UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

FRANK BAILEY, *et al.*, Plaintiffs,	)	
	)	No. 2:24-cv-45
-v-	)	
	)	Honorable Paul L. Maloney
CHIPPEWA COUNTY, *et al.*, Defendants.	)	

OPINION AND ORDER GRANTING IN PART MOTION TO DISMISS

Plaintiffs neglected to pay their property taxes. Using then existing state statutory procedures set forth in the General Property Tax Act (GPTA), Chippewa County initiated tax foreclosure proceedings and eventually took Plaintiffs' properties. Chippewa County sold the properties at auction and kept the proceeds, including the surplus (the amount of the sale that exceeded what Plaintiffs owed in taxes and fees). The Michigan Supreme Court subsequently found portions of the GPTA unconstitutional under the Michigan Constitution. *Rafaeli, LLC v. Oakland Cnty.*, 952 N.W.2d 435 (Mich. 2020). The United States Supreme Court found a similar tax foreclosure statute in Minnesota violated the Takings Clause of the United States Constitution. *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023). The Michigan Legislature has since amended the GPTA.

Plaintiffs initiated this lawsuit in the state courts and Defendants removed the action to federal court. Plaintiffs sued Chippewa County, the current County Treasurer, and the former County Treasurer. Plaintiffs pled both state law and federal law claims in the complaint. Dozens of similar lawsuits have been filed in this district.

Defendants filed a motion to dismiss. ECF No. 5. The court will grant the motion in part. The court will dismiss three of the five federal claims for failing to state a claim. The court will also decline to exercise supplemental jurisdiction over the state law claims and will remand those claims to the state court.

Since Defendants filed their motion, the parties have submitted several stipulations, which the court approved. The parties dismissed the County Treasurers. ECF Nos. 19 and 20. Plaintiff Estate of George Kiel dismissed its claims. ECF Nos. 23 and 24. Plaintiffs Frank Bailey, the Estate of Marilou Keith, and Timothy and Deborah Lott also dismissed their claims. ECF Nos. 24 and 25. Two plaintiffs remain: Kevin Fralik and Barbara Mayward. Chippewa County is the sole remaining defendant.

I.

Plaintiffs filed their complaint in the 50th Circuit Court, located in Chippewa County, Michigan. Plaintiffs alleged eleven causes of action: six state law claims and five federal claims. Defendants timely removed the lawsuit to federal court. The complaint does not plead when Chippewa County completed the foreclosure process for each plaintiff. Plaintiffs attach a spreadsheet as an exhibit to the complaint. ECF No. 1-1 PageID.32. Plaintiffs' exhibit identifies the year each foreclosure occurred. Kevin Fralick lost his property in 2020. Barbara Mayward lost her property in 2014.

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a plaintiff to allege facts that provide both fair notice of the nature of the claim and the facts giving rise to that claim. *In re I.E. du Pont de Nemours and Co.*, 87 F.4th 315, 320 (6th Cir. 2023). "The complaint must 'contain either direct or inferential allegations respecting all material elements necessary

for recovery under a viable legal theory.'" *Kreipke v. Wayne State Univ.*, 807 F.3d 768, 774 (6th Cir. 2015) (citation omitted). The factual allegations need not be detailed but must be "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Hobart-Mayfield, Inc. v. Nat'l Operating Comm. on Standards for Athletic Equip.*, 48 F.4th 656, 663 (6th Cir. 2022). Those factual allegations, taken to be true, must show that a legal claim is plausible, not merely possible. *Darby v. Childvine, Inc.*, 964 F.3d 440, 444 (6th Cir. 2020).

