No. 24-

IN THE

Supreme Court of the United States

KALVIN SCHANZ,

Petitioner,

v.

CITY OF OTSEGO, MICHIGAN, AARON MITCHELL, DAVE RAYMAN, AND BRET REITKERK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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July 15, 2024

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QUESTION PRESENTED FOR REVIEW

1. Under the Fair Housing Act, 42 U.S.C. § 3617, when a plaintiff claims that a defendant has intimidated or interfered with him "on account of his having aided or encouraged any other person in the exercise or enjoyment" of FHA rights, may a court require that the alleged aid provided is of a certain degree, or will any amount of aid suffice to trigger the protections of the statute?

PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Kalvin Schanz, *Plaintiff-Petitioner.*

City Of Otsego, Michigan, Aaron Mitchell, Dave Rayman and Bret Reitkerk, *Defendants-Respondents.*

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Plaintiff Kalvin Schanz makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

RELATED PROCEEDINGS IN FEDERAL TRIAL AND APPELLATE COURTS

1. United States District Court, Western District of Michigan

No. 21-cv-1028

KALVIN SCHANZ,

Plaintiff-Appellant,

v.

CITY OF OSTEGO, MI, a municipal corporation; BRANDON WEBER, individually and in his official capacity; AARON MITCHELL, individually and in his official capacity; DAVE RAYMAN, individually and in his official capacity; BRET REITKIRK, individually and in his official capacity; BRAD MISNER, individually and in his official capacity,

Defendants-Appellees.

Date of Judgment: July 14, 2023

2. United States Court of Appeals for the Sixth Circuit

No. 23-1705

KALVIN SCHANZ,

Plaintiff-Appellant,

v.

CITY OF OTSEGO, MICHIGAN, AARON MITCHELL, DAVE RAYMAN, and BRET REITKIRK,

Defendants-Appellees,

and

BRANDON WEBER and BRAD MISNER,

Defendants.

Date of Judgment: April 15, 2024

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

Schanz v. City of Otsego, No. 1:21-CV-1028, 2023 WL 11081615 (W.D. Mich., July 14, 2023), *sub nom. Schanz v. City of Otsego, Michigan*, No. 23-1705, 2024 WL 1622465 (6th Cir., April 15, 2024)

Schanz v. City of Otsego, Michigan, No. 23-1705, 2024 WL 1622465 (6th Cir., April 15, 2024)

JURISDICTION OF THE UNITED STATES SUPREME COURT

The United States Court of Appeals for the Sixth Circuit entered Judgment in this case on April 14, 2024. 1a-15a.

This Court has appellate jurisdiction under U.S. Const. Art. III § 2, cl. 2 to review this case by petition for writ of certiorari under 28 U.S.C. § 1254.

STATUTE INVOLVED IN THIS CASE

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

42 U.S.C. § 3617.

CONCISE STATEMENT OF THE CASE

The Petitioner asks this Court to review the decision of the United States Court of Appeals for the Sixth Circuit. 1a-15a.

The Court of Appeals' decision conflicts with the decision of the United States Supreme Court in *Muldrow v. City of St. Louis, Missouri*, 144 S. Ct. 967 (2024).

Accordingly, for the following reasons Plaintiff Kalvin Schanz seeks a writ of certiorari for this Court to review the decision of the Court of Appeals.

STATEMENT OF FACTS

In 2013, Plaintiff Kalvin Schanz (Schanz) purchased a former elementary school (the school) in Otsego, Michigan. In 2015, Schanz read that JBS Foods, a local meat-packing plant in Plainwell, Michigan, had a multitude of employees needing local housing. Otsego is next door to Plainwell and housing in Otsego would be local housing for the employees.

Schanz wanted to convert the former school to dormitory-style housing for a multitude of the JBS employees. The national origins of the employees were Africa, the Middle East, and Asia. Some were black, and they were all religious refugees. Dep Schanz 10-3-22, ECF No. 112-2, PageID.1468-16; Dep Winn, ECF No. 112-3, PageID.150722; Dep Zevalkink, ECF No. 112-4, PageID.151310.

