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STATE OF MICHIGAN
IN THE SUPREME COURT
(On Appeal from the Michigan Court of Appeals)

NICK YONO,

Plaintiff-Appellee,

vs.

INGHAM COUNTY;
INGHAM COUNTY TREASURER; and
INGHAM COUNTY LAND BANK FAST TRACK AUTHORITY,

Defendants-Appellants.

Supreme Court No.: 166791
MCOA Docket No. 362536
Ingham County Circuit Court
Case No. 20-697-CZ

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RESPONSE BY DEFENDANTS-APPELLANTS INGHAM COUNTY, INGHAM COUNTY TREASURER AND INGHAM COUNTY LAND BANK FAST TRACK AUTHORITY TO THE AMICUS BRIEF OF THE BUCKEYE INSTITUTE

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QUESTIONS PRESENTED

I. WHERE PLAINTIFF YONO'S TAX-FORECLOSED PROPERTY WAS OFFERED FOR SALE BUT FOUND NO BUYER AND GENERATED NO "SURPLUS PROCEEDS," **DID THE COURT OF APPEALS ERR** BY FINDING THE DEFENDANTS-APPELLANTS LIABLE FOR VIOLATION OF MICHIGAN'S TAKINGS CLAUSE FOR NOT HAVING PAID COMPENSATION TO YONO?

Amicus curiae, The Buckeye Institute, answers: "No."

Plaintiff-Appellee Yono answers: "No."

The Ingham County Defendants-Appellants answer: "Yes."

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STATEMENT OF FACTS

For the facts of the case, Defendants-Appellants Ingham County, Ingham County Treasurer and Ingham County Land Bank Fast Track Authority, rely upon the "Statement of Material Facts and Proceedings" in their application seeking leave for appeal. **(Application, pp. 1-3)**.

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ARGUMENT

The amicus brief of The Buckeye Institute proceeds from the false notion that the principles for compensation in the context of property tax foreclosure are no different from those principles in the context of eminent domain. This is highlighted by The Buckeye Institute making repeated reference to "eminent domain" **(The Buckeye Institute Amicus Brief, pp. 3, 7)** and predicating its analysis on federal eminent domain cases, while making only cursory reference to the tax foreclosure compensation decision in ***Tyler v Hennepin County, MN***, 598 US 631 (2023).

Context matters. And this Court has recognized that tax foreclosure "*should not be confused with the power of eminent domain*." ***Rafaeli, LLC v Oakland County***, 505 Mich 429, 480; 952 NW2d 434 (2020). In eminent domain, property is taken by the government for the purpose of putting the real estate itself to public use. ***Michigan Dept of Transportation v Tomkins***, 481 Mich 184, 191-2; 749 NW2d 716 (2008), ***PennEast Pipeline Co, LLC v NJ***, 594 US 482, 487 (2021). Conversely, the purpose of property tax foreclosure is to satisfy the property owner's tax delinquency, through sale of the real estate in the hope that sale proceeds will be adequate to satisfy that delinquency.

In the tax foreclosure context, the property potentially "taken" is <u>*not*</u> the real properties but, rather, the surplus proceeds (i.e., proceeds above the amount of tax debt), *if any*, generated by the tax foreclosure sale. ***Rafaeli***, 505 Mich at 477, 482-4. In this regard, federal law agrees with Michigan law that the potentially compensable property interest is "no more" than the "overplus," "excess" or "surplus" of sale proceeds above the tax debt. ***Tyler***, 598 US at 639-43, ***Freed v Thomas***, 81 F4th 655, 659 (CA 6, 2023), ***Rafaeli***, 505 Mich at 483-4.

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As previously observed by the Ingham County Defendants-Appellants, Plaintiff-Appellee Yono did not assert any federal claim in this case. **(Appellants' Appx., pp. 7-13, Yono Complaint)**. Nevertheless, if this Court accepts The Buckeye Institute's invitation to read Michigan's Takings Clause "in the same spirit" that the federal courts read the Fifth Amendment **(The Buckeye Institute Amicus Brief, p. 1)**, focus should be upon federal law addressing the context of tax foreclosure compensation, i.e., ***Tyler***, not the eminent domain cases (and articles) upon which The Buckeye Institute's argument is based.