Rule 12(b)(6) provides a vehicle for a defendant to challenge whether a plaintiff pleads a plausible claim. *See Heyward v. Cooper*, 88 F.4th 648, 653 (6th Cir. 2023). When resolving motions to dismiss brought under Rule 12(b)(6), a court generally considers only the complaint and attached exhibits. *Diei v. Boyd*, 116 F.4th 637, 643 (6th Cir. 2024). The court must accept as true all well-pled factual allegations in the complaint and must draw all reasonable inferences in the plaintiff's favor. *Ogbonna-McGruder v. Austin Peay State Univ.*, 91 F.4th 833, 839 (6th Cir. 2024). A plaintiff pleads a facially plausible claim when the well-pled facts allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Matthew N. Fulton, D.D.S., P.C. v. Enclarity, Inc.*, 962 F.3d 882, 887 (6th Cir. 2020); *see Ashcroft v. Iqbal*, 556 U.S. 662, 668 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The factual allegations "must do more than create speculation or suspicion of a legally cognizable cause of action; they must show *entitlement* to relief." *League of United Latin American Citizens v. Bredesen*, 500 F.3d 523, 527 (6th Cir. 2007) (emphasis in original).

II.

Plaintiffs pled six causes of action under state law. In an exercise of discretion, the court *sua sponte* declines to exercise jurisdiction over the state law claims. *See Transcontinental Leasing, Inc. v. Michigan Nat'l Bank of Detroit*, 738 F.2d 163, 165–66 (6th Cir. 1984) (noting that supplemental or pendent jurisdiction "is a doctrine of discretion"). The court exercises subject matter jurisdiction over this civil action under 28 U.S.C. § 1331 because Plaintiffs pled federal constitutional claims. Under 28 U.S.C. § 1367(a), federal courts may exercise supplemental jurisdiction over the state law claims when those claims relate to the federal law claims.

A court may decline to exercise supplemental jurisdiction when the state law claims raise "a novel or complex issue of State law[.]" *Id.* § 1367(c)(1); *see City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 173 (1997)*; see, e.g.*, *James v. Hampton*, 592 F. App'x 449, 462 (6th Cir. 2015) (affirming the dismissal of a state common law right-to-privacy claim when the district court found that the "claim presented a novel and complex issue of state law"). Our Supreme Court noted that supplemental jurisdiction "is a doctrine of discretion, not of plaintiff's right[.]" *City of Chicago*, 522 U.S. at 172 (quoting *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966)); *see Habich v. City of Dearborn*, 331 F.3d 524, 535 (6th Cir. 2003). When deciding whether to exercise supplemental jurisdiction over state law claims, a court should consider and weigh factors such as judicial economy, convenience, fairness and comity. *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988).

The holding in *Rafaeli* and the Michigan Legislature's amendments to the GPTA constitute significant developments and changes to the relevant state law. Discussing the

amendments, the Michigan Supreme Court explained that "MCL 211.78t creates a controlling and structured system for adjudication of tax-foreclosure disputes as the exclusive means for obtaining surplus proceeds." *Schafer v. Kent Cnty.*, 29 N.W.3d 25, 50 (Mich. 2024). The court then held that the amendments applied to claims arising prior to *Rafaeli*. *Id.* Citing *Schafer*, the Sixth Circuit found that the exclusivity only limits a former property owner's state remedies for seeking the surplus. *Howard v. Macomb Cnty.*, 133 F.4th 566, 572 (6th Cir. 2025).

The balance of factors weighs in favor of declining to exercise supplemental jurisdiction. Judicial economy and convenience weigh in favor of exercising supplemental jurisdiction. Dismissing the state law claims would require Plaintiffs to pursue remedies in two forums. Comity, however, weighs strongly in favor of declining jurisdiction over the state law claims. While Plaintiffs filed this lawsuit in 2024, it remains in the early stages of litigation. No case management order has issued. These state law claims should be resolved by the state courts. Fairness also weighs heavily in favor of declining jurisdiction over the state law claims. Some persuasive authority exists for dismissing the state law claims outright. At least one judge in the Eastern District of Michigan relied on *Schafer* to dismiss a plaintiff's state law claims for a pre-*Rafaeli* foreclosure. *Palakurthi v. Wayne Cnty.*, No. 21cv10707, 2025 WL 1293351, at *6 (E.D. Mich. May 5, 2025). Fairness to Plaintiffs weigh in favor of dismissal without prejudice.

III.