Defendant Dave Rayman was the Director of Development for the City of Otsego. Schanz believed that

Rayman was "the representative of the City, so anything that had to do with any development, you would have to ask him for permission." Dep Schanz 10-3-22, ECF No. 112-2, PageID.1466, 1467.

But, starting in 2015, Rayman voiced his racist objections to the JBS employees living at the school. Rayman told Schanz, "That ain't happening. Get real. You'll get run out of town." Dep Schanz 10-3-22, ECF No. 112-2, PageID.1490-1491.

In 2017, Scot Reitenour expressed interest in converting the school to apartments and renting them to the JBS workers. In summer 2017, Schanz had Reitenour set up a meeting at the school with Schanz and certain JBS executives, and Dave Rayman. Schanz had Reitenour set up the meeting instead of doing it himself, because Schanz feared Rayman after Rayman had told Schanz, "it ain't happening." Dep Schanz 10-3-22, ECF No. 112-2, PageID.1489-1492.

The company executives toured the school But, when Rayman and Schanz were apart from the JBS executives and Reitenour, Rayman again told Schanz: "Ain't ever going to happen here. The city is never going to go for that." Dep. Struyk, ECF No. 112-5, PageID.1517.

Later, when neither the JBS officials nor Reitenour showed interest converting the school to apartments, Schanz independently moved forward with a new housing design that he planned to market directly to the employees – dormitory style housing, like a college dormitory. Dep Schanz, ECF No. 112-6, PageID.1525 (deposition p. 21-22; Appellant's Brief, Document 19. 40-41.)

Schanz consulted with Brian Winn, a contractor who was the former chaplain for the JBS workers and then supervisor of Otsego Township. From his service as chaplain, Winn was very familiar with the workers' dire need for affordable local housing. At Schanz's request, Winn called the JBS personnel office and learned that the workers were still desperate for local housing. JBS was hiring 10 to 20 immigrants per week. There was a crunch for local housing for those new employees, most of who were living in Lansing or Grand Rapids (some in motels) and reimbursing JBS from their wages for housing and travel costs. Dep Winn, ECF No. 121-1, PageID.1750; Dep Zevalkink, ECF No. 121-5, PageID.1826-1827.

Creating the dormitory was relatively inexpensive and simple. Winn, Schanz's general contractor, prepared an estimate that labor and materials would cost Schanz $1,200,000. Alterations required only building a community kitchen, dining hall, showers and restrooms. Dep Winn, ECF No. 121-1, PageID.1747-1749; Estimate, ECF No. 121-7, PageID.1868. Schanz planned to rent each classroom (bedrooms) to four workers and would provide furniture. This design avoided the much larger capital investment required to convert the school to apartments. Schanz had the financial ability to fund the project by himself. Dep. Schanz, ECF No. 112-6, PageID.1537-1538.

Over the years until March 2021, Schanz approached Rayman and City Manager Aaron Mitchell every month or two and asked about using the school as housing for the JBS employees. Schanz advocated for the JBS employees and prodded Rayman and Mitchell to withdraw their objections to the housing for the JBS employees.

> You know, I was *prodding* them a little after I knew that it offended them that some brown folks would move in there, I was offended, so *I poked them a little*. Even when I took -- I will not use the word legitimate because legitimately them people should be living there today, but it wouldn't matter what person called or what they called me about, it's like just move the Marshall Islanders in there, who's it going to hurt.

Dep. Schanz, ECF No. 112-2, PageID.1493, deposition page 115 (emphasis added.)

But Rayman and Mitchell gave the same response: "[T]hey ain't living here, are you crazy…you'd get run out of town for that one, we ain't got time for this," or "It ain't happening. The town's people would hang you. Imagine how pissed-off the community would be if you did that. We would rather destroy the school than provide housing to those people." Dep Schanz 10/3/22, ECF No. 112-2, PageID.1491; First Am. Verified Complaint, ECF No. 3, PageID.101. Mitchell and Rayman "pretty much convinced me [Schanz] that if I tried they would run me out of town." Dep Schanz, 1/23/23, ECF No. 112-6, PageID.1538-1539.