In such proper context, where the right to compensation arises only to the extent that the tax foreclosure sale yields surplus proceeds, ***Rafaeli***, 477, 482-4, ***Tyler***, 598 US at 439-43, ***Freed***, 81 F4th at 659, there is no basis for any compensation to Yono in the present case. Yono's former property was offered for public sale at auction in the year of foreclosure (i.e., 2017) **(Appellants' Appx., p. 17, Certificate of Foreclosure)**, and the property has remained on offer by the Land Bank ever since transfer to that entity (*by mandate of MCL 211.78m(7) as then in effect*). But the property has yielded no surplus proceeds, because no buyer has been found. Rather, the property has continued only to generate further expense and loss to the County - - thereby compounding the loss imposed upon the County by the delinquency of Yono that led to foreclosure in the first place.

Given these facts, The Buckeye Institute's enthusiasm for federal law is rather ironic. In ***Hall v Meisner***, 51 F4th 185 (CA 6, 2022), the federal Sixth Circuit explained that public sale is the obligatory disposition for tax-foreclosed property, because the proceeds of such sale are "*the truest test of the value of the landowner's equitable interest*

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in the land." ***Hall***, 51 F4th at 193. Subjected to that "test" for more than seven years now, it has been demonstrated that Yono's former property has no value adequate even to satisfy Yono's tax debt, much less to generate compensable surplus proceeds. Because no such proceeds have arisen, there is no factual or legal basis for Yono (*or for The Buckeye Institute as amicus in Yono's favor*) to claim that any "taking" has occurred - - under either Michigan *or* federal law.

Moreover, even if surplus proceeds had been generated from a sale of Yono's former property, Yono still could not make compensatory recovery of those proceeds via his present litigation. As confirmed by this Court in ***Schafer v Kent County***, ___ Mich ___; ___ NW2d ___ (2024) (Nos. 164975, 165219), Yono would be obligated to seek his recovery through the procedures of MCL 211.78t. ***Id.***; at 33-36. And federal law countenances such procedural conditions for recovery - - with risk that recovery will be "forfeited," if the procedures are not followed. ***Tyler***, 598 US at 644.

Contrary to The Buckeye Institute's argument, the foregoing analysis does not represent an improperly "narrow" or "hyper-technical" reading of ***Rafaeli***. **(The Buckeye Institute Amicus Brief, p. 12)**. Rather, this result is expressly mandated by ***Rafaeli's*** plain statement that "a former property owner has a compensable takings claim if and only if the tax-foreclosure sale produces a surplus." ***Rafaeli***, 505 Mich at 477. This comports with federal law under the Fifth Amendment. ***Tyler***, 598 US at 639-44, ***Freed***, 51 F4th at 659.

What The Buckeye Institute erroneously postulates is a "categorical" right of the former owners of tax-foreclosed property to recover the supposed market value of their former real estate, as if tax foreclosure were merely a form of eminent domain. **(The**

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Buckeye Institute Amicus Brief, particularly p. 14). Neither Michigan nor federal law supports such a proposition.

As this Court emphasized in ***Rafaeli***, "[i]f plaintiffs were entitled to collect more than the amount of the surplus proceeds, no only would they be taking money away from the public as a whole, but they would themselves benefit from their tax delinquency." ***Rafaeli***, 505 Mich at 483. Yet such is precisely the result advocated by Yono and The Buckeye Institute.

As discussed at length in the Ingham County Defendants-Appellees' prior briefing, the County has obtained no benefit at all from the foreclosure in this case. Yono's former property has not been part of any "public use." The County has obtained only additional expense of maintaining the property in saleable condition, in order to be rid of it. And because the property has not sold, the reality is that Yono has not even satisfied his own tax debt. Yono has no right to demand compensation for a *demonstrably fictional* market value that the County (i.e., the public) has never received.

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CONCLUSION AND RELIEF REQUESTED

The demonstrably misdirected analysis by The Buckeye Institute duplicates the fallacy of Plaintiff-Appellee Yono's own arguments. The Buckeye Institute analysis should be rejected.

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Dated: February 5, 2025

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CERTIFICATE OF COMPLIANCE

The undersigned certifies this response complies with the applicable formatting and word count described in MCR 7.215(I)(1).

1. Exclusive of the portions exempted by MCR 7.212(B)(2), the response contains:

   A. 1,131 words.

2. The response has been prepared:

   B. in proportionally spaced typeface using "Arial" in font size 12.

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Dated: February 5, 2025

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2025, I electronically filed the foregoing document with the Clerk of the Curt using the ECF system which will send notification of such filing to the following: All Attorneys of Record; and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants: N/A.

/s/Marie E. Jones
Legal Assistant
Cummings, McClorey, Davis & Acho, P.L.C.