

Case Nos. 15-2463/15-2525

**In the United States Court of Appeals
for the Sixth Circuit**

WAYSIDE CHURCH, an Illinois Not-For-Profit (Ecclesiastical) Corporation,
MYRON W. STAHL, and HENDERSON HODGENS,
individually and on behalf of a class of all others similarly situated,

Plaintiffs-Appellants/Cross-Appellees,

v.

VAN BUREN COUNTY, in its individual Michigan municipal
capacity and on behalf of a class of all other Michigan counties
similarly situated and KAREN MAKAY, in her individual official capacity as
Treasurer of Van Buren County and on behalf of a class of all
other Treasurers of Michigan Counties similarly situated,

Defendants-Appellees/Cross-Appellants.

Appeal from the United States District Court
For the Western District of Michigan at Kalamazoo.
No. 1:14:cv-01274–Hon. Paul L. Maloney, District Judge

**BRIEF FOR AARP AS AMICUS CURIAE SUPPORTING
PLAINTIFFS-APPELLANTS' URGING REVERSAL OF ORDER DISMISSING
PLAINTIFFS CLAIMS PURSUANT TO RULE 12(B)(6)**

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**DISCLOSURE OF CORPORATE AFFILIATIONS AND
FINANCIAL INTEREST**

Sixth Circuit Case Nos.: Case Nos. 15-2463/15-2525
Case Name: Wayside Church, et al. v. Van Buren County, et al.
Name of Counsel: Daniel B. Kohrman

Pursuant to 6th Cir. R. 29(c)(1) and 26.1, AARP makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party: No.
2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest: No.

The Internal Revenue Service has determined that AARP is organized and operated exclusively for the promotion of social welfare pursuant to Section 501(c)(4) of the Internal Revenue Code and is exempt from income tax. AARP is also organized and operated as a nonprofit corporation under the District of Columbia Nonprofit Corporation Act. Other legal entities related to AARP include AARP Foundation, AARP Services, Inc., and Legal Counsel for the Elderly. AARP has no parent corporation, nor has it issued shares or securities.

CERTIFICATE OF SERVICE

I certify that on this 23rd day of May 2016, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/Daniel B. Kohrman
Daniel B. Kohrman

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STATEMENT OF INTEREST¹

Losing one's home to a tax sale or foreclosure is both emotionally wrenching and financially devastating. The practice at issue in this case—taxing authorities retaining the excess equity in a property foreclosed upon to collect delinquent taxes—is greatly important to AARP and its members because it has a disproportionate impact on older homeowners. Home equity is often the only asset available to sustain older people throughout their lifespan.

AARP's affiliated charitable entity, Legal Counsel for the Elderly, was instrumental in raising the profile of similar tragic and unjust practices in the national media. *See* Debra Cenziper, *Homes for the Taking: Liens, losses, and profiteers*, Washington Post (Sept. 8-10, 2013), <http://wapo.st/1XnQwws>. This exposé spurred calls for a federal probe to protect vulnerable older homeowners from “unscrupulous practices,” that stem from collection of taxes, explaining “[w]hile we understand that some state and local governments are struggling in the current economic climate, it is never acceptable to make up such a shortfall on the backs of some of our most vulnerable citizens.” *See* Debbie Cenziper & Michael

¹ All parties have consented to AARP filing this brief. Pursuant to F. R. A. P. § 29(c)(5), AARP states that this brief was not authored in whole or in part by any party or its counsel, and that no person other than AARP, its members, or its counsel contributed any money that was intended to fund the preparation and submission of this brief.

Sallah, Citing abuses, federal lawmakers call for examination of tax-lien programs nationwide, Washington Post (Sept. 19, 2013), <http://wapo.st/1ORQ8op>.

AARP is a nonprofit, nonpartisan organization dedicated to fulfilling the needs and representing the interests of people age fifty and older. AARP has a significant interest in this case because the tax foreclosure statute at issue eliminates all of an owner's equity in the property, including amounts far exceeding the taxes being collected. AARP fights to prevent and remedy illegal or abusive practices that threaten the financial security and well-being of older people.