In 2017, Brian Winn was the supervisor for Otsego Township and was a private construction contractor whom Schanz wanted to renovate the school for the JBS employees. After Dave Rayman had intimidated Schanz, Brian Winn approached Rayman and asked why Rayman would not support the housing project. Rayman told Winn: "There's never -- the city will never allow you and Kal to run a refugee camp out of that school." Dep Winn, ECF 121-1, PageID.1753.

Eventually, Rayman's threats included demolishing the school building if Schanz kept asking about housing the JBS employees. "[S]everal years these guys have warned me and it got to the point, sir, that when Dave was around and I would ever mention, he'd say the building will have to come down, this building will have to come down, it will have to come down, you know... It just like made me very nervous." Schanz Dep 10/3/22, ECF No. 112-2, PageID.1494.

Thus, the racist attitude and threats from Mitchell and Rayman, to run Schanz out of down and to demolish the school, dissuaded Schanz from filing an application for rezoning or for permits to convert the school to housing for the JBS employees. Id., ECF No. 112-2, PageID.1466; ECF No. 112-2, PageID.1494-1495; Dep Schanz 1-23-23, ECF No. 112-6, PageID.1538; First Am (verified) Complaint, ECF No. 3, PageID.101.

In 2020, there were some instances when several trespassers breached the school building. Defendant Officer Weber investigated those incidents, but Weber did not voice any concerns about building code violations or safety issues at the school. Dep Weber, ECF No. 112-7, PageID.1545-1547.

But on July 14, 2020, Weber sent an email to City Manager Mitchell, Police Chief Misner, and Building Official Bret ReitKerk, complaining that because Schanz had left windows open, persons had breached the building and that responding to the intrusions was a waste of police resources. Email message series, 7/14/20 and 7/24/20, ECF No. 112-8, PageID.1559; Dep Weber, ECF No. 112-7, PageID.1546-1548.

But the City Building Official did not believe the building was an attractive nuisance and he refused to issue a building code citation. Dep. Reitkerk, 2 ECF No. 112-9, PageID.1568-1568.

Meanwhile, Schanz unsuccessfully tried to develop the school in other ways throughout the years. But finally, in 2020 Schanz told Rayman, "I am going to bring in the JBS employees as tenants." Declaration of Kalvin Schanz, ECF No. 121-2, PageID.1786-1787.

On that same day in 2020, Mitchell emailed the other Defendants stating that, without any other prospects for developing the school, they had to deal with Schanz. Dep Mitchell, ECF No. 112-10, PageID.1591; Email from Mitchell 7/24/20, ECF No. 112-8, PageID.1559.

Shortly thereafter, Mitchell instructed Officer Weber to enter the school the next time he performed perimeter checks and go in and photograph any conditions that he considered health or safety violations.

On July 28, 2020, Weber entered the school without permission from Schanz, without a search warrant, and without contacting ReitKerk, the Building Official. Weber took pictures of alleged code violations and wrote a report which he conveyed to Mitchell and to ReitKerk. Dep. Weber, ECF No. 112-7, PageID.1549-1550; Weber's Report, ECF No. 112-11, PageID.1596.

After a suggestion from Mitchell, ReitKerk issued a demolition notice for the school. Dep ReitKerk, ECF No. 112-9, PageID.1570.

Schanz hired Henry Green, former Executive Director of the State of Michigan's Bureau of Construction Codes, to inspect the building. Green issued a report verifying that the building did not warrant demolition. Declaration of Henry Green, ECF No. 121-9, PageID.1871-1875.

