No. 21-1108

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS A. FOX, and all those similarly situated,

Plaintiff-Appellee,

v.

SAGINAW COUNTY, MI, by its Board of Commissioners; et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Michigan
Docket No. 1:19-cv-11887
The Honorable Thomas L. Ludington

APPELLANTS' BRIEF

Theodore W. Seitz
Kyle M. Asher
DYKEMA GOSSETT PLLC
201 Townsend Street, Suite 900
Lansing, Michigan 48933
517-374-9137
tseitz@dykema.com
Attorneys for Defendant County of Washtenaw

Gregory M. Meihn
Matthew T. Wise
Melinda A. Balian
FOLEY & MANSFIELD PLLP
130 East Nine Mile Road
Ferndale, Michigan 48220
248-721-4200
gmeihn@foleymansfield.com
mwise@foleymansfield.com
mbalian@foleymansfield.com
Attorneys for Defendant County of Ogemaw

Charles A. Lawler
CLARK HILL
212 E. Grand River Avenue
Lansing, Michigan 48906-4328
517-318-3016
clawler@clarkhill.com
Attorneys for Defendants County of Crawford and County of Presque Isle

Matthew T. Nelson
Conor B. Dugan
Ashley G. Chrysler
WARNER NORCROSS + JUDD LLP
150 Ottawa Avenue, NW, Suite 1500
Grand Rapids, MI 49503
Telephone: (616) 752-2000
mnelson@wnj.com
Attorneys for Defendant County of Alcona

Allan C. Vander Laan
CUMMINGS MCCLOREY DAVIS & ACHO
2851 Charlevoix Dr. SE, Suite 327
Grand Rapids, Michigan 49546
616-963-7800
avanderlaan@cmda-law.com
Attorneys for Defendants County of Saginaw, County of Bay, County of Gratiot, County of Midland, Cathy Lunsford, County of Isabella, Steven W. Pickens, County of Tuscola, County of Montmorency, County of Alpena, County of Oscoda, County of Arenac, County of Clare, County of Gladwin, County of Genesee, County of Huron, County of Jackson, County of Lapeer, County of Lenawee, County of Otsego, County of Roscommon, County of Sanilac, and County of St. Clair

Aaron C. Thomas
Frank J. Krycia
Peter C. Jensen
MACOMB COUNTY CORPORATION COUNSEL
1 South Main Street, 8th Floor
Mt. Clemens, Michigan 48043
586-469-6346
aaron.thomas@macombgov.org
frank.krycia@macombgov.org
peter.jensen@macombgov.org
Attorneys for Defendant County of Macomb

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STATEMENT REQUESTING ORAL ARGUMENT

Defendants-Appellants respectfully request oral argument under Sixth Circuit Rule 34(a). This case is one of dozens of similar cases in federal and state court challenging Michigan's tax-foreclosure system and raises important questions regarding the justiciability of such claims. Indeed, one of these issues—whether the juridical-link doctrine can be used in a class action to circumvent the Article III standing requirement—is a matter of first impression for this Court. Further, the questions raised in this appeal are recurring issues of critical importance that will impact numerous other cases currently pending in state and federal courts. Defendants-Appellants respectfully submit that oral argument will help this Court resolve these important questions.

JURISDICTIONAL STATEMENT

Plaintiff-Appellee Thomas Fox filed this action in the district court under: 28 U.S.C. § 1331, which authorizes federal courts to decide cases concerning federal questions; 28 U.S.C. § 1343, which authorizes federal courts to hear civil-rights cases; 28 U.S.C. § 2201, which authorizes declaratory judgments via the Declaratory Judgment Act; and 28 U.S.C. § 1367, which authorizes federal courts to decide supplemental state-law claims. (Am. Compl. ¶10, R.17, PageID.220.) Fox asserted that Gratiot County foreclosed on a property he owned because he failed to pay the property taxes. (*Id.* ¶¶18, 21, PageID.222.) Gratiot County sold the property for more than the unpaid taxes, but Fox complains that he did not receive any of the surplus funds from Gratiot County. (*Id.* ¶25, PageID.223.) Fox does not claim that any of the other counties injured him in any way. (*See id.* ¶¶25-31, PageID.223-24.) Instead, he added the other counties because he wants to be the representative of a multi-county class action.

Defendants-Appellants filed motions to dismiss, asserting various arguments and defenses, including issues relating to standing and governmental immunity. The Defendants specifically argued that because Fox was not purportedly injured by any county other than Gratiot, the district court lacked subject-matter jurisdiction over Fox's claims against those counties.

On January 13, 2021, the district court issued an order granting in part and denying in part the Counties' motions to dismiss, holding that Fox had standing under the juridical-link doctrine to assert claims against counties that had done him no harm. The court also held that the Counties were not entitled to sovereign immunity, and that they could be held liable for claims brought under § 1983. (Order Re Mots. to Dismiss, R.148, PageID.3312, 3317.)

The County Defendants filed a timely notice of appeal on February 1, 2021. (Notice, R.153, PageID.3351.) This Court has jurisdiction under 28 U.S.C. § 1291 because the district court's order denies sovereign immunity to Defendants-Appellants and is thus appealable as a final decision under the collateral order doctrine. *Town of Smyrna, Tenn. v. Mun. Gas Auth. of Georgia*, 723 F.3d 640, 645 (6th Cir. 2013).

Before this Court reaches the question of sovereign immunity, it must first consider the threshold question of whether the federal courts have subject-matter jurisdiction over Fox's claims against any defendant other than Gratiot County. *Am. Telecom Co. v. Republic of Lebanon*, 501 F.3d 534, 537 (6th Cir. 2007) ("Subject matter jurisdiction is always a threshold determination."). This Court addresses constitutional standing even on collateral-order appeals. *Children's Healthcare is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412, 1419 (6th Cir. 1996) (Batchelder, J., concurring) (stating in an interlocutory appeal from the denial of

Eleventh Amendment immunity that "when an appellant properly appeals another issue, the issue of standing comes before us as well. Constitutional standing is always a threshold inquiry for us to make before asserting jurisdiction over an appeal."); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998) (there is no "doctrine of 'hypothetical jurisdiction' that enables a court to resolve contested questions of law when its jurisdiction is in doubt"). Finally, this Court has pendent appellate jurisdiction over the § 1983 claim, which is inextricably intertwined with the question of sovereign immunity. *See Chambers v. Ohio Dep't of Human Servs.*, 145 F.3d 793, 797 (6th Cir. 1998).

STATEMENT OF ISSUES FOR REVIEW

1. Did the district court err in applying the "juridical link" doctrine to circumvent Article III standing, thereby allowing Plaintiff-Appellee Fox to sue 54 defendants that caused him no injury?

2. Did the district court err in holding that Defendants-Appellants, which are all counties, are not entitled to sovereign immunity when this suit arises from Defendants-Appellants' distribution of the proceeds of the sale of tax-foreclosed properties in the manner mandated by Michigan's General Property Tax Act?

3. Did the district court err in holding that Defendants-Appellants can be held liable under 42 U.S.C. § 1983 pursuant to *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978) merely because they did not elect to have the State of Michigan serve as the foreclosing government unit under Michigan's General Property Tax Act?