AARP brief as amicus curiae will address the district court holding that Plaintiffs do not have a constitutionally protected property interest in their home equity following a tax foreclosure. AARP's participation as amicus curiae will assist this Court to understand the disproportionate vulnerability of older and low-income people to bearing burdens that should not fall disproportionately on their backs.

INTRODUCTION AND SUMMARY OF ARGUMENT

It is undisputed that the County sold Plaintiffs' property at public auction and deposited the entire amount of the proceeds into County accounts, including amounts that exceeded the minimum bid necessary to pay all taxes, fees and costs related to the delinquency. Plaintiffs claim that the County's failure to return to

them the surplus proceeds of the tax sales violates the Takings Clause of the Fifth Amendment to the United States Constitution. The district court dismissed Plaintiffs' claims, holding there was no taking because Michigan law, Public Act 123, extinguished any interest the former owners had in the property prior to the sale. *Wayside Church, et al. v. Van Buren Cnty*, No. 1:14-cv-1274-PLM, ECF No. 38, PageID.405, Op. and Ord. Granting Defs.' Mot. to Dismiss Under Rule 12(b)(6), *14, (W.D. Mich. Nov. 9, 2015) [hereinafter Op. and Ord.]. As a result, the court found, any excess proceeds from the sale belonged to the County, not the former owners. *Id.*

The court's analysis turns the Takings Clause on its head and should be reversed. "The Takings Clause of the Fifth Amendment . . . prohibits the government from taking private property for public use without just compensation." *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001). While local governments have a legitimate interest in collecting delinquent taxes, the Takings Clause prevents the government from arbitrary actions that amount to confiscation of property.

The district court holding fails to recognize the justifiable expectation of property owners subject to a tax foreclosure that any surplus equity following deduction of the taxes and foreclosure expenses owed will be returned to them. Homeowners should not be deprived of the equity in their homes, which they have

worked their entire lives to build, simply because they are unable to pay their taxes. Historically, homeownership has been fostered by government policy because of its undeniable importance in building familial wealth and spurring and supporting American social and economic prosperity. Home equity is essential to the well-being and financial security of older people. It is often the sole asset available to sustain them throughout their lifespan.

The Takings Clause should protect against the unjustified windfall reaped by the government at the expense of vulnerable property owners who become delinquent on their taxes. Many older people are disproportionately at risk of losing their homes to tax sales due to an increased likelihood of having limited and fixed income, high housing costs, a greater prevalence of disabling health conditions and cognitive decline or dementia that makes it difficult for them to manage their finances, not having an escrow account because they no longer carry a mortgage, and high health care costs.

This Court should recognize that property owners have a fundamental property interest in their surplus equity that is protected from taking without just compensation, and reverse and remand this case to the district court.

ARGUMENT

I. TAXING AUTHORITIES ARE ENTITLED TO TAKE ONLY A FAIR SHARE OF PROCEEDS FROM A TAX FORECLOSURE SALE: THAT AMOUNT NEEDED TO PAY THE DELINQUENT TAXES AND COSTS.

The district court holding turns the Takings Clause on its head and should be reversed. The court found that “Plaintiffs, as delinquent taxpayers, have no ‘property interest’ under state law for any ‘surplus equity’ at the time of the tax sale.” Op. and Ord. at. *14. It further found that after the 1999 enactment of Public Law 123, Michigan law explicitly recognizes that the County owns the property interest upon the sale of the land. The court dismissed Plaintiffs’ Takings claim, because without a property interest, the court reasoned, there can be no taking. This conclusion begs the ultimate question in this case. Essentially, the district court holding impermissibly allows the government to take property without just compensation merely by declaring a property owner’s right is eliminated.

The key question the district court should have considered is whether the state is constrained by the Fifth Amendment Takings Clause and by principles of fundamental fairness and justice from eliminating a property owners’ interest in surplus equity merely because the property owner becomes delinquent in paying their taxes.

Respectfully, this Court should find that the Takings Clause does not permit state law to eliminate an interest in one's property merely because of non-payment of taxes. The Fifth Amendment "stands as a shield against the arbitrary use of governmental power." *Webb's Fabulous Farms. v. Beckwith*, 449 U.S. 155, 164 (1980).