ReitKerk finally inspected the school in September 2022. Shortly thereafter, the city withdrew the demolition notice. Dep Schanz 10/3/22, ECF No. 112-2, PageID.1483, 1487; Dep ReitKerk, ECF No. 112-9, PageID.1576 and Letter from Kirk Scharphorn, ECF No. 112-15, PageID.1621.

The Complaint

On December 6, 2021, in the United States District Court for the Western District of Michigan, Schanz filed his Complaint against the Defendants. Schanz sued the City of Otsego, Aaron Mitchell, and Dave Rayman for violation of 42 U.S.C. § 3617 for coercing, intimidating, threatening and, or interfering with Schanz in the exercise of the fair housing rights, granted and protected under 42 U.S.C. § 3604. Complaint and Jury Demand, ECF No. 1, PageID.1-31; First Amended Complaint, ECF No. 3, PageID.94-126.

Schanz sued Bret ReitKerk under 42 U.S.C. § 1983 for depriving Schanz of procedural and substantive due process in connection with the attempted demolition of the building. Id.

Schanz sued Brandon Weber, Mitchell, Brad Misner, and the City under 42 U.S.C. § 1983 for violating Schanz's 4th Amendment rights by illegally entering the building without a warrant. Id.

The United States District Court for the Western District of Michigan had jurisdiction of this case under 28 U.S.C. §§ 1331 and 1343, because federal questions are presented in this action under the United States Constitution, 42 U.S.C. § 3617, and 42 U.S.C. § 1983.

The Trial Court's Decision

On July 14, 2023, the trial judge granted the Defendants' dispositive motion and, ruling that there was no genuine issue of material fact, dismissed all counts in the Complaint. 18a-51a.

The judge dismissed the claims under FHA section 3617. 24a-31a. First, the judge found that the building was not a dwelling as defined by 42 U.S.C. § 3602(b). The judge stated that Schanz was not a "real developer" because he did not have "real skin in the game." 24a-29a (footnote 4). On that basis, the judge ruled that the building was not a dwelling because it was not "intended for occupancy as, a residence by one or more families…" The judge ruled that, because the building was not a dwelling, Schanz lacked standing under Article III. 29a.

Second, the judge also dismissed the FHA count because he ruled that Schanz had not encouraged or aided any protected party. The judge found that Schanz had not contacted any individual JBS workers directly and there was no evidence that any workers needed local housing. 29a-31a.

The trial judge also dismissed the other claims. 32a-51a.

The Court of Appeals' Decision

On July 31, 2023, Schanz appealed the decision of the district court to the United States Court of Appeals for the Sixth Circuit. Notice of Appeal, ECF No. 136, PageID.2221. Schanz appealed the dismissal of the FHA claim against Rayman, Mitchell, and the City of Otsego. Schanz also appealed the dismissal of the procedural due process claim against ReitKerk. Appellant's Principal Brief, Document 19, pages 21-41 and 45-52. Schanz also asked for a different judge upon remand. Id., 52-56. The Court of Appeals had jurisdiction of this case under 28 U.S.C. § 1291.

The panel of the Court of Appeals affirmed the dismissal of the FHA claim under 42 U.S.C. § 3617 holding that Schanz had not "aided" the JBS employees as required by the statute.[1] The Court claimed that Schanz had not aided the employees because he had not spoken with any employee, there was no evidence the employees were aware of his efforts, he had no contact with JBS management after they expressed no interest in sponsoring Schanz's project, and Schanz never filed any application for a zoning change or for approval of a site plan. 8a-13a.

The Court of Appeals also affirmed the dismissal of the procedural due process claim. 14a-15a.

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1. 42 U.S.C. § 3617 prohibits intimidation or interference "with any person ... on account of his *having* aided or encouraged any other person in the exercise or enjoyment" of FHA rights. 42 U.S.C. § 3617 (emphasis added).

ARGUMENT

I. THE COURT OF APPEALS' DECISION AFFIRMING THE DISMISSAL OF THE FHA CLAIM CONFLICTS WITH THE HOLDING OF *MULDROW V. CITY OF ST LOUIS, MISSOURI*, 144 S. Ct. 967 (2024).

