SUPREME COURT OF NEW JERSEY

DOCKET NO. 090953

LYNETTE JOHNSON,

Plaintiff/Respondent,

v.

CITY OF EAST ORANGE; ANNMARIE CORBITT, in her official capacity as Collector of Taxes, and TED R. GREEN, in his official capacity as Mayor of East Orange,

Defendants/Petitioners.

APP. DIV. NO. A-2486-23

Civil Action

On Appeal From:
Superior Court of New Jersey
Chancery Division, Essex County
Docket No. ESX-C-16-23

Sat Below:
Hon. Hany A. Mawla, J.A.D.
Hon. Arnold Natali, J.A.D.
Hon. Robert M. Vinci, J.A.D.
Hon. Lisa M. Adubato, PJ Ch.

RESPONSE BRIEF OF PLAINTIFF/RESPONDENT LYNETTE JOHNSON

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TABLE OF CONTENTS

Page

TABLE OF JUDGMENTS, ORDERS, AND RULINGS BEING APPEALED

TABLE OF AUTHORITIES

Page(s)

Cases

Statute

Rules

Other Authorities

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Lynette Johnson purchased commercial property located at 250 Tremont Avenue in East Orange for $55,000 in 2014. (Da4).[1] Her intention was to renovate the property and allow two of her adult children to operate businesses on the premises. (Da5). Ms. Johnson signed a "Letter of Agreement" with the City confirming her intention to renovate, and providing that the property may not be occupied or "in any way deliver[ed] up . . . for occupancy" until the City had issued a certificate of conformity. (Da4; Ja177). The Letter listed Ms. Johnson's "mailing address" as 68 S. Devine Street in Newark in bold, italicized typeface. (Ja177).

Despite having her residential mailing address on file, the City sent notices of tax assessments only to the property at 250 Tremont, which did not have a mailbox set up. (Da5). Ms. Johnson therefore never received actual notice of the tax assessments. (*Id.*).

On October 1, 2015, the City purchased a tax lien on the property in the amount of $4,787.76. (Da5). Just two weeks later, Ms. Johnson obtained a construction permit from the City to proceed with renovation work for which she paid nearly $2,000. (Da5; Ja26). No one from the City informed her during this process that her property was in tax delinquency and at risk of foreclosure. (Da5–6).

[1] Da# refers to the appendix attached to the City's Petition. Ja# refers to the Appellate Division joint appendix.

The City filed a complaint for foreclosure in September 2017 and obtained a default judgment on February 13, 2018. (Da6). Notices of both the commencement of the action and the judgment were sent to 250 Tremont and were returned undeliverable. (*Id.*). The City also sent notices to various other parties, but not to Ms. Johnson's residential mailing address at 68 S. Devine. (Ja28–29). The attorney who represented the City in the foreclosure action represented in a certification that he "ran various Lexis searches to ensure that the subject property was a good address" for Ms. Johnson, and that the Lexis records "did not disclose any alternate or additional addresses[.]" (Da5; Ja76).

Ms. Johnson did not receive actual notice of the tax foreclosure judgment until March 16, 2018, at which point her children immediately went to City Hall and offered to pay the outstanding taxes. (Da7). They were refused. (*Id.*). On June 7, 2018, the City sold the property to a third-party for $101,000. (Da7). Although the parties dispute by how much, there is no dispute that this sale price significantly exceeded the total tax liability that had led to foreclosure. (Da7; Ja203). The City retained all proceeds from the sale.

Ms. Johnson consulted an attorney who advised it was unlikely that the foreclosure action could be reversed or that the Property could be recovered. (Ja166). However, in 2021 Ms. Johnson learned of pro-bono counsel who had been successful in other jurisdictions challenging the government's retention of surplus equity in tax

foreclosures as a taking without compensation. (*Id.*). She filed the present action shortly thereafter claiming a taking without compensation as well as unjust enrichment. (*Id.*).

The City moved for summary judgment on all claims, and Ms. Johnson cross-moved for partial summary judgment as to the City's liability for a taking, asserting that disputed issues of material fact remained as to unjust enrichment claim and the amount of her equity interest in the property. (Da6–7; Ja309). The case was held in abeyance pending the U.S. Supreme Court's decision in *Tyler v. Hennepin County*, which was issued on May 25, 2023. 598 U.S. 631 (2023). *Tyler* held that government violates the Takings Clause when it takes and keeps more property than necessary to recover a tax debt. 598 U.S. at 647–48. Seven months later, the Appellate Division issued its decision in *257-261 20th Ave. Realty, LLC v. Roberto*, 477 N.J. Super. 339 (App. Div. 2023) (*Roberto I*), holding that *Tyler* applied to the New Jersey Tax Sale Law (TSL) and that it must be given "retroactive pipeline application[.]" *Roberto I*, 477 N.J. Super. at 363. The trial court granted the City's motion for summary judgment on all counts, finding that the case was not "in the pipeline, the way the [*Roberto I*] court intended."