A. A state may not eliminate a property interest in excess equity simply by declaring it is eliminated.

This Court should recognize that states may not deprive property owners of their property interest without just compensation merely because they become delinquent in paying taxes. Depriving a property owner of their interest in property is a *per se* taking. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2600 (2013) (quoting *Brown v. Legal Foundation of Wash.*, 538 U. S. 216, 235 (2003)) (finding that "[w]hen the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account or parcel of real property, a '*per se* [takings] approach' is the proper mode of analysis under the Court's precedent."); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 430, 436 (1982) (holding that the government's taking physical control over a property interest for public use is a *per se* taking).

The Takings Clause "does not proscribe the taking of property; it proscribes taking without just compensation." *Williamson County Regional Planning*

Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 194 (1985).

Accordingly, the Supreme Court has held “it makes considerable sense to allow the Government to seek the sale of the whole, *and obtain its fair share of the proceeds*, rather than satisfy itself with a mere sale of the part[.]” *United States v. Rodgers*, 461 U.S. 677, 694 (1983) (emphasis added). The Court presumes that the government will not keep the surplus equity when it sells a property for an amount greater than that necessary to recover the delinquent taxes.

The right to just compensation does not merely evaporate once a property owner is divested of a property interest. The Supreme Court implicitly recognizes that a “former owner” has a protected property interest. “When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the *former owner*. . .” *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322 (2002) (citation omitted) (emphasis added).

Former property owners are entitled to just compensation, despite Michigan's tax foreclosure statute, because the government is not permitted to keep more than its fair share of the proceeds of the tax sale: that amount necessary to cover the taxes and costs of collection. The state cannot enlarge its fair share by simply declaring that the interest of the delinquent taxpayer is forfeit. *See Webb's Fabulous Pharmacies, Inc.*, 449 U.S. at 164 (explaining a state could not “by *ipse*

dixit” secure a windfall for itself). It is well settled that a state government cannot write laws that circumvent constitutional rights. *Palazzolo*, 533 U.S. at 626-27. “[T]he government’s power to redefine [property rights is] necessarily constrained by constitutional limits.” *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1014 (1992).

A proper takings analysis must focus on the government action that actually divests a property owner of a protected property interest. It must also recognize that the owner who is protected is the one who lost a property interest due to government taking. A former owner may seek a remedy for just compensation when a taking is alleged to have occurred.

The district court analysis erroneously focuses on the Plaintiffs’ interests in the property at the time of the tax sale—which it found no longer existed pursuant to operation of Michigan law—rather than the government actions that effectuated the taking. This is not the appropriate focus, since the government is not the owner whose interests are protected against a taking without just compensation.

Instead, the Plaintiffs’ property interest was eliminated, pursuant to Michigan law, upon the foreclosure and running of the right of redemption. The sale of the property cannot be the trigger that effectuates a taking, because, as the court implicitly recognizes, the property was already transferred to the County by the time of the sale. Moreover, it would lead to absurd results, because it would

allow a government to avoid the constraint of the Takings Clause simply by not selling property.

By improperly focusing on the sale date as the relevant trigger, the district court ignores the fundamental mandate of the Takings Clause, which “places a condition on the [government’s] exercise of” the power to take private property in the first instance; it must pay just compensation. *First English Evangelical Lutheran Church of Glendale v. Los Angeles*, 482 U.S. 304, 314 (1987).

Michigan’s statutory enactment that purports to eliminate a private owner’s property interest in the surplus equity upon a tax foreclosure should be subject to these conditions as well.

Even if the County does own the property at the sale date, as the district court found, that does not resolve the question whether just compensation is due at the time of the action that effectuated the taking. “The Court has repeatedly held that just compensation normally is to be measured by ‘the market value of the property at the time of the taking.’” *United States v. 50 Acres of Land*, 469 U.S. 24, 29 (1984) (quoting *Olson v. United States*, 292 U.S. 246, 254 (1934)).