A. In *Muldrow v. City of St. Louis*, the Supreme Court held that, in absence of a statutory requirement, a plaintiff in an employment discrimination case need show only that she suffered some harm, not "*significant* harm" from the discriminatory act.

In *Muldrow v. City of St. Louis, Missouri*, 144 S. Ct. 967 (2024), the Supreme Court held that, in an employment discrimination case under Title VII, the judicially-created requirement that the plaintiff-employee have suffered "*significant* harm" from the discriminatory act cannot stand. Since the statute does not require that the harm be significant, a court has no ability to introduce that requirement. This Court ruled that proof of any amount of harm is sufficient to withstand a dispositive motion. "Muldrow need show only some injury respecting her employment terms or conditions. The transfer must have left her worse off, but need not have left her significantly so." Id., at 976-977.

When construing the FHA, courts look to the decisions interpreting Title VII. "Because Title VII and the FHA employ similar language and 'are part of a coordinated scheme of federal civil rights laws enacted to end discrimination,' [citation omitted]

much of our FHA jurisprudence is drawn from cases interpreting Title VII." *Hollis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 537 (6th Cir. 2014) citing *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 935 (2nd Cir. 1988), *aff'd in part sub nom. Town of Huntington, NY v. Huntington Branch, NAACP*, 488 U.S. 15 (1988); see also *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc*, 576 U.S. 519, 539 (2015) ("The FHA, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of our Nation's economy.") But in construing Section 3617 of the FHA, the Court of Appeals made the same error as the lower courts in *Muldrow*. By measuring the amount of effort necessary to constitute "aiding" under the statute, the Court of Appeals has created a requirement that is not in the statute. Any amount of "injury" was sufficient to withstand a dispositive motion in *Muldrow*. And any amount of "aiding" is sufficient to withstand a dispositive motion under FHA's retaliation provisions. *Muldrow, supra,* at 976-977.

B. The Court of Appeals' decision conflicts with *Muldrow*, because, instead of determining whether Schanz aided the JBS employees to any degree, the Court of Appeals required Schanz to have provided aid that the Court considered significant.

The statute under which Schanz sued provides:

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his

> having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

42 U.S.C. § 3617.

The Court of Appeals denied that Schanz had "aided" the JBS employees. 13a. But the actual rationale was not that Schanz failed to aid the employees, but that Schanz did not aid them *enough*. That rationale conflicts with the Supreme Court's decision in *Muldrow*, because there is no requirement in 42 U.S.C. § 3617 that a plaintiff must provide a certain level of aid.

The Court of Appeals' reasoning is as follows:

> Schanz, by contrast, has presented no evidence that he did anything that aided or encouraged, or that even had the prospect of aiding or encouraging, JBS's immigrant employees in their pursuit of housing. There is no evidence that any of the employees were interested in, or even aware of, Schanz's plan. Schanz admits that he never spoke to or tried to reach any such person. He also admits that he had no further contact with JBS representatives after his sole meeting with them in mid-2017, and that he does not know whether the company had any interest in the building. And Schanz never attempted to file a single application to obtain the necessary approvals to develop the building for his stated purpose.

Schanz, in short, would like to premise § 3617 liability on evidence that he manifested a speculative *desire* to aid or encourage others in the exercise or enjoyment of their FHA rights. But § 3617 prohibits interference "with any person ... on account of his *having* aided or encouraged any other person in the exercise or enjoyment" of FHA rights, not on account of having an abstract, future intention to do so. 42 U.S.C. § 3617 (emphasis added); *see Linkletter* [*v. Western & Southern Financial Group, Inc.*], 851 F.3d [632] at 639 [2017] (considering the "plain-meaning understanding of the word 'encouraged' ").