INTRODUCTION

This appeal is part of a wave of cases in federal and state courts challenging the distribution of proceeds from the sale of properties that were previously foreclosed and had their title transferred to the foreclosing governmental entity for nonpayment of property taxes. Plaintiff-Appellee Thomas Fox failed to pay his property taxes on real estate in Gratiot County. After repeated warnings, Gratiot County foreclosed on the property, obtained title and sold it at auction, in accordance with the General Property Tax Act ("GPTA"). Gratiot County used the sale proceeds to pay the property taxes owed to the local taxing units to reimburse the costs associated with the foreclosure and sale, and retained the surplus. This distribution plan is *required* by the GPTA.

Fox filed this class action against Gratiot County and its treasurer, alleging that they took or destroyed his equity in the property by retaining the surplus proceeds. Fox also sued 54 other Michigan counties and county treasurers, even though none of them had sold at auction any Fox-owned property. Indeed, Fox did not allege that those other Defendants had injured him in any way.

The County Defendants moved to dismiss the complaint on various grounds, including sovereign immunity, failure to state a legally cognizable claim, and, as to the non-Gratiot County Defendants, lack of standing. After acknowledging that Fox had not been injured by the non-Gratiot County Defendants and that the

County Defendants had been acting pursuant to the GPTA's requirements, the district court nonetheless partially denied the County Defendants' motions, and allowed the case to proceed against them. But there are three significant problems with the district court's decision.

First, as a threshold matter, the court erred in determining that it had subject-matter jurisdiction over this matter as to the non-Gratiot County Defendants. Contrary to the holdings in several circuits, the district court relied on the "juridical link" doctrine—a *class certification* doctrine from the Ninth Circuit—to create Article III standing against all of the non-Gratiot County Defendants. The district court did so despite acknowledging that this Court has never applied the juridical-link doctrine to provide standing. This Court's precedent counsels against the district court's decision, as does the Supreme Court's standing jurisprudence and the decisions of the other circuits. It is well settled that a class representative cannot acquire standing against each defendant merely by virtue of bringing a class action. The requirement of Article III standing cannot simply be assumed away at any point during a case.

Additionally, the district court rejected the County Defendants' claims of sovereign immunity, despite agreeing that the GPTA restricts the County Defendants' from distributing the surplus proceeds in the way Fox claims the proceeds should have been distributed. But the law in this circuit is clear—where

county officials are sued simply for complying with state mandates that afford no discretion, they act as an arm of the State and are entitled to sovereign immunity.

Finally, the district court held that the County Defendants can be liable under 42 U.S.C. § 1983 because of their "affirmative, voluntary, and discretionary decision" to act as the foreclosing governmental unit under the GPTA. Specifically, the court reasoned that the County Defendants selected and enforced an unconstitutional policy for which they can be held liable. But *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978) dictates otherwise. Because the GPTA disbursement requirements are a state legislative mandate, and the County Defendants took no affirmative act to adopt this mandate as policy, liability under § 1983 does not attach.

These three fundamental errors, independently but even more so together, warrant reversing the district court's order denying the County Defendants' motions to dismiss as to standing, sovereign immunity, and the § 1983 claim, and remanding for dismissal of the County Defendants.

STATEMENT OF THE CASE

Michigan's General Property Tax Act

Property taxes are nonrecourse, meaning that taxing units of local government cannot sue property owners to collect unpaid taxes. Before 1999, the GPTA provided for the recovery of delinquent property taxes via tax liens. Under

the former provisions of the GPTA, when a taxpayer was delinquent in paying property taxes, the county recorded a lien and, three years later, the liens would be offered at tax-lien sales. Kevin T. Smith, *Foreclosure of Real Property Tax Liens Under Michigan's New Foreclosure Process*, 29 Mich Real Prop Rev 51, 51 (2002); *see also Rafaeli, LLC v. Oakland Cty.*, 952 N.W.2d 434, 442 n.10 (Mich. 2020). The process was cumbersome and "could extend many years, causing properties to deteriorate and become clouded with poor title." *Id*.

In 1999, the Michigan Legislature revised the GPTA to "expedite[] the foreclosure process, thereby reducing the amount of abandoned, tax-delinquent properties within the state." *Id*. It converted the GPTA from a tax-lien statute to a tax-deed statute. As revised, the GPTA allowed for "the recovery of unpaid real-property taxes, penalties, interest, and fees through the foreclosure and sale of the property on which there is a tax delinquency." *Rafaeli*, 952 N.W.2d at 441-42. Pursuant to this process, "tax-delinquent properties are forfeited and [title] transferred to the county treasurers; foreclosed on after a judicial foreclosure hearing; and, if not timely redeemed, sold at a public auction." *Id*. *See* Mich. Comp. Laws § 211.44; Mich. Comp. Laws § 211.45.[1] The GPTA identified county

[1] All references to the GPTA in the Michigan Compiled Laws refer to the version that existed at the time of the *Rafaeli* decision in July 2020. The GPTA was revised in December 2020, to address the *Rafaeli* decision.

treasurers as the foreclosing governmental units and gave them the responsibility for selling the properties. Mich. Comp. Laws § 211.78(8)(a)(i). Counties could opt out of this responsibility, but in that case, the State would substitute itself as the foreclosing governmental unit and carry out the same process. Mich. Comp. Laws § 211.78(8)(a)(ii).

The revised version of the GPTA provided for a lengthy process whereby owners of properties on which delinquent taxes were owed were given repeated notices of the delinquency, forfeiture, and foreclosure. Specifically, when tax delinquencies are unpaid for a year after notice is given of the delinquency, the properties are labeled delinquent. *See* Mich. Comp. Laws § 211.78a(2). After another year of delinquency, the properties are "forfeited" to the county treasurer. *See* Mich. Comp. Laws § 211.78g(1). Being a "forfeited" property under the GPTA simply means that "a foreclosing governmental unit may seek a judgment of foreclosure if the property is not redeemed; it does not affect title." *Rafaeli*, 952 N.W.2d at 444.

After forfeiture, the foreclosing governmental unit must give notice to all those with an interest in the property that if unredeemed, title to the property will vest in the county treasurer. *See id.*; Mich. Comp. Laws § 211.78g(2). The foreclosing governmental unit must file a petition for foreclosure in the circuit court. *See* Mich. Comp. Laws § 211.78h(1). After a judicial foreclosure hearing,

unless the tax delinquency plus interest, fees, and penalties are paid off, fee-simple title vests in the foreclosing governmental unit. *See* Mich. Comp. Laws § 211.78k.