The district court holding that the Plaintiffs’ do not state a claim for just compensation pursuant to the Fifth Amendment cannot be squared with Takings Clause jurisprudence.

B. The State may not eliminate property rights arbitrarily.

The Takings Clause also prevents arbitrary government actions that effectively confiscate property. *See Koontz*, 133 S. Ct. at 2602 (2013) (recognizing Fifth Amendment protects against arbitrary regulatory taking). The district court recognized as much, noting that “[l]evying of taxes does not constitute a Fifth Amendment taking unless the taxation is so ‘arbitrary as to constrain to the conclusion that it was not the exertion of taxation, but a confiscation of property.’” Op. and Ord. at *11-12 (quoting *Quarty v. United States*, 170 F.3d 961, 969 (9th Cir. 1999) (quoting *Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1, 24–25 (1916))). The district court nevertheless rejected the notion that the County acted arbitrarily upon finding that Plaintiffs have no property interest at stake at the time of the tax sale.

Michigan’s foreclosure statute creates inherently arbitrary results. Two property owners with identical amounts of delinquent tax may be deprived of very different amounts of equity. For example, some property owners will lose very small amounts, particularly if they have limited equity or property with low market value. Property owners with significant equity and higher property values will lose greater amounts of equity and significantly greater value. Such arbitrary results cannot be countenanced.

Moreover, Michigan law creates arbitrary results that raise the specter of additional constitutional concerns. For example, it treats similar taxpayers differently, meaning that taxpayers will not be on notice of what they will lose. This result violates “[e]lementary notions of fairness enshrined in our constitutional jurisprudence, [which] dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.” *BMW of N. Am. v. Gore*, 517 U.S. 559, 574 (1996).

The arbitrary results from Michigan’s tax foreclosure statute may also be exacerbated because County Treasurers have considerable discretion whether to foreclose on a property to collect taxes. Similarly, Courts have authority to postpone a tax sale. Property owners who are relatively sophisticated about navigating the local government channels, have access to legal advice, or have personal or business relationships with County employees and officials may have greater access to seek the exercise of such discretion. But those who are most vulnerable, such as property owners who do not understand the tax collection process, cannot independently advocate for themselves, and have no access to legal representation are less likely to benefit from such discretion. Additionally, the tax foreclosure process lacks essential transparency. Consequently, property owners

have no means to judge what factors may be considered to enable them to save their home or at least preserve their excess equity.

It is fundamentally unfair, arbitrary, and contrary to Takings Clause jurisprudence to eliminate Plaintiffs' property rights without just compensation.

II. THIS COURT SHOULD PROTECT THE EXPECTATION THAT A TAX FORECLOSURE WILL NOT ELIMINATE EXCESS EQUITY, WHICH IS VITAL TO THE FINANCIAL SECURITY OF MOST HOMEOWNERS AND OVERALL AMERICAN PROSPERITY.

There is a deeply rooted expectation that a government cannot and will not deprive a property owner of their excess equity following a tax sale. This expectation deserves to be protected. “[I]n any society the fulness [sic] and sufficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the character and value of the government.” *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 324 (1892); *accord Olson*, 292 U.S. at 254. The sanctity of an owner’s interest in the equity of their real property is firm and should be protected from arbitrary and punitive confiscation without justification or compensation.

America historically has sought to encourage homeownership because it provides stability, builds wealth for families and communities, and spurs economic growth. U.S. Dep’t of Hous. & Urb. Dev., *Homeownership and Its Benefits*, Urb. Pol’y Br., Number 2 (1995), <http://bit.ly/1AzFo2X>. President Clinton, like many

Presidents before him, expressed the national consensus that “more Americans should own their own homes, for reasons that are economic and tangible, and reasons that are emotional and intangible, but go to the heart of what it means to harbor, to nourish, to expand the American Dream.” *Id.* Similarly, Ronald Reagan recognized that homeownership “supplies stability and rootedness” and Lyndon Johnson promoted homeownership as part of a strategy for addressing the urban ills of the 1960s, declaring that “owning a home can increase responsibility and stake out a [person’s] place in [the] community. . . .The [person] who owns a home has something to be proud of and reason to protect and preserve it.” *Id.*

The economic, social and emotional benefits of owning property have prompted the United States to support programs designed to foster homeownership and protect against practices that strip homeowner’s equity. “For most American families, buying a home is the single biggest investment they will ever make. . . . As a public policy for the good of communities and families across the country, we want to encourage home ownership.” *Reforming The Real Estate Settlement Procedure: Review of HUD’s Proposed RESPA Rule Hearing Before H. Comm. on Fin. Services*, 107th Cong. 3 (2002) (statement of Chairman Oxley).