Plaintiffs pled five causes of action under federal law. Relying on 42 U.S.C. § 1983, Plaintiffs asserted claims for violations of (1) the Takings Clause in the Fifth Amendment

(Count 1); (2) the Excessive Fines Clause in the Eighth Amendment (Count 5); (3) procedural due process (Count 6); and (4) substantive due process (Count 7). Plaintiffs also pled a claim arising directly from the Takings Clause (Count 2). Defendants seek dismissal of each of the federal causes of action.

A.

The court declines to dismiss Plaintiffs' § 1983 claim under the Takings Clause (Count 1). In *Tyler*, our Supreme Court held that a plaintiff pleads a plausible § 1983 takings claim by alleging facts to show that the state kept the surplus following the sale of property to satisfy a property tax debt. *Tyler*, 598 U.S. at 647-48; *see Pung v. Isabella Cnty.*, 146 S. Ct. 1964, 1967 (2026); *Hall v. Meisner*, 51 F.4th 185, 196 (6th Cir. 2022).

Defendants argue that Plaintiffs cannot maintain the takings claim because Plaintiffs seek market value equity as damages. While Plaintiffs cannot recover market value as damages, *Pung*, 146 S. Ct. at 1969–72, that portion of the prayer for relief does not require the court to dismiss the claim altogether. Plaintiffs have pled the elements of a federal takings claim.

Defendants also argue that the amendments to the GPTA undermine the Fifth Amendment claim. Michigan now provides a process by which a former property owner can claim the surplus. *See Howard*, 133 F.4th at 568 (involving a 2023 tax foreclosure). After the Michigan Supreme Court found that portions of the GPTA violated the Michigan Constitution, the Michigan Legislature amended the statute in 2020 and established a mechanism for former property owners to claim any surplus following a tax foreclosure and auction. *See* Mich. Comp. Laws § 211.78t. The statute contained a conditional retroactivity

provision. The statute became retroactive only if the Michigan Supreme Court determined that the holding in *Rafaeli* applied retroactively. *Id.* § 211.78t(1)(b)(i). In July 2024, the Michigan Supreme Court held that *Rafaeli* applied retroactively "to timely filed cases not yet final at the time of the decision." *Schafer*, 29 N.W.3d at 41. Prior to the time Plaintiffs filed this lawsuit, the Michigan Court of Appeals had reached the same conclusion, that *Rafaeli* applied retroactively to timely filed lawsuits. *Proctor v. Saginaw Cnty. Bd. of Comm'rs*, 985 N.W.2d 193, 216 (Mich. Ct. App. 2022) *vacated in part*, 12 N.W.3d 182 (Mich. 2024).

Because the foreclosures of Plaintiffs' properties occurred before the amendments to the GPTA became effective, their takings claims survive. "A constitutional violation accrues the moment the government undertakes a constitutional act. For example, a violation of the Takings Clause occurs 'at the time of taking.'" *Wilson v. Hawaii*, 145 S. Ct. 18, 20 (2024) (quoting *Knick v. Twp. of Scott*, 588 U.S. 180, 194 (2019)); *see, e.g., Palakurthi,* 2025 WL 1337029, at *5–*6. "And, the availability of state-law compensation remedies cannot delay *or undo* the accrual of a takings claim." *Wilson*, 145 S. Ct. at 20 (quoting *Knick*, 588 at 193–94) (emphasis added). The final judgment of foreclosure against each plaintiff constituted a final decision. When the final judgment entered, Plaintiffs lost all rights to their properties under the earlier version of the GPTA. *See* Mich. Comp. Laws § 211.78k(5) and (6); *Hall*, 51 F.4th at 194–96.

B.

The court will dismiss Plaintiffs' arising-directly under the Fifth Amendment takings claim (Count 2). The Sixth Circuit has consistently found that 42 U.S.C. § 1983 provides the exclusive remedy for constitutional violations. *See Foster v. Michigan*, 573 F. App'x 377,

391 (6th Cir. 2014) ("To the extent that Appellants attempt to assert direct constitutional claims, they fail; we have long held that § 1983 provides the exclusive remedy for constitutional violations."); *c.f., O'Connor v. Eubanks*, 83 F.4th 1018, 1029 (6th Cir. 2023) (Thapar, J., concurring) ("Perhaps our circuit should allow suits against officials directly under the takings clause."). Multiple district courts, including this one, have already rejected the same arising-directly claim in the context of tax foreclosure cases. *See, e.g., Grainger v. Ottawa Cnty.*, No. 1:19cv501, 2021 WL 790771, at *11 (W.D. Mich. Mar. 2, 2021); *Fox v. Saginaw Cnty.*, No. 19cv11887, 2021 WL 120855, at *13 (E.D. Mich. Jan. 13, 2021).

