minimum, the Court should hold this petition pending the disposition of *Pung*. If *Pung* leaves unresolved the foundational question of whether the Takings Clause is self-executing in its own right, this case provides an ideal vehicle to resolve it.

V. This Case Is an Ideal Vehicle

This case is postured ideally. No procedural defects or jurisdictional complexities exist. The Michigan Supreme Court entered a final judgment on a purely federal question, leaving nothing for further factual development. It arrives cleanly on a single dispositive constitutional issue resulting in an issued definitive ruling on the exclusivity of Mich. Comp. Laws § 211.78t that dismissed the constitutional claims. The federal question is dispositive. Unlike *DeVillier*, there is no adequate state-law cause of action preserving constitutional remedies. And unlike *Tyler*, which resolved whether surplus equity constitutes property, this case asks the necessary

next question: whether the State can cabin and curtail the remedy.

The Petition thus allows this Court to resolve what it set aside just one Term ago. The Takings Clause is either self-executing – guaranteeing a federal right of action for just compensation – or it is subject to legislative nullification. The Michigan Supreme Court has taken the latter view. Only this Court can correct it.

VI. Without Review, States Can Erase the Fifth Amendment by Statute

If Michigan's decision is permitted to stand, the Fifth Amendment will mean only what state legislatures permit it to mean. States can draft "exclusive mechanisms" that return only partial compensation, bar interest, prohibit collective action, and shield themselves from constitutional accountability. The Michigan Supreme Court candidly acknowledged that property owners' arguments for interest, attorney fees, and against deductions may have merit, but declared them "premature" because the only available mechanism is statutory. That reasoning turns the Constitution on its head: it makes state law the source of the right, and constitutional right merely advisory. That cannot stand. State legislatures are simply never permitted to legislate away federal constitutional rights. The Constitution promises property owners a federal remedy for takings. Michigan has erased it by statute.

Only this Court can restore what the Fifth Amendment already and expressly commands.

CONCLUSION

This case is the natural sequel to *DeVillier*. Where *DeVillier* ended with Texas conceding an alternate remedy, Michigan begins by denying one. The Michigan Supreme Court together with the Michigan Legislature did through 78t what *Seaboard* squarely prohibits: "[j]ust compensation… cannot be taken away by statute." 261 U.S. at 304. The Petition squarely presents the question reserved, highlights serious conflicts with this Court's precedents, deepens acknowledged divisions among courts, and threatens to hollow out the Takings Clause. This Court's correction is essential to preserve the Fifth Amendment's force. Otherwise Michigan's state sovereign immunity bars federal court challenges, its 78t "exclusive mechanism" bars constitutional claims, and 78t is deliberately sub-constitutional. And the Constitution does not wait upon legislative permission to be obeyed. This Court's review is necessary to ensure that the Fifth Amendment remains what it has always been—a command, not a courtesy.

For all the foregoing reasons, this Court should grant the petition for a writ of certiorari or, in the alternative, summarily reverse the decision below.

At a minimum, if the Court prefers not to grant review immediately, it should hold this petition pending its disposition of *Pung v. Isabella Cnty.*, No. 25-95. If *Pung* does not fully resolve whether the Takings Clause is self-executing in its own right, *Hathon* provides the clean and necessary vehicle to answer that foundational question. If *Pung* makes clear that 78t's inadequacy alone violates the Constitution, the Court should summarily reverse here, because the Michigan Supreme Court's 'exclusive remedy' holding forecloses any constitutional avenue for relief.

Respectfully submitted,

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