After foreclosure, if the state, a local municipality, or the county does not purchase the property itself for the tax debt owed, the GPTA allows a foreclosing governmental unit to sell the foreclosed property at auction. Mich. Comp. Laws § 211.78m(7). Auction proceeds are placed into a delinquent tax account and commingled with proceeds from other sales. Mich. Comp. Laws § 211.78m(8). There is a reimbursement priority under the GPTA. *Rafaeli*, 505 Mich at 446; *see also* Mich. Comp. Laws § 211.78m(2). Auction "sale proceeds are often insufficient to cover the full amount of the delinquent taxes, interest, penalties, and fees related to the foreclosure and sale of the property." *Rafaeli*, 952 N.W.2d at 447. However, where there are "excess proceeds . . . those proceeds are used to subsidize the costs for all foreclosure proceedings and sales for the year of the tax delinquency, as well as any years prior or subsequent to the delinquency." *Id.* Ultimately, any "surplus proceeds may be transferred to the county general fund in cases in which the county is the foreclosing governmental unit" and there is a surplus in its delinquent tax fund. *Id.* Under the GPTA, former property owners are not entitled to "any disbursement of the surplus proceeds" nor is there any mechanism to pay those proceeds to the former property owner, just as there is no recourse against the former owner if the proceeds do not cover the tax burden. *Id.*

Historically, individuals who have lost their property in this tax-foreclosure system implemented in 1999 because they failed to pay property taxes have challenged the legality of the system. Until last year, those challenges had been rebuffed. *E.g.*, *Wayside Church v. Van Buren Cty.*, 847 F.3d 812 (6th Cir. 2017); *Rafaeli, LLC v. Oakland Cty.*, No. 330696, 2017 WL 4803570 (Mich. Ct. App. Oct. 24, 2017). But in July 2020, the Michigan Supreme Court declared that the GPTA violates the Michigan Constitution's taking provision because it does not allow for the return of any portion of the proceeds from the sale of tax-foreclosed properties that exceeds the unpaid taxes and fees. *Rafaeli*, 952 N.W.2d 434.

Fox sues 26 counties against whom he has no personal claims

Fox failed to pay about $3,100 in property taxes on real estate in Gratiot County, Michigan. (Am. Compl. ¶18, R.17, PageID.222.) After ignoring numerous notices and opportunities to pay the overdue taxes, Fox's property was forfeited to and then foreclosed on by Gratiot County. (*Id.* ¶19, PageID.222.) That county then sold the property in a tax-foreclosure auction for more than the sum of the unpaid property taxes, late fees, and associated costs. Consistent with the GPTA, Gratiot County paid the property taxes to the local taxing units and kept the surplus proceeds from the sale. (*See id.* ¶¶16-22, R.17, PageID.222.)

In June 2019, Fox filed a five-count class-action complaint in the district court against Gratiot County and its treasurer, alleging that they had unlawfully

retained the surplus "equity" in his foreclosed property. (Compl., R.1, PageID.1.) The complaint sought damages against Gratiot County and its treasurer for a taking under the Fifth and Fourteenth Amendments of the U.S. Constitution under § 1983 (Count I), a direct taking under Fifth and Fourteenth Amendments (Count II), inverse condemnation under Michigan law (Count III), violation of Article X, Section II of the Michigan Constitution (Count IV), and an excessive fine under the Eighth Amendment of the U.S. Constitution (Count V). (*Id.*, PageID.11-19.) Fox also asserted claims against 13 other Michigan counties and their treasurers even though Fox personally had no claims against them. (*Id.* ¶¶ 2-3, 20-21, PageID.3, 7.) Fox alleged that the other defendant counties and their treasurers committed the same infractions at unidentified times against unidentified individuals, and asserted class claims on behalf of those individuals. (*Id.*)

A few months later, Fox filed an Amended Complaint adding three additional counts: violation of procedural due process (Count VI), substantive due process (Count VII), and unjust enrichment (Count VIII). (Am. Compl. 19-24, R.17, PageID.237-39.) The Amended Complaint also added 13 more counties and 14 more treasurers as defendants. (*Id.* 1-3, PageID.216-18.) Again, Fox did not assert any personal claims against these new defendants.

The district court stays the case

In January 2020, the district court stayed the case pending this Court's decision in *Freed v. Thomas*, No. 18-2312, which was considering the issue of whether the Tax Injunction Act deprived the court of jurisdiction. (Stay Order, R.85, PageID.1146.) While the case was stayed, the Michigan Supreme Court decided *Rafaeli*, 952 N.W.2d at 461.

On September 14, 2020, Fox moved to lift the court's stay in light of *Rafaeli*, explaining his fear that "other opportunistic plaintiffs' lawyers" would create "a deluge of new cases." (Emergency Mot. to Lift Stay, R.92, PageID.1172.) Along with the lift-stay motion, Fox moved for class certification and expedited consideration of class certification.

On September 30, 2020, this Court decided *Freed v. Thomas*, 976 F.3d 729 (6th Cir. 2020), and ruled that the Tax Injunction Act does not bar suits like this one.

The County Defendants seek dismissal on a number of grounds, including standing and governmental immunity

When the court issued the stay, there were three pending motions to dismiss—all included jurisdictional arguments, including standing and governmental immunities. (Ogemaw Cty. Defs. Mot. to Dismiss, R.22, PageID.407-12; Alpena Cty. *et al*. Defs. Mot. to Dismiss, R.23, PageID.445-54;

Macomb Cty. Defs. Mot. to Dismiss, R.66, PageID.871-72.) After an informal status conference, three more motions to dismiss by different defendants were filed. (Washtenaw Cty. Defs. Mot. to Dismiss, R.120, PageID.2081; Crawford Cty. *et al.* Defs. Mot. to Dismiss, R.122, PageID.2178; Alcona Cty. Defs. Mot. to Dismiss, R.123, PageID.2257.) All three motions presented a number of threshold challenges to the claims before the court. Specifically, all three argued that Fox lacked Article III standing against any non-Gratiot County defendants. (*Id.* at PageID.2095-2106, 2187-91, 2269-75.) These motions also raised sovereign immunity as a basis for dismissing the suits. (*Id.* at PageID.2106-10, 2276-81; Ogemaw Cty. Defs. Joinder, R.126, PageID.2307; Crawford Cty. *et al*. Defs. Joinder, R.127, PageID.2311.)

The district court lifts the stay, and instantaneously certifies a class

On October 16, 2020, the court lifted the stay, simultaneously certified a class, and appointed class counsel. (Order Lifting Stay, R.124, PageID.2284.) No discovery was allowed before class certification, and Fox was not deposed on his willingness or ability to serve as the class representative. Indeed, because Fox dawdled in serving the Amended Complaint on the new defendants, at least one county and its treasurer were not even served until after the stay was entered. And the time for answering the complaint had not yet run for several defendants. Thus, the district court incongruously granted class certification *before* several counties

even had the opportunity to file responsive pleadings, much less had the opportunity to oppose class certification.

The court recognized that the Defendants had pending motions challenging the court's subject-matter jurisdiction. So the court preemptively ruled that Fox had standing vis-à-vis the non-Gratiot County Defendants based on the juridical-link doctrine. The court found that all Defendants are "so juridically linked to one another that Plaintiff has standing against each of them to the same extent that he has standing against the Gratiot County Defendants." (*Id.* at PageID.2294.)