Ms. Johnson appealed. After the case was fully briefed, this Court modified the Appellate Division's decision in *Roberto*. *See 257-261 20th Ave. Realty, LLC v. Roberto*, 259 N.J. 417, 449 (2025) (*Roberto II*). Of special relevance here, this Court

"decline[d] to address or adopt" the Appellate Division's analysis of retroactivity. *Id.* at 442 n.3. It also did not address a related question raised by Pacific Legal Foundation[2] about "whether a party may file a claim for just compensation alone when a foreclosure has been finalized and a taking of equity has already occurred, but the taking is within the relevant statute of limitations." *Id.*

The Appellate Division thereafter reversed the trial court's decision in this case, answering that question in the affirmative. (Da4, 27–28). The City now petitions for review.

ARGUMENT

I. The Appellate Division Correctly Ruled That Ms. Johnson Raised a Timely Claim in Response to a Completed Taking Which Need Not, and Could Not, Have Been Raised in the Underlying Foreclosure Proceeding

The statute of limitations for a takings claim in New Jersey is six years. *Klumpp v. Borough of Avalon*, 202 N.J. 390, 409–10 (2010). Ms. Johnson filed the present complaint less than four years after the City took her property without compensation. That should be the end of the matter. Yet the City insists that the claim was brought too late because of the existence of an earlier case: the underlying foreclosure action which led to the uncompensated taking. (Pet. 7). Based on a belief that Ms. Johnson could have raised her takings claim during that earlier action, the

[2] Pacific Legal Foundation was amicus in the *Roberto* case and lead counsel in *Tyler*. It is also counsel for Ms. Johnson here.

City argues that this case should be barred by the entire controversy doctrine (ECD) or by retroactivity principles (*Id.*). It is wrong.

As an initial matter, the ECD plainly does not apply for several reasons, the most glaring of which is that Ms. Johnson did not have actual knowledge of the events giving rise to her claim until after the conclusion of the foreclosure suit. *See Joel v. Morrocco*, 147 N.J. 546, 549 (1997) (ECD requires that plaintiff was "actually aware of the actionable conduct" during the original suit). More broadly, the existence of a judicial foreclosure action does not preclude a subsequent takings claim under *any* doctrine because a takings claim does not accrue until property is actually taken and just compensation withheld. *Knick v. Twp. of Scott*, 588 U.S. 180, 189 (2019) ("[A] property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it."). As the court below recognized, Ms. Johnson's claim does not seek to reopen or to undo the foreclosure judgment. (Da24). Rather, it seeks just compensation for the City's retention of her equity interest in the property—something the Constitution compels.

A. A takings claim for just compensation need not have been raised during the foreclosure action

This case is simple. Ms. Johnson's claims seek just compensation for the taking of her equity interest in the property which the City unlawfully retained following the foreclosure. It does not seek title to the property, nor does it ask to

reopen or overturn the foreclosure itself. Indeed, it does not even attack the validity of the foreclosure itself. It simply seeks constitutionally mandated compensation. *See First English Evangelical Lutheran Church of Glendale v. Los Angeles Cnty.*, 482 U.S. 304, 315–16 (1987) (U.S. Supreme Court has "frequently repeated the view that, in the event of a taking, the compensation remedy is required by the Constitution."); *Jacobs v. United States*, 290 U.S. 13, 27 (1933) (right to just compensation "rested upon the Fifth Amendment. Statutory recognition was not necessary."); *Klumpp*, 202 N.J. at 405 ("Regardless of the exact method employed, where a taking occurs, the Takings Clause requires the government to compensate the property owner.").

Notably, Petitioners fail to identify a single instance of a takings claim being raised as a defense to a tax foreclosure,[3] nor a single example of a court rejecting a post-foreclosure takings claim for failure to raise it during the foreclosure action. Indeed, as far as Respondent is aware, every published decision which has considered the arguments raised by Petitioners has rejected them.