This is not to say that a plaintiff's actions can come within the protection of § 3617 only if the plaintiff's aid or encouragement is efficacious. As *Linkletter* suggests, advocacy may constitute protected conduct. But we do not need to define the precise boundary between protected and unprotected conduct; wherever it is, we are confident that something more than stray comments or idle talk is required. Schanz's conversations with Mitchell and Rayman do not amount to protected conduct because they had no prospect of aiding or encouraging the immigrant employees at JBS. Rayman was not even a relevant decisionmaker for the fate of the building. Mitchell did have a role on the Planning Commission once he became City Manager, but he was not in office in 2017, the only year during which Schanz made even the slightest efforts to explore a

> plan to house the employees. Schanz is sparse on the details of what his exchanges with these men entailed, but even he does not characterize his comments as being aimed at any practical objectives: he testified that he would mention the topic to them to "prod[ ]" and "poke[ ] them a little," because he thought they were offended by the idea of "some brown folks ... mov[ing] in there." R. 112-2, Schanz Dep.1, PageID.1493. And he denies that his comments sparked "big, long conversations"—just "the dumb look of scoff, of get real, it ain't happening." *Id.* at 1494. Schanz's comments, untethered from any indications of a practical intention to advance his hypothetical plan, could not have aided or encouraged anyone in the exercise or enjoyment of FHA rights.

12a-13a.

The Court of Appeals cited with approval the *Linkletter* case for employing in its analysis the "plain-meaning understanding of the word 'encouraged'." 12a. But the Court did not consider the plain-meaning of the word "aided" which is the protected activity that Schanz engaged in here. The plain-meaning of the word "aiding" is "to provide with what is useful or necessary in achieving an end." Merriam-Webster Dictionary https://www.merriam-webster.com/dictionary/aid (accessed 6-20-24).

Schanz could not achieve the end of providing dormitory-style housing for religious refugees, because the threats and intimidation by the city officials dissuaded him from doing so. Mitchell and Rayman "pretty much

convinced me [Schanz] that if I tried they would run me out of town." Dep Schanz, 1/23/23, ECF No. 112-6, PageID.1538-1539; Appellant's Brief, Document 19, 43-46. But Schanz's efforts certainly provided what is useful, and even necessary, in achieving that end.

In 2017, Scot Reitenour expressed interest in converting the school to apartments and renting them to the JBS workers. In summer 2017, Schanz had Reitenour set up a meeting at the school with Schanz and certain JBS executives, and Dave Rayman. Schanz had Reitenour set up the meeting instead of doing it himself, because Schanz feared Rayman after Rayman had told Schanz, "it ain't happening." Dep Schanz 10-3-22, ECF No. 112-2, PageID.1489-1492.

The company executives toured the school. But, when Rayman and Schanz were apart from JBS the executives and Reitenour, Rayman again told Schanz: "Ain't ever going to happen here. The city is never going to go for that." Dep. Struyk, ECF No. 112-5, PageID.1517.

Later, when neither the JBS officials nor Reitenour showed interest in converting the school to apartments (because the conversion to apartments was too expensive,) Schanz independently moved forward with a new housing design that he planned to market directly to the employees – dormitory style housing, like a college dormitory. Dep Schanz, ECF No. 112-6, PageID.1525 (deposition p. 21-22; Appellant's Brief, Document 19. 40-41.

Schanz consulted with Brian Winn, a contractor who was the former chaplain for the JBS workers and then supervisor of Otsego Township. From his service as

chaplain, Winn was very familiar with the workers' dire need for affordable local housing. At Schanz's request, Winn called the JBS personnel office and learned that the workers were still desperate for local housing. JBS was hiring 10 to 20 immigrants per week. There was a crunch for local housing for those new employees, most of who were living in Lansing or Grand Rapids (some in motels) and reimbursing JBS from their wages for housing and travel costs. Dep Winn, ECF No. 121-1, PageID.1750; Dep Zevalkink, ECF No. 121-5, PageID.1826-1827.

Creating the dormitory was relatively inexpensive and simple. Winn, Schanz's general contractor, prepared an estimate that labor and materials would cost Schanz $1,200,000. Alterations required only building a community kitchen, dining hall, showers and restrooms. Dep Winn, ECF No. 121-1, PageID.1747-1749; Estimate, ECF No. 121-7, PageID.1868. Schanz planned to rent each classroom (bedrooms) to four workers and would provide furniture. This design avoided the much larger capital investment required to convert the school to apartments. Schanz had the financial ability to fund the project by himself. Dep. Schanz, ECF No. 112-6, PageID.1537-1538.

For five years, from 2017 until March 2021, Schanz "prodded" and "poked" Rayman and City Manager Aaron Mitchell every month or two to withdraw their objections to using the school as housing for the JBS employees. Dep. Schanz, ECF No. 112-2, PageID.1493, deposition page 115, emphasis added. By his persistence, Schanz certainly "advocated" for housing for the JBS employees. If "Linkletter's petition-signing supporting the shelter fits within the meaning of the phrase 'aided or encouraged'" [*Linkletter supra*, 851 F.3d at 635,] then Schanz's monthly

beseeching Rayman and Mitchell certainly fits within the definition of "aided or encouraged" in section 3617 of the FHA.

All Schanz's efforts were designed "to provide with what is useful or necessary to achieve an end" – housing for the JBS employees.

That Schanz did not, indeed could not, reach his goal does not mean he did not aid the JBS employees. And the Court of Appeals in this case acknowledged: "This is not to say that a plaintiff's actions can come within the protection of § 3617 only if the plaintiff's aid or encouragement is efficacious. As *Linkletter* suggests, *advocacy* may constitute protected conduct." 12a-13a.

Likewise, "'aiding or encouraging' may occur without actually securing housing for a would-be tenant." *United States v. Gilbert*, 813 F.2d 1523, 1528 (9th Cir. 1987).[2]

Here, the threats from the Defendants dissuaded Schanz from further action and prevented his aid from being efficacious. In fact, unless the threats reasonably

2. In *United States v. Gilbert*, 813 F.2d 1523 (9th Cir. 1987), the court construed 42 U.S.C. § 3631(c) which provides a criminal penalty for "whoever … intimidates or interferes with any citizen … in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap," etc.) The Court held that the director of an adoption organization responsible for the placement and adoption of black and Asian children with families, but who was not directly involved with placing the children in "dwellings," had aided the children within the meaning of 42 U.S.C. § 3631(c) [FHA's criminal provision.]

dissuade a plaintiff from further aiding a protected class, a defendant's threats are not actionable under section 3617 of the FHA. *Cf. Burlington N. & Santa Fe Ry. Co. v. White,* 548 U.S. 53, 67–68 (2006) (construing Title VII of the Civil Rights Act of 1964) *cited in Muldrow v. City of St. Louis, Missouri*, 144 S. Ct. 967, 976 (2024).

The Title VII principle in *Burlington* is applicable to FHA section 3617. S*ee Geraci v. Union Square Condo Ass'n,* 891 F.3d 274, 277 (7th Cir. 2018*); United States v. Gilbert,* 813 F.2d 1523, 1528 (9th Cir. 1987); *Hatfield v. Cottages on 78th Cmty. Ass'n*, No. 21-4035, 2022 WL 2452379, at *9 (10th Cir., July 6, 2022).

Yet, the Court of Appeals ignored Schanz's argument that the threats themselves prevented Schanz from aiding the JBS employees more than Schanz did. Appellant's Brief, Document 19, 44-47; *see Smith v. Stechel,* 510 F.2d 1162, 1164 (9th Cir. 1975) ("[§ 3617] deals with a situation where no discriminatory housing practice may have occurred at all because the would-be tenant has been discouraged from asserting [ ] rights").

By all Schanz's efforts (hosting the meeting with JBS officials, contacting JBS personnel office, obtaining a quote from a contractor, and repeatedly "prodding" Rayman and Mitchell to withdraw their objections to the project,) Schanz certainly *advocated* for the JBS employees even though Schanz did not reach his goal.