The district court rejects the County Defendants' standing and sovereign-immunity defenses

Three months after lifting the stay and concurrently granting class certification, the court ruled on the motions to dismiss, granting them in part and denying them in part. (Order Re Mots. to Dismiss, R.148, PageID.3307.) The court dismissed the county treasurers on qualified-immunity grounds, and also dismissed Count II (direct takings claims under the Fifth and Fourteenth Amendments), Count IV (violation of Article X, Section II of the Michigan Constitution), Count V (excessive fine under the Eighth Amendment of the U.S. Constitution), and Count VII (substantive due process). (*Id.*) The court allowed Count I (takings claim under § 1983), Count III (inverse condemnation), Count VI (procedural due process), and Count VIII (unjust enrichment) to proceed against all of the County

Defendants. (*Id.*, PageID.3335.) Most importantly for this appeal, the court rejected the County Defendants' defenses on the basis of standing and sovereign immunity. (*Id.*, PageID.3312-18, 3320-23.)

As to the non-Gratiot County defendants' standing argument, the court first reaffirmed its previous determination that all the County Defendants were juridically linked for standing purposes. (*Id.*, PageID.3312.) The court recognized that "Defendants correctly note that, per the Amended Complaint, Plaintiff was injured only by the Gratiot County Defendants." (*Id.*) Nonetheless, the court went on to conclude that, under the Ninth Circuit's decision in *La Mar v. H & B Novelty & Loan Co.*, 489 F.2d 461, 464 (9th Cir. 1973), Fox has standing against the non-Gratiot County Defendants by virtue of the juridical-link doctrine. (*Id.*, PageID.3313.) Specifically, the court reasoned that the *La Mar* court had "recognized two exceptions to the ordinary standing rule," one of which applied in "[i]nstances in which all defendants are juridically related in a manner that suggests a single resolution of the dispute would be expeditious." (*Id.*) The court went on to note that while this Court "has yet to apply the juridical link doctrine," it also has not rejected the doctrine outright. (*Id.*, PageID.3314.) Thus, the court determined that it was "not bound to reject a doctrine because the Sixth Circuit has not already applied it." (*Id.*, PageID.3315.) The court ultimately held that by electing to act as foreclosing governmental units and retaining the surplus proceeds

under the GPTA, the County Defendants had "become so juridically linked to one another that Plaintiff has standing against each of them." (*Id.*)

With respect to the sovereign-immunity defense, the court held that the County Defendants were not acting as "arms of the State" because they chose to act as foreclosing governmental units, and therefore, they were not complying with state mandates that afford no discretion. (*Id.*, PageID.3317.) While the court recognized that "the GPTA appears to limit their discretion as [foreclosing governmental unit]," it based its decision on the fact that the GPTA states that the " 'foreclosure of forfeited property by a county is *voluntary* and is *not* an activity or service required of units of local government for purposes of' article IX, section 29 of the Michigan Constitution."[2] (*Id.* (quoting Mich. Comp. Laws § 211.78(6)).) Accordingly, the court held that the County Defendants were not entitled to sovereign immunity.

Finally, the court rejected the County Defendants' argument that they were not liable under § 1983 because the GPTA is a policy of the State of Michigan, not the County Defendants. (*Id.*, PageID.3324.) Consistent with its decision on sovereign immunity, the court again stated that the County Defendants had made

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[2] Article IX, Section 29 of the Michigan Constitution is the so-called Headlee Amendment that bars the state from imposing unfunded mandates on lower units of government.

an "affirmative, voluntary, and discretionary decision" to act as foreclosing governmental units. (*Id.*) As a result, the court held that "[t]o the extent that they selected and enforced an unconstitutional policy, the County Defendants can be held liable under § 1983." (*Id.*, PageID.3324-25.)

SUMMARY OF THE ARGUMENT

At the outset of every case, plaintiffs must establish at that they have standing to assert their claims against each defendant. Where a plaintiff lacks standing, courts are constitutionally barred from entertaining the plaintiff's claims. Here, despite acknowledging that Fox was injured by only two of the 56 defendants, the district court nonetheless concluded that Fox had standing to sue all of the named counties. The court relied on the juridical-link doctrine—a decades-old doctrine from the Ninth Circuit addressing whether a putative class representative will adequate represent the class—to create standing without injury contrary to Article III. As other circuits, *including the Ninth*, have recognized, the juridical-link doctrine is inapplicable to determining the threshold issue of Article III standing, and certainly cannot be used to circumvent constitutional standing requirements. *Mahon v. Ticor Title Ins. Co.*, 683 F.3d 9, 62 (2d Cir. 2012); *Wong v. Wells Fargo Bank N.A.*, 789 F.3d 889, 896 (8th Cir. 2015); *Bahamas Surgery Ctr., LLC v. Kimberly-Clark Corp.*, 820 F. App'x 563, 566 n.4 (9th Cir. 2020). And this Court's precedent is also contrary to the district court's ruling—a potential class representative cannot acquire standing against each defendant merely by virtue of bringing a class action. *Fallick v. Nationwide Mut. Ins. Co.*, 162 F.3d 410, 423 (6th Cir. 1998). Because Fox lacks standing against the non-Gratiot County Defendants, the district court erred in failing to dismiss the claims

against these counties. In the absence of standing, this Court too lacks subject-matter jurisdiction over Fox's claims against the non-Gratiot County defendants. For that reason, the Court should reverse and remand for dismissal of Fox's claims against all Defendants except Gratiot County.

Fox's claims against Gratiot County and all the County Defendants also fail because of sovereign immunity. The County Defendants acted as required by the State of Michigan in the GPTA to fulfill the State's purposes and in the State's stead. While the district court correctly recognized that the GPTA cabins the County Defendants' ability to distribute the surplus proceeds generated by the property sales, it nonetheless held that the County Defendants were not entitled to sovereign immunity. Instead of focusing on the challenged activity—the distribution of the sale proceeds—the court expanded its assessment to whether the Defendant Counties had the discretion to foreclose tax-delinquent properties. The relevant inquiry is whether the County Defendants, *while acting as foreclosing governmental units*, were "complying with state mandates that afford no discretion" with respect to handling proceeds after foreclosure occurred. *Brotherton v. Cleveland*, 173 F.3d 552, 566 (6th Cir. 1999); *Gottfried v. Medical Planning Servs., Inc.*, 280 F.3d 684, 686 (6th Cir. 2002). Because the answer is unquestionably "yes," the County Defendants were state actors entitled to sovereign immunity.

For similar reasons, the district court also erred in holding that the County Defendants' decision to act as foreclosing governmental units subjects them to claims under 42 U.S.C. § 1983. Under the decision in *Monell*, municipalities may only be sued directly under § 1983 where the allegedly unconstitutional action is based on a policy that is officially adopted by the municipality. But here, the GPTA is adopted by and implements the policy of the *state*, not the counties. The GPTA does not require counties to take any affirmative actions to be subject to its provisions. Rather, the foreclosing governmental unit is *automatically* the county treasurer unless the county board opts to have the State do the foreclosure. Mich. Comp. Laws § 211.78(6)(a)(i). Because the County Defendants did not affirmatively adopt the State of Michigan's policies in the GPTA, the district court erred in allowing Fox to pursue claims under § 1983.

STANDARD OF REVIEW

This Court reviews de novo a district court's decision regarding a plaintiff's Article III standing, *Murray v. U.S. Dep't of Treasury*, 681 F.3d 744, 748 (6th Cir. 2012), as well as the legal question of whether a governmental defendant is entitled to sovereign immunity, *Timmer v. Mich. Dep't of Commerce*, 104 F.3d 833, 836 (6th Cir.1997). The Court also reviews a district court's decision on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) de novo. *Hensley Mfg. v. ProPride, Inc.*, 579 F.2d 603, 608-09 (6th Cir. 2009).

ARGUMENT

I. The district court erred by relying on the juridical-link doctrine to supplant the required Article III standing at the outset of the case.

At every stage of a case, the federal courts have the duty to ensure that there is subject-matter jurisdiction over the dispute. *United States v. Van*, 931 F.2d 384, 387 (6th Cir. 1991). When a plaintiff has not suffered an injury that is fairly traceable to each Defendant, the constitutional minimum for Article III standing has not been met, and the federal courts lack subject-matter jurisdiction. Here, the district court erred by concluding that the juridical-link doctrine eliminated the constitutional requirement of an injury traceable to each defendant. And for that reason, Fox's claims against the non-Gratiot County Defendants should be dismissed.

Modern Supreme Court precedent emphasizing the importance of Article III standing represents a restoration of constitutional fidelity. Chief Justice Roberts has explained that "no principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies," and Article III standing "enforces" this principle. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) (cleaned up). There is no case or controversy between Fox and the non-Gratiot County Defendants.

A. The district court correctly recognized that Fox did not suffer any injury traceable to the non-Gratiot County Defendants.

"Threshold individual standing is a prerequisite for all actions, including class actions. A potential class representative must demonstrate individual standing vis-à-vis the defendant; he cannot acquire such standing merely by virtue of bringing a class action." *Fallick*, 162 F.3d at 423 (cleaned up). "The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998). The "irreducible constitutional minimum" of standing requires that a plaintiff individually: (1) suffered an injury in fact that is concrete and particularized, and actual or imminent, not conjectural or hypothetical; (2) alleged an injury that is fairly traceable to, or caused by, challenged conduct by the defendants; and (3) demonstrated that the injury is likely to be redressable by the court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

The fact that Fox asserted a putative class action does not affect standing. Rather, he "must allege and show that [he] *personally*" suffered an injury by *all* the County Defendants—he cannot rely upon an "injury suffered by other, unidentified members of the class." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 n.6 (2016), *as revised* (May 24, 2016) (quotation omitted, emphasis added).

The district court correctly recognized that "Plaintiff was injured only by the Gratiot County Defendants" and that this would "[n]ormally . . . require dismissal of the non-Gratiot County Defendants." (Order Re Mots. to Dismiss, R.148, PageID.3312.) The district court erred by not following the admittedly "normal" course.

B. The juridical-link doctrine does not create standing.

The district court ruled that Fox's claims against the non-Gratiot County Defendants should survive because of the juridical-link doctrine. (*Id.*) But the court erred because the juridical-link doctrine addresses the adequacy of a class representative and the typicality of the claims, not standing. In any event, the doctrine does not create standing where a party lacks an injury fairly traceable to each defendant.

The juridical-link doctrine has its genesis in the 1973 decision by the Ninth Circuit in *La Mar v. H & B Novelty & Loan Co.*, 489 F.2d 461, 464 (9th Cir. 1973). There, the Ninth Circuit analyzed whether, under Rule 23, a plaintiff who had a cause of action against a single defendant could represent a class against the single defendant and an unrelated group of defendants who had engaged in similar conduct to that of the single defendant. *Id.* at 462. The Court's analysis revolved around Rule 23 and specifically the requirement that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P.

23(a)(4). The Ninth Circuit noted that the plaintiffs could not sustain a putative class action against defendants who did not injure them. *La Mar*, 489 F.2d at 466 (applying Fed. R. Civ. P. 23). But in dicta, the court noted that there may be two situations that could qualify as exceptions to this rule: when "all injuries are the result of a conspiracy or concerted scheme[]," and "instances in which all defendants are juridically related in a manner that suggests a single resolution of the dispute would be expeditious." *Id.*

Because the plaintiff did not meet the requirements of Rule 23, the *La Mar* court found that it was not necessary to rule on the issue of Article III standing. Thus, the court did not decide the issue of standing at all, but merely "assume[d] the presence of standing" for purposes of that appeal.[3] *Id.* at 464.

The district court misapplied the analysis in *La Mar* by failing to recognize that the second exception discussed in *La Mar* applies only to the requirements of Rule 23, not to Article III standing. Specifically, the district court assumed without discussion that "[t]he Ninth Circuit, in *La Mar* . . . recognized two exceptions to the *ordinary standing rule*." (Order Re Mots. to Dismiss, R.148, PageID.3313 (emphasis added).) The Ninth Circuit did not make such an error.

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[3] The Supreme Court has since ruled that standing cannot be assumed. *Steel Co.*, 523 U.S. at 94.

As the district court acknowledged, this Court has never adopted the juridical-link doctrine. (*Id.*) In fact, this Court has only discussed it in two cases. *Thompson v. Bd. of Educ. of Romeo Cmty. Schs.*, 709 F.2d 1200, 1205 (6th Cir. 1983); *Perry v. Allstate Indem. Co.*, 953 F.3d 417 (6th Cir. 2020). Last year, in *Perry*, this Court acknowledged the critical distinction between Rule 23 requirements and Article III standing, recognizing that the juridical-link doctrine is a "sparingly applied *class-certification* doctrine," used to "meet the Federal Rule of Procedure 23's class certification requirements." 953 F.3d at 420 n.2 (emphasis added). Although the plaintiff in *Perry* argued that the doctrine applied to Article III standing, this Court did not decide either way. *Id.* In other words, the current state of the juridical-link doctrine in the Sixth Circuit is that it is a *class-certification* doctrine used under Rule 23, not an exception to the essential, threshold doctrine of standing.

Even though this Court has never approved the use of the juridical-link doctrine to create standing, the district court construed this silence as permission to ignore the Supreme Court's direction in *Lujan* and *Spokeo*. It was not free to do so. Instead, like other district courts faced with a similar invitation to gloss over the lack of standing, the court should have rejected that invitation and applied the normal standing rules. *See, e.g.*, *Esedebe v. Circle 2, Inc.*, 2021 WL 232595, at *3 (E.D. Va. Jan. 22, 2021) (concluding that because the Fourth Circuit has not

adopted the juridical-link doctrine, the court would not allow standing under that doctrine); *In re Zantac (Ranitidone) Prods. Liability Litig.*, 2020 WL 786674, at *16 (S.D. Fla. Dec. 31, 2020) (the juridical-link doctrine "does not" confer standing); *Kombal v. Allstate Ins. Co.*, 2020 WL 5816498, at *4-*5 (D. Mont. Sept. 30, 2020) (confining the doctrine to assessing adequacy and typicality under Rule 23); *Blackburn v. Dare Cty.*, 486 F. Supp. 3d 988, 995 (E.D.N.C. 2020) (noting that the juridical-link doctrine "does not cure plaintiffs' lack of standing under Article III of the Constitution"); *Rolaff v. Farmers Ins. Co.*, 2020 WL 4939172, at *3 (D. Okla. Mar. 19, 2020) (noting the Tenth Circuit had not adopted the doctrine and declining to do so).

C. The majority of other circuits have not varied standing requirements because of the juridical-link doctrine.

Four circuits have addressed the question of whether, contrary to the rule set forth in *Lujan*, the juridical-link doctrine can confer standing. All but the Seventh Circuit have ruled that it cannot. And even the Seventh Circuit has since backed away from its earlier ruling, which has been rejected by two other circuits.

The Second Circuit has held that it would be "unprecedented" to interpret Article III to allow suit against defendants who caused the plaintiff no injuries. *Mahon*, 683 F.3d at 62. The *Mahon* court determined that it was "flawed" to use the juridical-link doctrine to either (1) merge the question of standing with a Rule

23 analysis, or (2) decide class certification first, and then determine standing based upon the entire class. *Id.* at 63-64. The court rejected the plaintiff's "novel and unsupported interpretation of Article III" that "as long as the injurious defendant is sued in the same case, Article III does not prevent a plaintiff from suing non-injurious defendants." *Id.* at 65-66. The doctrine had originated out of Rule 23, and "[a] federal rule cannot alter a constitutional requirement"—namely, Article III's standing requirement. *Id.* at 64.

The Eighth Circuit has likewise held that this doctrine is "inapplicable" to the standing analysis. *Wong*, 789 F.3d at 896. Specifically, the court has rejected the argument that the juridical-link doctrine allows a court to assess standing requirements with reference to the class as a whole, and not with reference to the individual named plaintiffs. *Id.*

More recently, the Ninth Circuit itself ruled that the juridical-link doctrine was "irrelevant" to the question of standing—in part because the *La Mar* court "assumed" standing existed for purposes of the appeal. *Bahamas Surgery Ctr., LLC*, 820 F. App'x at 566 n.4 (citing *La Mar*, 489 F.2d at 464). There, the named plaintiff brought a putative class action against two defendants related to their manufacture of surgical gowns; however, the named plaintiff had never purchased any gowns from defendant Halyard Health. *Id.* at 565. The district court certified a class, held a jury trial which found for the class, and issued a judgment against

both defendants. *Id.* On appeal, the Ninth Circuit vacated the judgment because the named plaintiff had no injury traceable to Halyard's conduct, and could not "seek relief on behalf of itself or any other members of the class." *Id.* But the court did not stop there, and remanded to dismiss the entire case against Halyard. *Id.* at 566. "Even if other class members have valid claims against Halyard, that cannot retroactively cure the district court's *improper certification* of a class wherein the named plaintiff . . . lacked standing to pursue those claims."[4] *Id.* at 565-66 (emphasis added).

As mentioned above, the Seventh Circuit is the only federal court of appeals to have adopted the juridical-link doctrine to circumvent the bedrock principles of standing. *Payton v. Cty. of Kane*, 308 F.3d 673, 680 (7th Cir. 2002). The Seventh Circuit reached its decision by considering class certification before determining if the plaintiff had standing. *Id.* That approach has been rejected by the Second and Eighth Circuits. *Wong*, 789 F.3d at 896; *Mahon*, 683 F.3d at 64.

The Seventh Circuit has since "appeared to retreat" from *Payton*, treating standing as "an antecedent legal issue." *Davidson v. Worldwide Asset Purchasing, LLC*, 914 F. Supp. 2d 918, 922 (N.D. Ill. 2012) (quoting *Arreola v. Godinez*, 546

[4] The district court's erroneous application of the juridical-link doctrine risks the same sort of colossal waste of time and resources here.

F.3d 788, 794 (7th Cir. 2008)). This retreat is appropriate because the Supreme Court has never indicated that a case can proceed against a defendant for *any* period of time in the absence of Article III standing. Recently, the Supreme Court even went so far as to vacate a judgment approving a class-action *settlement* because the Court questioned whether named plaintiffs had Article III standing. *Frank v. Gaos*, 139 S. Ct. 1041, 1046 (2019) (per curiam). The Court indicated that this drastic step was necessary because of the Court's "obligation to assure ourselves of litigants' standing under Article III," an obligation that "extends to court approval of proposed class settlements" because "federal courts lack jurisdiction if no named plaintiff has standing." *Id.*

The district court's application of the juridical-link doctrine abandons these principles altogether. Fox *must* establish that he had Article III standing against *all* the County Defendants at the time the case was filed. *Spokeo*, 136 S. Ct. at 1547 n.6. The juridical-link doctrine is irrelevant to this fundamental requirement because if the district court lacked subject-matter jurisdiction at the outset, it cannot retroactively acquire jurisdiction to resolve the dispute. Fox has suffered no injury fairly traceable to the conduct of the non-Gratiot County Defendants. Accordingly, the district court lacked subject-matter jurisdiction over Fox's claims against the non-Gratiot County Defendants, and all claims against those defendants should be dismissed.

II. Because the GPTA affords the County Defendants no discretion regarding how to distribute surplus proceeds, the district court erred in holding that the County Defendants are not entitled to sovereign immunity.

The Eleventh Amendment grants sovereign immunity to the states and their actors, shielding them from private lawsuits unless otherwise waived. *Cady v. Arenac Cty.*, 574 F.3d 334, 342 (6th Cir. 2009). While county officials are generally not considered state actors, "[w]here county officials are sued simply for complying with state mandates that afford no discretion, they act as an arm of the State" and are entitled to immunity under the Eleventh Amendment. *Brotherton*, 173 F.3d at 566.

For instance, in *Gottfried v. Medical Planning Services, Inc.*, a sheriff (a county official) acted in his official capacity to enforce a court-ordered injunction restricting picketing. 280 F.3d at 686. The injunction required the sheriff to "bring before the Court any person who…refuses to obey it, or who obstructs or interferes with the Sheriff." *Id.* at 693. The sheriff argued that he was entitled to immunity under the Eleventh Amendment because his obligations to enforce the state-court injunction flowed from the State. *Id.* This Court agreed, stating that the sheriff "did not have any discretionary authority regarding the state court injunction." *Id.*

The same is true here. Like the state court injunction in *Gottfried*, the GPTA *mandated* how the County Defendants distributed surplus proceeds from tax-foreclosure sales. As the Court in *Rafaeli* noted, "Michigan is one of nine states

with a statutory scheme that *requires* the foreclosing governmental unit to disperse the surplus proceeds to someone other than the former owner." 952 N.W.2d at 446 (emphasis added); *see also Wayside Church*, 847 F.3d at 824 (Kethledge, J., dissenting) (noting that the GPTA "appears actually to *require* the County to short the taxpayer"). Indeed, Michigan Compiled Laws § 211.78m(8) dictates that "[a] foreclosing governmental unit *shall* deposit the proceeds from the sale of property under this section into a restricted account" and that "[t]he foreclosing governmental unit *shall* use proceeds in that account only for" specific enumerated purposes (emphases added).

In this sense, the GPTA's statutory scheme is unlike the "permissive statutory scheme" in *Brotherton*. 173 F.3d at 555. There, a widow brought an action against a county coroner for removing her deceased husband's corneas. *Id.* The statute at issue allowed, but did not require, county coroners to harvest corneas. *Id.* ("A county coroner who performs an autopsy . . . *may* remove one or both corneas . . ." (emphasis added)). This Court held that "[r] ather than rotely enforce prescribed Ohio law, [the county coroner] voluntarily implemented a policy of corneal harvesting, and he chose the means of enforcing his policy." *Id.* at 566. Thus, he was not entitled to sovereign immunity.

By contrast, the County Defendants "did not have any discretionary authority" regarding how to distribute the surplus proceeds. *See Gottfried*, 280

F.3d at 693. They were bound to distribute those proceeds only for the purposes and in the priority set forth in the GPTA. Mich. Comp. Laws § 211.78m(8). Indeed, Fox's Amended Complaint does not allege that Defendants had the discretion to disburse the surplus proceeds in any manner different than what the Defendants actually did. The County Defendants were implementing state law and, as such, they acted as an arm of the State with respect to these proceeds.

The district court agreed that "the GPTA appears to limit the County Defendants' discretion" as foreclosing governmental units. (Order Re Mots. to Dismiss, R.148, PageID.3317.) But the court went on to hold that the County Defendants were nevertheless not entitled to sovereign immunity because they could have chosen not to act as foreclosing governmental units. Specifically, the court stated, "[u]nder the GPTA, Michigan counties are not compelled to act as foreclosing governmental units and may instead allow the State to do so," and therefore, "the County Defendants' decision to act as foreclosing governmental units was solely their own." (*Id*.) Of course, had the Defendants done so, the very same events would have transpired and the State would be immune from suit. *See* Mich. Comp. Laws § 211.78m(8); Mich. Comp. Laws § 211.78(8)(a). It makes no sense to punish the County Defendants for not placing additional burdens on the State.

In any event, the court's analysis focuses on the wrong question. The question for purposes of Eleventh Amendment immunity is not whether the County Defendants *initially* had discretion to choose to act as foreclosing governmental units. That would be akin to analyzing whether the sheriff in *Gottfried* had discretion to choose to become a sheriff or deciding that the county coroner in *Brotherton* did not have sovereign immunity because he could have chosen to run a funeral parlor instead. The district court's attempt to distinguish this analogy actually demonstrates why the County Defendants are entitled to sovereign immunity. The court stated: "While the County Defendants, like sheriffs, must discharge their duties under state law, there is no duty to serve as [foreclosing governmental units]." (Order Re Mots. to Dismiss, R.148, PageID.3318.) In the same way, however, there is no duty for individuals to serve as sheriffs or coroners. But once they choose to do so, they must discharge their duties under state law, and are entitled to immunity for carrying out state policy. The same is true for the County Defendants

This Court's cases show that the relevant focus was on what the law required of the coroner or sheriff after that initial decision (to act as coroner or sheriff) was made. *See, e.g.*, *Brotherton*, 173 F.3d at 567 ("Ohio law allowed Dr. Cleveland to harvest corneas *in the course of his actions as a county coroner*, but it did not dictate a method." (emphasis added)). Therefore, the relevant inquiry is not

whether the County Defendants should have declined acting as foreclosing governmental units, but rather, *while acting as foreclosing governmental units*, were they "complying with state mandates that afford no discretion" with respect to handling proceeds after foreclosure occurred. *Id.* at 566. The answer is undoubtedly, "yes."

There is no question that the County Defendants acted in compliance with required state law to effectuate State policy with regard to the disbursement of the surplus proceeds. The County Defendants were acting as arms of the State and are entitled to sovereign immunity in the federal courts. The district court's contrary ruling should be reversed.

III. Because the County Defendants did not affirmatively adopt the GPTA or take an affirmative act to become foreclosing governmental units, they cannot be held liable under § 1983.

The district court erred in holding that the County Defendants could be held liable under § 1983 pursuant to *Monel* for their "affirmative, voluntary and discretionary decision" to act as the Foreclosing Governmental Units under the GPTA, Mich. Comp. Laws § 211.78 *et seq*. (Order Re Mots. to Dismiss, R.148, PageID.3324.) The GPTA is policy of the State of Michigan, not the counties. Pursuant to Michigan Compiled Laws § 211.78 the counties became the foreclosing governmental units automatically with no affirmative act required. Fox's alleged damages were also caused by state statute, Michigan Compiled Laws

§ 211.78m, which required the surplus from a tax-foreclosure auction to be used for a public purpose regardless of whether a county or the State conducted the foreclosure.

To hold a municipal defendant liable under § 1983, a plaintiff must: (1) identify the municipal policy or custom, (2) connect the policy to the municipality, and (3) show that the claimed particular injury was incurred due to the execution of that policy. *Vereecke v. Huron Valley Sch. Dist.*, 609 F.3d 392, 403 (6th Cir. 2010). With regard to the first element, the Court in *Monell* stated that local municipalities may be sued directly under §1983 where "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." 436 U.S. at 690.

The policy behind the GPTA is the State of Michigan's policy and is stated in Michigan Compiled Laws § 211.78(1):

> The legislature finds that there exists in this state a continuing need to strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes. Therefore, the powers granted in this act relating to the return of property for delinquent taxes constitute the performance by this state or a political subdivision of this state of essential public purposes and functions.

The challenged action in this case is based not on custom but on the *distribution* of tax-foreclosure proceeds *into a restricted public account* pursuant to Michigan law, Mich. Comp. Laws § 211.78m, so Fox must show that the county defendants affirmatively adopted this policy on distribution.

As required by *Monell*, the alleged policy must be officially adopted by the municipality. While this Court has yet to interpret this requirement, the Third Circuit has found this requirement to mean that the municipality must officially take an affirmative act to adopt the policy, such as through an official act, proclamation, or edict. *McTernan v. City of York*, 564 F.3d 636, 657-58 (3d Cir. 2009); *Flood v. Sherk*, 400 F. Supp. 3d 295, 306 (W.D. Pa. 2019).

Yet the County Defendants did not affirmatively adopt this policy. The GPTA automatically requires the counties to foreclose on tax delinquent properties. The only "affirmative act" that is arguably contemplated under the GPTA is one by which counties can *opt out* and elect to have the State conduct the foreclosure. Mich. Comp. Laws § 211.78m(3). However, the GPTA does not require counties to take an affirmative act to be subject to its provisions. Pursuant to Michigan Compiled Laws § 211.78(8)(a)(i), the foreclosing governmental unit is automatically the county treasurer unless the county board with the consent of their treasurer passed a resolution within a certain time limit to have the State do the

foreclosure. Accordingly, the district court erred when it found that the County Defendants affirmatively adopted the State of Michigan's policies in the GPTA.

To do so, the district court improperly distinguished this Court's decision in *Johnson v. Turner*, 125 F.3d 324 (6th Cir. 1997). In *Johnson*, this Court found that a county that followed state law as interpreted by a local judge was not liable pursuant to *Monell* because the county was merely following state policy:

> Further, the alleged unconstitutional actions taken by the juvenile court judge are not "policies" of the county for which liability could attach under *Monell*, 436 U.S. at 694-95, but are judicial decisions reviewable on appeal to the Tennessee appellate courts. The functions of the juvenile court are established by state law. The Shelby County government could not have altered the state statutes, nor could it have required Judge Turner to interpret those statutes differently or otherwise interfered with the means used by the juvenile court and its employees to carry out state law. [125 F.3d at 335-36.]

Likewise, the functions of the County Defendants with regard to tax foreclosure were established by state law, the GPTA, which the County Defendants could not alter. The County Defendants were required to follow this state law.

At most, Fox claims an injury as to a *state* policy in Michigan Compiled Laws § 211.78m, not a county policy. The law at the time alleged in the complaint did not allow for the return of surplus to persons who lost the property in tax foreclosure. The fact that the County Defendants foreclosed on the property does not affect what happens to the surplus from Fox's perspective because the result

would be the same if the State of Michigan foreclosed on the property. Mich. Comp. Laws § 211.78m(8)(h).

Further, *Monell* does not apply when a county follows a court's interpretation of state law. *Johnson*, 125 F.3d at 335-36. As noted by the district court, the prevailing view, before the Michigan Supreme Court's decision in *Rafaeli*, was that Michigan Compiled Laws § 211.78m was lawful. (Order Re Mots. to Dismiss, R.148, PageID.3319.)

The district court erred in finding that the County Defendants affirmatively adopted the State of Michigan's policy regarding tax foreclosure. The plain language statute, Michigan Compiled Laws § 211.78, automatically subjected the County Defendants to the state law and did not require the counties to take an affirmative act to be subject to the law. The policies in the GPTA are the policies of the State of Michigan. The County Defendants were following the language of Michigan law as interpreted by the courts. The lower court erred in finding that pursuant to *Monell*, Fox may pursue §1983 claims against the County Defendants.

CONCLUSION AND REQUESTED RELIEF

Fox cannot sidestep the constitutionally mandated Article III standing requirements merely because he has asserted a class action. Likewise, the County Defendants' decision to act as foreclosing governmental units cannot forever deprive them of immunity under the Eleventh Amendment or subject them to

claims under § 1983 for their actions that were legally mandated by the GPTA. Accordingly, the County Defendants respectfully request that this Court reverse the district court's determination that the court has subject-matter jurisdiction over the non-Gratiot County Defendants pursuant to the juridical link doctrine. Further, the County Defendants request that this Court reverse the district court's determination that the County Defendants' are not entitled to sovereign immunity, and are subject to claims under § 1983.

Dated: April 30, 2021

s/ Matthew T. Nelson
Matthew T. Nelson
Conor B. Dugan
Ashley G. Chrysler
Warner Norcross + Judd LLP
150 Ottawa Avenue, NW, Suite 1500
Grand Rapids, MI 49503
Telephone: (616) 752-2000
mnelson@wnj.com

Attorneys for Defendant County of Alcona

s/ Theodore W. Seitz (with permission)
Theodore W. Seitz
Kyle M. Asher
DYKEMA GOSSETT PLLC
201 Townsend Street, Suite 900
Lansing, Michigan 48933
517-374-9137
tseitz@dykema.com

Attorneys for Defendant County of Washtenaw

s/ Allan C. Vander Laan (with permission)
Allan C. Vander Laan
CUMMINGS MCCLOREY DAVIS & ACHO
2851 Charlevoix Dr. SE, Suite 327
Grand Rapids, Michigan 49546
616-963-7800
avanderlaan@cmda-law.com

Attorneys for Defendants County of Saginaw, County of Bay, County of Gratiot, County of Midland, Cathy Lunsford, County of Isabella, Steven W. Pickens, County of Tuscola, County of Montmorency, County of Alpena, County of Oscoda, County of Arenac, County of Clare, County of Gladwin, County of Genesee, County of Huron, County of Jackson, County of Lapeer, County of Lenawee, County of Otsego, County of Roscommon, County of Sanilac, and County of St. Clair

s/ Matthew T. Wise (with permission)
Gregory M. Meihn
Matthew T. Wise
Melinda A. Balian
FOLEY & MANSFIELD PLLP
130 East Nine Mile Road
Ferndale, Michigan 48220
248-721-4200
gmeihn@foleymansfield.com
mwise@foleymansfield.com
mbalian@foleymansfield.com

Attorneys for Defendant County of Ogemaw

s/ Charles A. Lawler (with permission)
Charles A. Lawler
CLARK HILL
212 E. Grand River Avenue
Lansing, Michigan 48906-4328
517-318-3016
clawler@clarkhill.com

Attorneys for Defendants County of Crawford and County of Presque Isle

s/ Frank J. Krycia (with permission)
Aaron C. Thomas
Frank J. Krycia
Peter C. Jensen
MACOMB COUNTY CORPORATION COUNSEL
1 South Main Street, 8th Floor
Mt. Clemens, Michigan 48043
586-469-6346
aaron.thomas@macombgov.org
frank.krycia@macombgov.org
peter.jensen@macombgov.org

Attorneys for Defendant County of Macomb

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the type-volume limitation pursuant to Fed. R. App. P. 32(a)(7)(B). The foregoing brief contains 8,817 words of Times New Roman 14-point proportional type. The word processing software used to prepare this brief was Microsoft Word 2016.

Dated: April 30, 2021

s/ Matthew T. Nelson

Matthew T. Nelson
Conor B. Dugan
Ashley G. Chrysler
Warner Norcross + Judd LLP
150 Ottawa Avenue NW, Suite 1500
Grand Rapids, MI 49503
Telephone: (616) 752-2000
E-mail: mnelson@wnj.com
conor.dugan@wnj.com
achrysler@wnj.com

Attorneys for Alcona County

CERTIFICATE OF SERVICE

This certifies that Appellants was served April 30, 2021, by electronic mail using the Sixth Circuit's Electronic Case Filing system on all parties of record.

s/ Matthew T. Nelson
Matthew T. Nelson
Conor B. Dugan
Ashley G. Chrysler
Warner Norcross + Judd LLP
150 Ottawa Avenue NW, Suite 1500
Grand Rapids, MI 49503
Telephone: (616) 752-2000
E-mail: mnelson@wnj.com
conor.dugan@wnj.com
achrysler@wnj.com

Attorneys for Alcona County

DESIGNATION OF RECORD

Doc. Entry No.	Date Entered	Page ID Range	Description of Doc.
R.1	06/25/19	1–19	Complaint
R.17	09/04/19	216–239	Amended Complaint
R.22	09/25/19	407–412	Ogemaw County Defendants' Motion to Dismiss
R.23	09/26/19	445–454	Alpena County, et al.'s Motion to Dismiss
R.66	11/19/19	871–872	Macomb County Defendants' Motion to Dismiss
R.85	01/10/20	1146	Stay Order
R.92	09/14/20	1172	Emergency Motion to Lift Stay
R.120	10/06/20	2081–2110	Washtenaw County Defendants' Motion to Dismiss
R.122	10/14/20	2178–2191	Crawford County, et al.'s Motion to Dismiss
R.123	10/14/20	2257–2285	Alcona County Defendants' Motion to Dismiss
R.124	10/16/20	2284–2294	Order Lifting Stay
R.126	10/19/20	2307	Ogemaw County Defendants' Joinder in Motions to Dismiss
R.127	10/23/20	2311	Crawford County, et al.'s Joinder in Motions to Dismiss
R. 148	01/13/21	3307–3335	Order Regarding Motions to Dismiss
R.153	02/01/21	3351	Notice of Appeal