Indeed, homeownership is considered the lynchpin of well-being for older Americans. Kermit Baker et al., *Housing America’s Older Adults: Meeting the Needs of an Aging Population*, J. Ctr. for Hous. Stud. of Harv. Univ. 1 (2014)

[hereinafter *Housing America's Older Adults*], <http://bit.ly/1umYrKY>. As of 2009, approximately 18.5 million [80 percent] of the 23.1 million householders over age 65 owned their homes. Loraine A. West et al., *65+ in the United States: 2010*, U.S. Census Bureau Spec. Stud. 84 (2010), <http://1.usa.gov/1WELpW7>. “Older Americans often use[] their home equity in retirement to finance health care, home maintenance, and other large expenses and as a safety net that could be used to meet unexpected needs.” Lori Trawinski, *Nightmare on Main Street: Older Americans and the Mortgage Market Crisis*, AARP Pub. Pol’y Inst. 3 (July 2012), <http://bit.ly/XLk7FC>. “For most older people, the home is . . . their most valuable asset.” *Id.*

Michigan’s tax foreclosure law is the antithesis of longstanding policies of the federal government that supports and fosters homeownership. The Takings Clause should protect against incursions into property rights that are so deeply entrenched in America’s social and economic fabric.

III. THE BURDEN OF MICHIGAN’S TAX FORECLOSURE LAW WEIGHS DISPROPORTIONATELY ON THE MOST VULNERABLE HOMEOWNERS.

The “Fifth Amendment’s guarantee . . . was designed to bar Government[s] from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960); *see also Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537

(2005). Michigan’s tax sale law, however, inflicts an unfair and unjust burden on property owners who fail to pay their taxes. That burden weighs most heavily on the most vulnerable older and low-income homeowners, including the two individual named Plaintiffs in this case.

An alarming nationwide increase in tax foreclosures ensued in the wake of the economic crisis that triggered millions of mortgage foreclosures. John Rao, *The Other Foreclosure Crisis: Property Tax Lien Sales*, Nat’l Consumer Law Ctr. 10-11 (Jul. 2012) [hereinafter *The Other Foreclosure Crisis*], <http://bit.ly/1WbHe62>. “Local governments face financial pressures that necessitate a steady stream of tax revenue . . .” *Id.* at 5. The nationwide increase in tax foreclosures is in part a result of local governments seeking to “bridge these budget gaps by instituting more aggressive tax collection practices.” *Id.* at 11.

Older and low-income homeowners are often at high risk of tax foreclosure, even if they have substantial equity, because their income is insufficient to meet their most basic needs. *Housing America’s Older Adults*, *supra* at 12-14. “As the single largest item in most household budgets, housing costs directly affect day-to-day financial security as well as the ability to accrue wealth to draw upon later in life.” *Id.* at 1. Housing costs—including taxes, insurance, maintenance, repairs, and utilities—typically consume a disproportionately large share of (usually low- and fixed) income of older households. William C. Apgar & Zhu Xiao Di,

Housing Wealth and Retirement Savings: Enhancing Financial Security for Older Americans, J. Ctr. for Hous. Stud. of Harv. Univ. 16 (Sept. 2005),

<http://bit.ly/1WbHD8B>. An unprecedented and increasing number of older people are entering their retirement years, during which most will earn significantly lower incomes, still carrying mortgage debt. The vast majority of these older homeowners are paying most of their income for housing costs. *Id.* But even those who do not have any mortgage debt are overburdened by housing costs. One in four of the lowest-income homeowners over age 65 without any mortgagee debt pays 50 percent or more of their income for housing costs, such as taxes and utilities. *Id.*