C.

The court will dismiss Plaintiffs' Eighth Amendment excessive fines claim (Count 5). The Supreme Court and the Sixth Circuit have rejected this cause of action raised in the context of a tax foreclosure proceeding. *Pung*, 146 S. Ct. at 1973; *Freed*, 81 F.4th at 659; *Hall*, 51 F.4th at 197.

D.

The court declines to dismiss Plaintiffs' § 1983 procedural due process claim (Count 6). To prove a procedural due process claim, a plaintiff must establish (1) a deprivation by state action of a protected interest in life, liberty, or property, and (2) inadequate state process. *Reed v. Goertz*, 598 U.S. 230, 236 (2023). The claim arises not when the deprivation occurs, but when the state fails to provide due process. *Id.* (citation omitted); *see Bozzo v. Nanasy*, 159 F.4th 1111, 1118 (6th Cir. 2025) ("And, again, the 'injury' in a procedural due process claim is the 'infirm process' that accompanies a deprivation."). "When the denial of procedural due process itself creates an injury" the plaintiff need not

pursue potential administrative remedies or seek a final decision. *Bigelow v. Michigan Dep't of Nat. Res.*, 970 F.2d 154, 160 (6th Cir. 1992).

Defendants again argue that Plaintiffs failed to pursue their remedies under the amended GPTA. Defendants insist that the new statutory process for obtaining the surplus undermines Plaintiffs' procedural due process claim.

Defendants have not established that Plaintiffs' procedural due process claims fail as a matter of law. Plaintiffs seek actual damages and nominal damages. The new statutory process does not render moot Plaintiffs' claim for damages from the initial failure to provide due process. The injury is complete when the state fails to provide any process and the procedural due process claim is "instantly cognizable in federal court." *Braun v. Ann Arbor Chapter Twp.*, 519 F.3d 564, 572 (6th Cir. 2008) (quoting *Nasierowski v. Sterling Heights*, 949 F.2d 890, 894 (6th Cir. 1991)).

E.

The court will dismiss Plaintiffs' substantive due process claim (Count 7). The Sixth Circuit affirmed the dismissal of a substantive due process claim brought in the context of a tax foreclosure action. *Hall*, 51 F.4th at 197 (adopting the reasoning of the district court). Several district courts, including this one, have reasoned that because our Constitution provides an explicit provision for a taking without just compensation, the substantive due process clause will not cover the same government conduct. *Grainger*, 2021 WL 790771, at *13; *Fox*, 2021 WL 120855, at *15.

IV.

Plaintiffs allege causes of action arising from the tax foreclosure of their properties. Since the foreclosures, the Michigan Supreme Court declared a portion of the state statute violated the Michigan Constitution and the Michigan Legislature amended the statute. The state law claims thus present novel and complex matters that should be resolved by the state courts. The court declines to exercise subject matter jurisdiction over those claims and will remand the state law claims to the 50th Circuit Court. Defendants have established that allegations in the complaint do not support three federal causes of action: the arising-directly takings claim, the claim for violation of the Excessive Fines Clause in the Eighth Amendment, and the claim for violation of substantive due process. This leaves only Plaintiffs' § 1983 claims for a taking and for a violation of procedural due process.

ORDER

Consistent with the accompanying Opinion, the court **GRANTS IN PART** Defendants' motion to dismiss. ECF No. 5. The court **DECLINES** to exercise subject matter jurisdiction over the state law claims and REMANDS the state law claims to the 50th Circuit Court. The court DISMISSES Plaintiffs' arising-directly Fifth Amendment claim, their Eighth Amendment claim, and their substantive due process claim because the allegations in the complaint do not support those causes of action. **IT IS SO ORDERED.**

Date: September 22, 2026

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge