UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRUCE CORWIN, *et al.*, Plaintiffs,	)	
	)	No. 1:21-cv-82
-v-	)	
	)	Honorable Paul L. Maloney
VAN BUREN COUNTY and TRISHA NESBITT, Defendants.	)	

OPINION AND ORDER GRANTING IN PART MOTION TO DISMISS

Bruce and Sandra Corwin, George Newell, and Jacquline Thompson neglected to pay their property taxes and lost their properties through tax foreclosure proceedings. Following the procedures then required by Michigan statutes, Van Buren County sold the properties and kept all of the proceeds, including the surplus (the amount that exceeded what Plaintiffs owed in taxes and fees). The Michigan Supreme Court subsequently found this tax foreclosure scheme violated the Michigan Constitution. *Rafaeli, LLC v. Oakland Cnty.*, 952 N.W.2d 435 (Mich. 2020). The United States Supreme Court found a similar statutory scheme violated the United States Constitution. *Tyler v. Hennepin Cnty.* 596 U.S. 631 (2023). The Michigan Legislature has since amended the General Property Tax Act (GPTA).

Plaintiffs initiated this lawsuit in the state courts and Defendants removed the action to federal court. Plaintiffs sued Van Buren County and Trisha Nesbitt (the County Treasurer). Plaintiffs alleged both federal and state law claims. Defendants removed the

lawsuit on the basis of the federal claims. Dozens of similar lawsuits have been filed in this district.

In February 2021, Plaintiffs filed an amended complaint. ECF No. 8. Like the initial complaint, Plaintiffs pled a class action. Plaintiffs alleged nine causes of action: five federal claims and four state law claims. Defendants filed a motion to dismiss. ECF No. 11. Plaintiffs opposed the motion. ECF No. 14. The court will grant the motion in part. The court will decline to exercise subject matter jurisdiction over Plaintiffs' state law claims and will remand the state law claims to the state court. The court will dismiss the claims brought against Defendant Nesbitt because she enjoys immunity. The court will dismiss three of the five federal claims because the factual allegations in the complaint do not support those three claims. Finally, the court will dismiss the class action portion of the complaint.

I.

Plaintiffs filed their complaint in December 2020 in the 36th Circuit Court in Van Buren County, Michigan. The complaint alleged when each plaintiff lost his or her property to tax foreclosure. The Corwins lost their property in 2018. Newell and Thompson lost their properties in 2019.

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); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Ordinarily, a defendant bears the burden of proof for an affirmative defense. A party responding to a pleading must "affirmatively state any . . . affirmative defense." Fed. R. Civ. P. 8(c)(1). The rule includes a non-exhaustive list of affirmative defenses that must be pled in the response to a pleading. *Jones v. Bock*, 549 U.S. 199, 212 (2007). The responding party may raise an affirmative defense in a Rule 12(b)(6) motion when factual allegations supporting that defense appear in the complaint or in documents that may be considered at

the pleading stage. *VCST Int'l B.V. v. BorgWarner Noblesville, LLC*, 142 F.4th 393, 399–400 (6th Cir. 2025) (citing *Bock*, 549 U.S. at 215).

II.

Plaintiffs pled four causes of action under state law. In an exercise of discretion, the court *sua sponte* declines to exercise jurisdiction over the state law claims.[1] *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

[1] Because the court declines to exercise jurisdiction over the state law claims, the court need not resolve Defendants' argument that *Rafaeli* does not have retroactive application.

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 2020 and their amended complaint in 2021, 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 weighs in favor of dismissal without prejudice.

III.

Defendants assert qualified immunity for Nesbitt and Eleventh Amendment immunity for both Nesbitt and Van Buren County.

While qualified immunity is an affirmative defense, a defendant can raise qualified immunity as part of a motion to dismiss "when the *complaint* establishes the defense." *Siefert v. Hamilton Cnty.*, 951 F.3d 753, 762 (6th Cir. 2020). The Sixth Circuit has held that county treasurers who enforced the state tax foreclosure statute prior to *Rafaeli* enjoy qualified immunity from claims brought against them in their individual capacities. *Freed v. Thomas*, 81 F.4th 655, 660 (6th Cir. 2023); *see Felkers v. Kent Cnty.*, No. 1:24cv392, 2025 WL 2887532, at *5–*6 (W.D. Mich. Sept. 19, 2025). At the time, a presumption of constitutionality attached to the state statute, which had not been invalidated by any court. *Freed*, 81 F.4th at 660.

Concerning Eleventh Amendment immunity, the Sixth Circuit has addressed the issue in the context of Michigan's former tax foreclosure scheme. *See Bowles v. Sabree*, No. 22–1912, 2024 WL 1550833, at *2–*3 (6th Cir. Apr. 10, 2024). Counties do not enjoy Eleventh Amendment immunity because they chose to act as the foreclosing government unit. *Id.* at *3; *Fox v. Saginaw Cnty.*, No. 21–1108, 2022 WL 523023, at *5–*6 (6th Cir. Feb. 22, 2022); *see Flummerfelt v. City of Taylor*, No. 25–1169, 2026 WL 674362, at *8 (6th Cir. Mar. 10, 2026). When the county opts to act as the foreclosing government unit, the county treasurers must follow the statute and, therefore, act as arms of the state when

enforcing the tax foreclosure process. *Bowles*, 2024 WL 1550833, at *3. In that capacity, county treasurers enjoy Eleventh Amendment immunity. *Id.*

IV.

Plaintiffs pled five causes of action under federal law. Relying on 42 U.S.C. § 1983, Plaintiffs asserted claims for violations of (1) substantive due process (Count 3), (2) procedural due process (Count 4), the Takings Clause in the Fifth Amendment (Count 6), and (4) the Excessive Fines Clause in the Eighth Amendment (Count 9). Plaintiffs also pled a claim arising directly from the Takings Clause (Count 5). 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 6). Defendants argue only that *Rafaeli* addressed a state claim, not a federal claim. Binding authority issued since *Rafaeli* holds that Michigan's tax foreclosure scheme, or a similar one, violated the Fifth Amendment. 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).

B.

The court will dismiss Plaintiffs' arising-directly under the Fifth Amendment takings claim (Count 5). 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 9). 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 4). 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 argue that Plaintiffs were afforded notice and opportunity prior to the foreclosure sale. But Plaintiffs' due process claims arise from the inability to claim the surplus *after* the foreclosure process.

Defendants also 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 3). 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.

V.

Finally, Defendants seek dismissal of the class allegations. This court preliminarily certified a class involving individuals who failed to pay their taxes and lost their properties to foreclosure. *See Wayside Church v. Van Buren County*, No. 1:14cv1274 (W.D. Mich. Mar. 24, 2023) (ECF No. 234). The court granted final approval to the class and settlement in July 2024. *Wayside Church*, No. 1:14cv1274 (W.D. Mich. July 12, 2024) (ECF No. 555). All four plaintiffs in this lawsuit subsequently opted out of the *Wayside* lawsuit. Because the court has already approved a class action lawsuit covering the same claims, the court dismisses the class allegations in this lawsuit.

VI.

Plaintiffs alleged 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 will decline to exercise subject matter jurisdiction over those claims and will remand the state law claims to the 36th Circuit Court. The court dismisses the claims against the County Treasurer because she enjoys immunity. Defendants have established that allegations in the complaint do not support three 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 against Van Buren County.

ORDER

Consistent with the accompanying Opinion, the court **DECLINES** to exercise subject matter jurisdiction over the state law claims and **REMANDS** the state law claims to the 36th Circuit Court. The court **GRANTS IN PART** Defendants' motion to dismiss. ECF No. 11. The court DISMISSES the federal claims against Trisha Nesbitt and terminates her from this lawsuit. 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. The court also DISMISSES the class action allegations. Defendant Van Buren County must file its answer to the complaint within twenty-eight (28) days of this order. **IT IS SO ORDERED.**

Date: September 30, 2026

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