That older people are finding it difficult to pay their taxes is not surprising in the current economic climate. The median income of people aged 50+ was lower in 2009 than it was in 1997 due in part to declining pension and investment income, waning employment prospects, and enduring longer periods of unemployment than their younger counterparts. See Gary Koenig, *The Elusive Middle in America—What Has Happened to Middle-Class Income?* AAPR Pub. Pol’y Inst. 7 (Jan. 2015), <http://bit.ly/1U5jZWD>. At the same time, costs for basic expenses such as housing, utilities, prescription drugs, and health care are continuously rising. Sudipto Banerjee, *Income Composition, Income Trends, and Income Shortfalls of Older Households*, Emp. Benefit Research Inst. Issue Br. No.

383, 12 (Feb. 2013), <http://bit.ly/1tYkntI>. As a result, many people enter their retirement years incurring expenses for basic needs that exceed their income—particularly for home-related expenses and health care. *See id.* at 13-14.

Approximately two-fifths of families that include a person over age 65 have an income shortfall. *See id.* at 13. The situation is particularly dire for older people in the lowest income brackets, who may be unable to afford both food and housing costs. *Executive Summary: Spotlight on Senior Hunger 2011*, Feeding Am. & Nat'l Found. To End Senior Hunger 2-3 (May 2013), <http://bit.ly/1qX0Wjo>.

Housing costs and high taxes are not the only reasons that older people are particularly vulnerable to tax foreclosures. Older people who no longer have the benefit of an escrow account for taxes and insurance because they have paid off their mortgage or have a subprime or reverse mortgage have a disproportionately greater risk of tax foreclosure. *The Other Foreclosure Crisis, supra* at 5.

Managing one's tax payments directly can be challenging for older homeowners. They may not understand the process, inadvertently miss a tax payment dates, or be unable to set aside a sufficient amount to pay a tax bill when it becomes due.

Older people are also at risk of tax sale or tax foreclosure because government notices frequently use legalistic or archaic language that is difficult to understand. The notices frequently are printed in small font sizes that older people have difficulty reading. As part of the natural aging process, many people begin to

have trouble reading small print beginning in their 40s. Disease processes common in older people may cause cataracts and macular degeneration, among other vision disorders. *Common Eye Disorders*, Ctrs. for Disease Control and Prevention, Vision Health Initiative, <http://1.usa.gov/1SqC076> (last visited May 20, 2016).

Paying taxes timely is particularly difficult for older people experiencing increasing disease or disability, diminished capacity to manage finances, cognitive decline, or dementia. The risk of having such disorders increases exponentially with advancing age. See David Marson & Charles Sabatino, *Financial Capacity in an Aging Society*, 36 *J. of the Am. Soc. on Aging* (Summer 2012), <http://bit.ly/1moAJIL>.

The factors that make older people particularly vulnerable to becoming delinquent on their taxes also make them least able to save their homes and avoid the devastating loss of their equity. Some will be forced into nursing homes prematurely, and others may be forced to rely on government benefits. The Fifth Amendment Takings Clause was designed to prevent such “arbitrary use of governmental power.” *Webb’s Fabulous Pharms*. 449 U.S. at 164.

CONCLUSION

Respectfully, AARP urges this Court to find that property owners have a constitutionally protected property interest in the surplus equity in their homes that are sold at tax sale, to reverse the Order dismissing Plaintiffs' claims pursuant to Rule 12(b)(6), and remand this case to the district court for further proceedings.

Dated May 23, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of 6th Cir. R. 32(b) and Fed. R. Ap. P. 32(a)(7)(B). This brief contains 4082 words which include footnotes, and excluding the corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel.

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CERTIFICATE OF SERVICE AND FILING

I hereby certify that on this 23rd day of May, 2016, I caused this Brief for AARP as Amicus Curiae Supporting Plaintiffs-Appellants' Urging Reversal of Motion to Dismiss filed electronically with the Clerk of the Sixth Circuit Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF.

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