[3] To be sure, some procedures in some forums do allow for a takings claim to be raised as a defense. In *Horne v. Dep't of Agric.*, for example, the U.S. Supreme Court held that raisin growers were free to raise a takings-based defense during an enforcement proceeding initiated by the U.S. Department of Agriculture. 569 U.S. 513, 528–29 (2013). The holding was largely a matter of statutory interpretation. *Id.* ("The text of [7 U.S.C.] § 608c(14)(B) does not bar handlers from raising constitutional defenses to the USDA's enforcement action."). Moreover, the Court also explained that a grower could instead turn over her raisins in response to an enforcement action and later bring a suit for just compensation. *Id.* at 526, n.7.

In *Harrison v. Montgomery County*, for example, the plaintiff filed a takings claim after her property had been foreclosed by the county's board of revision. 997 F.3d 643, 647 (6th Cir. 2021). The county argued, like the City does here, that the plaintiff should have raised the claim as a defense during the board's proceedings. *Id.* at 650. But though the Sixth Circuit treated the board's decision as a state court judgment for claim preclusion purposes, *id.* at 648, it rejected the county's argument because the takings claim did not ripen until the Board's final decision, "not before." *Id.* at 650. The takings claim was separate and distinct from the underlying foreclosure action because, as here, it challenged only the government's "extinguishment of [] surplus equity—not its foreclosure of tax-delinquent property." *Id.* at 652.

To similar effect is *Sikorsky v. City of Newburgh*, which rejected similar claim preclusion arguments. 136 F.4th 56, 62–63 (2025). There, as here, the plaintiff filed a takings claim some years after a tax foreclosure. *Id.* at 59. The government argued that the claim should be precluded based on earlier lawsuits filed by the plaintiff relating to a repurchase agreement on the property which had fallen through. *Id.* But the court held that the "'harm' at issue is the municipality's *retention* of the surplus equity." *Id.* at 62. In other words, "the harm did not occur until the City received (and began to 'retain') the money from the sale of the property." *Id.* Because this did not happen until *after* the earlier court proceedings, the takings claim could not be

precluded. *Id.*; *see also Dorce v. City of New York*, 2 F.4th 82, 105–106 (2d Cir. 2021) (*Rooker-Feldman* did not bar federal takings claim by reason of state-court foreclosure proceedings, since the absence of just compensation was not caused by the foreclosure judgment but by the government's actions following foreclosure).

Petitioners are simply incorrect that "the *entry of judgment alone*" inflicts the constitutional injury. (Pet. 12–13). As *Sikorsky* explained, the harm in a claim for just compensation does not occur until the government retains surplus equity, which the foreclosure judgment certainly did not require or command.[4] The Third Circuit has reached an analogous conclusion. *See Merritts v. Richards*, 62 F.4th 764 (2023). Though not a tax foreclosure case, *Merritts* involved a straightforward condemnation action in which a Pennsylvania agency took easements from the plaintiff's parcel in eminent domain proceedings. *Id.* at 768. The plaintiff thereafter filed a suit in federal court claiming, among other things, an unlawful acquisition as well as insufficient compensation. *Id.* at 769. The court held that the claims of unlawful acquisition must be dismissed under the *Rooker-Feldman* doctrine, since the right of the agency to take the easements had been fully adjudicated in the state court proceedings. *Id.* at 775. But the claims relating to just compensation were not

[4] Petitioners assert that some municipalities, such as Newark, were compelled to enforce tax delinquencies by the Department of Community Affairs. (Pet. 18). But it does not assert whether the Department similarly compelled those municipalities to retain all surplus equity without compensating the former property owner. Regardless, there is no suggestion that the City of East Orange was so compelled.

barred, since the amount of compensation owed had not—and could not—have been decided in the earlier action. *Id.* at 776. Moreover, the just compensation claim in *Merritts* did not challenge the *right* of the agency to take property, just as the claims in this case do not challenge the right of the City to foreclosure. *Id.* at 775 (on the contrary, claims for just compensation "actually depend [for their success] on the *correctness* of the judgment in the condemnation action."); *see Freed v. Thomas*, 976 F.3d 729, 737 (6th Cir. 2020) (federal takings claim following state tax foreclosure not barred by doctrine of comity because claim does "not challenge Michigan's taxing authority or the validity of Michigan's tax system" and would not "prevent Michigan from foreclosing on and selling property to recover delinquent taxes."); *Coleman through Bunn v. District of Columbia*, 70 F. Supp. 3d 58, 74 (D.D.C. 2014) (no *Rooker-Feldman* bar where plaintiff challenges not the foreclosure judgment itself but the government's "enforcement of the statute providing for a taking of his surplus equity.").

Although several of the cases discussed above involve the *Rooker-Feldman* doctrine, a federal doctrine which has no application here, the principle uniformly understood in these cases is dispositive: A takings claim seeking just compensation raises a completely separate and distinct issue from those involved in a foreclosure action. The foreclosure action asks only whether the lienholder has the right to

foreclose property; it has nothing to say about the constitutional right of foreclosure defendants to receive just compensation for confiscated equity interests.

All of the relevant court rules confirm this understanding. Rule 4:64-6 provides that only defenses involving the "invalidity of the tax or other lien, or the invalidity of the proceedings to sell, or the invalidity of the sale" are to be tried in separate proceedings. Those defenses attack the propriety of the foreclosure itself. *See Nordell v. Twp. of Mantua*, 45 N.J. Super. 253 (Ch. Div. 1957) (where tax sale certificate is void, foreclosure is also void). Rule 4:50-1 enumerates the grounds for relief from a final judgment, including mistake, newly discovered evidence, fraud, invalidity of the judgment, and satisfaction of the judgment. There is no provision within the rules governing tax foreclosure proceedings for a motion for relief, not from the judgment itself, but from the lienholder's post-judgment retention of equity.[5] Rule 4:64-1(c) provides that only pleadings which "contest the validity or the priority" lien being foreclosed "or create an issue with respect to plaintiff's right to foreclose it" are considered contesting answers to a foreclosure complaint. This understanding is confirmed by this Court's July 12 Order and Notice to the Bar "relax[ing] and supplement[ing] Rule 4:64-1(c) to provide that allegations of equity

[5] Notably, Petitioners' counsel argued forcefully in *Roberto* that Rule 4:50-1(f) did not allow relief from a judgment on the grounds that substantial equity existed in the property. *Roberto II*, 259 N.J. at 434. This Court ultimately declined to resolve the question in that case. *Id.* at 437.

"shall be treated as a contesting answer to the tax foreclosure complaint." Before the Order, then, such allegations were clearly *not* contesting answers.

Petitioners cite *Bembry v. Twp. of Mullica*, 749 F. App'x 123 (3d Cir. 2018), but that case only reinforces Ms. Johnson's point. (Pet. 8). The plaintiff in *Bembry* did not seek just compensation for the township's post-foreclosure retention of equity. 749 F. App'x at 124. She sought instead to attack the validity of the foreclosure judgment itself by alleging it was fraudulently obtained in violation of due process and equal protection rights. *Id.* at 125 ("[I]n both the state and federal cases, Bembry has argued that the defendants *were not entitled to foreclose* on her property[.]") (emphasis added).

This case is entirely separate from the foreclosure action which catalyzed it. It is based on a different fact—that of the City's retention of equity—and it seeks a different remedy—just compensation.

B. The ECD has no application here

The ECD requires litigants to "consolidate their claims arising from a single controversy whenever possible" in order to "encourage complete and final dispositions through the avoidance of piecemeal decisions and to promote judicial efficiency and the reduction of delay." *Dimitrakopoulos v. Borrus, Goldin, Forely, Vignuolo, Hyman and Stahl, P.C.*, 237 N.J. 91, 98 (2019) (simplified). But the

doctrine is "predicated upon the polestar of judicial fairness, and it may only be invoked in that spirit." *Levchuk v. Jovich,* 372 N.J. Super. 149, 155 (Law Div. 2004).

The City's ECD argument is a nonstarter because the doctrine "does not apply to claims that [were] unknown or unaccrued" during the earlier action. *Dimitrakopoulos*, 237 N.J. at 115; *L.J. Zucca, Inc. v. Allen Bros. Wholesale Distribs. Inc.*, 434 N.J. Super. 60, 87 (App. Div. 2014). Regardless of the City's arguments that Ms. Johnson could have raised her takings claim as an affirmative defense to the foreclosure judgment, even though the rules did not allow for it, there is no dispute that Ms. Johnson did not have actual knowledge of the existence of the foreclosure action until after the judgment had entered. (Ja6–7). Yet this Court "ha[s] emphasized that the plaintiff must be actually aware of the actionable conduct when the original suit is brought." *Joel*, 147 N.J. at 549.

Even if Ms. Johnson had known about underlying foreclosure action, her takings claim still did not accrue until *after* the final judgment was entered and the City failed its constitutional mandate to compensate her for her equity.[6] *See Knick*, 588 U.S. at 189 (takings claim arises "as soon as a government takes [plaintiff's] property for public use without paying for it."); *Harrison*, 997 F.3d at 650 ("The

[6] Petitioners claim that the new amendments to the TSL prove that a claim "does not need to ripen in order to be asserted." (Pet. 11). It is unclear how these amendments are relevant given they did not exist at the time of the foreclosure proceeding. Regardless, the workings of a later-enacted statutory mechanism tell us nothing about the appropriate procedure for asserting constitutional rights.

taking, so far as federal law is concerned, happened when the Board adjudicated the foreclosure of Harrison's property through the land bank process, not before."); *Boling v. United States*, 220 F.3d 1365, 1370 (Fed. Cir. 2000) ("[T]he key date for accrual purposes is the date on which the plaintiff's land has been clearly and permanently taken."); *see also Hopland Band of Pomo Indians v. United States*, 855 F.2d 1573, 1577 (Fed. Cir. 1988) ("It is generally stated that a claim 'first accrues' when all the events have occurred which fix the alleged liability of the defendant and entitle the plaintiff to institute an action.")

Finally the ECD requires that a party have a "full and fair opportunity" to actually litigate the issue in the earlier action. *Dimitrakopoulos*, 237 N.J. at 120. Ms. Johnson had no such opportunity, because prior to this Court's July 12, 2023, Order and Notice to the Bar, an allegation of surplus equity was not treated as a contesting answer in a tax foreclosure proceeding.[7] Indeed, Rule 4:64-6 provides that only those defenses which raise questions as to the "invalidity of the tax . . ., or the invalidity of the proceedings to sell, or the invalidity of the sale" shall be tried separately. Petitioners argue, without basis, that a "taking/surplus equity defense . . . like every other [answer]" would "have been deemed contesting by the Office of

[7] Petitioners bizarrely suggest that the Court's Order "does not 'allow' anything that could not have been asserted earlier. (Pet. 10). Yet the Order clearly stated that it was "relax[ing] and supplement[ing]" Rule 4:64-1(c) to treat allegations of surplus equity as a contesting answer in a tax foreclosure. Respondent presumes that this Court does not issue meaningless orders, and she therefore surmises that allegations of surplus equity were not treated as contesting answers prior to the Order.

Foreclosure[.]" (Pet. 11). Yet Rule 4:64-7(f) clearly states that answers in an in-rem tax foreclosure are governed in accordance with Rule 4:64-6, which provides at subdivision (c)(2) that an action is deemed uncontested if the answer fails to "either contest the validity or priority of the . . . lien being foreclosed or create an issue with respect to plaintiff's right to foreclose it[.]" Petitioners' mistake here is in insisting that the only thing that matters for the ECD is whether a claim or defense "*could have been asserted*." (Pet. 8). But New Jersey Courts have been consistent that the ECD[8] "requires . . . that [] the first forum must have been able to provide all parties with the same full and fair opportunity to litigate the issues and with the same remedial opportunities as the second forum." *Dimitrakopoulos*, 237 N.J. at 117–18 (citing *Hernandez v. Region Nine Hous. Corp.*, 146 N.J. 645, 661 (1996)); *Gelber v. Zito P'ship*, 147 N.J. 561, 565 (1997); *Cafferata v. Peyser*, 251 N.J. Super 256, 261 (App. Div. 1991).

The ECD "is not intended to be a trap for the unwary." *Joel*, 147 N.J. at 554. This case is worlds apart from the paradigmatic scenario in which a litigant intentionally withholds claims to gain a tactical advantage and get "two bites at the apple." *Id.* The ECD cannot possibly have required Ms. Johnson to raise an

[8] The same is true of related doctrines like res judicata and collateral estoppel. *Cafferata*, 251 N.J. Super. at 261 (citing Restatement 2d Judgments, § 28(j).

unaccrued takings claim in an inappropriate forum during a foreclosure action that proceeded without her knowledge.

II. The Sky Will Not Fall

Petitioners' arguments about municipal liability are to be expected. "Time and again in Takings Clause cases," defendants "prophe[size] that recognizing a just compensation claim would unduly impede the government's ability to act in the public interest." *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 36 (2012). Time and again, the U.S. Supreme Court has "rejected this argument." *Id.* at 37.

It must be remembered that the magnitude of municipal foreclosures pointed to by Petitioners, (Pet. 14) translates in equal measure to the magnitude of unconstitutional and unjust confiscation of equity from property owners. That is money that the government was not owed and had no right to take. As this Court has explained, "[w]hile the importance of the government's taxing power cannot be ignored, we must not forget that governmental concern for convenience or simplicity does not outweigh individual rights."[9] *Twp. of Montville v. Block 69, Lot 10*, 74 N.J.

[9] Petitioners raise due process concerns about their liability for conforming to statutory procedures. (Pet. 13). But due process exists to protect people, not municipal corporations. *See City of Sault Ste. Marie v. Andrus*, 532 F. Supp. 157, 167–68 (D.D.C. 1980) (municipalities are not "persons" within the meaning of the Fifth Amendment). Thus, for example, a municipality may not challenge state legislation on the grounds that it violates the municipality's own constitutional rights. *City of New Rochelle v. Town of Mamaroneck*, 111 F. Supp. 2d 353, 364 (S.D.N.Y. 2000) (citing *City of Newark v. New Jersey*, 262 U.S. 192 (1923)). Moreover, while Petitioners cite to *Roberto I*'s opinion that *Tyler* introduced a "new principle of law," (Pet. 5), this Court observed on the contrary that "property owners in New Jersey have a recognized property right to surplus equity." *Roberto II*, 259 N.J. at 443.

1, 14 (1977); *see Marchetti v. United States*, 390 U.S. 39, 58 (1968) (Court must recognize taxing powers, but "we are equally obliged to give full effect to the constitutional restrictions which attend the exercise of those powers.").

Petitioners criticize the court below for agreeing with Respondents' "speculation" that an unmanageable rise of takings claims "is unlikely given the financial circumstances of those being foreclosed upon[.]". (Pet. 17). But Petitioners for their part asked the court speculate that its decision would cause outsized financial harm. (Pet. 15). Merely because the court below found Respondent's argument more persuasive than Petitioners is not a ground for this Court's review. Besides, the court below is not the first to observe that tax foreclosure defendants are "[o]ften . . . among society's most unfortunate[.]" *Cherokee Equities, LLC v. Garaventa*, 382 N.J. Super. 201, 211 (Ch. Div. 2005). Victims of tax-foreclosure takings are unlikely to file suits for just compensation for the same reasons that they were unable to pay their property taxes in the first place. They may be impoverished, ill, elderly, mentally unwell, or—as here—caring for a terminally ill spouse. (Da5).

Before *Tyler*, over a dozen states had the practice of routinely confiscating equity in tax foreclosures. *Tyler*, 598 U.S. at 642. That means that over a dozen states now have to reform (or already have reformed) their tax laws and adjudicate whatever *Tyler*-style claims are brought in relation to pre-*Tyler* foreclosures. Yet Petitioners do not point to a single authority from any jurisdiction withholding

constitutionally mandated compensation for the sake of protecting municipal budgets. On the contrary, the Supreme Court of Michigan[10] recently rejected a county's argument that it should decline relief to takings plaintiffs "citing, in no small part, the fact that the very governments that applied unconstitutional policies could in retrospect suffer financial consequences." *Schafer v. Kent Cnty.*, __N.W.3d__, 2024 WL 3573500, at *16 (Mich. July 29, 2024). As that court explained, "the financial concerns of governments are those of the governments and taxpayers as a whole, not of the individuals who would otherwise be forced to shoulder the costs of the unconstitutional action, and not of the courts who vindicated those individual's constitutional rights." *Id.*

When the government takes property, the Constitution "imposes a clear and categorical obligation to provide the landowner with just compensation." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021). There is no textual, jurisprudential, or logical reason why this obligation should be overcome by vague and unsupported predictions that too many people will seek justice.

[10] *Schafer* involved claims under the Michigan constitution pursuant to the ruling in *Rafaeli, LLC v. Oakland County*, 505 Mich. 429 (2020), a state law case which prefigured *Tyler*. *But see Schafer*, 2024 WL 3573500, at *16 n.93 (observing that federal law would likely require the same result).

CONCLUSION

For the reasons stated above, Ms. Johnson respectfully urges this Court to deny the petition for certification and allow the Appellate Division's well-reasoned opinion to stand.[11]

DATED: August 12, 2025.

Respectfully submitted,

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[11] Ms. Johnson has also submitted a conditional Cross-Petition seeking review of the Appellate Division's affirmance of summary judgment against her on the issue of unjust enrichment. If, and only if, this Court grants the City's Petition, Ms. Johnson respectfully requests that it also grant her conditional Cross-Petition.