Ironically, despite its acknowledging that aiding need not be efficacious, the Court of Appeals' rationale for finding Schanz had not aided the workers is centered around the criticism that his efforts would not have been efficacious.

The Court of Appeals found that, "There is no evidence that any of the employees were interested in, or even aware of, Schanz's plan. Schanz admits that he never spoke to or tried to reach any such person." 12a. But that point relates to whether the employees would have rented from Schanz if he had completed the project, *i.e., whether Schanz's efforts would have been efficacious.* And even if no employee rented from Schanz, his efforts would still have been designed "to provide with what is useful or necessary" to "achieve the end" of housing for the JBS employees. Merriam-Webster Dictionary https://www.merriam-webster.com/dictionary/aid (accessed 6-20-24).

Moreover, even if, *arguendo*, the JBS workers were not aware of Schanz's specific plan, Schanz had a reliable source that the JBS workers were desperately looking for affordable local housing. The JBS personnel department conveyed that to Brian Winn, Schanz's agent. Dep Winn, ECF No. 121-1, PageID.1750; Dep Zevalkink, ECF No. 121-5, PageID.1826-1827. Schanz did not need to talk to individual employees. A reliable source told Schanz that there was great demand for housing.

The Court of Appeals stated, "[Schanz] also admits that he had no further contact with JBS representatives after his sole meeting with them in mid-2017, and that he does not know whether the company had any interest in the building." 12a. But Schanz did not need the support or financial assistance of JBS. Schanz wanted to deal with the grassroot workers directly through his friends that worked at the plant and by a billboard Schanz owned near the plant. Dep Schanz, ECF No. 112-6, PageID.1537-1538.

The Court of Appeals stated: "Schanz's conversations with Mitchell and Rayman do not amount to protected

conduct because they had no prospect of aiding or encouraging the immigrant employees at JBS." 13a. By that statement, the Court of Appeals again improperly tied whether Schanz aided the employees to whether his efforts would have been efficacious. Thus, the Court of Appeals contradicted its own principle that "[t]his is not to say that a plaintiff's actions can come within the protection of § 3617 only if the plaintiff's aid or encouragement is efficacious. As *Linkletter* suggests, *advocacy* may constitute protected conduct." 12a-13a.

CONCLUSION

By reviewing the decision below, this Court can make explicit the following important principles of law:

1. When construing the FHA, courts should look to the decisions interpreting Title VII, and courts should specifically look to:

    a. the decision in *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006), as applied to the FHA, that unless the intimidation reasonably dissuades a plaintiff from aiding a protected class, a defendant's intimidation is not actionable under 42 U.S.C. § 3617, and,

    b. the holding in *Muldrow v. City of St. Louis, Missouri,* 144 S. Ct. 967 (2024), as applied to the FHA, that when a court construes the terms "aiding or encouraging" in 42 U.S.C. § 3617, any amount of aid or encouragement suffices to overcome a motion for summary judgment.

For the above reasons, Schanz asks this Court to issue a writ of certiorari in this case.

Respectfully submitted,

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July 15, 2024

APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED APRIL 15, 2024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-1705

KALVIN SCHANZ,

Plaintiff-Appellant,

v.

CITY OF OTSEGO, MICHIGAN *et al.,*

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

Before: LARSEN, READLER, and DAVIS, Circuit Judges.

OPINION

LARSEN, Circuit Judge. Kalvin Schanz bought a building in Otsego, Michigan, and explored the possibility of converting it into dormitory-style housing for nearby immigrant workers. In response to that idea, he claims, local officials intimidated and retaliated against him in violation of the Fair Housing Act. He also asserts that one official violated his procedural-due-process rights. So

Schanz sued the City of Otsego and several of its officials and employees under the Fair Housing Act and 42 U.S.C. § 1983. The district court entered summary judgment in favor of defendants. We AFFIRM.

I.

In May 2013, Kalvin Schanz purchased a vacant school building located at 313 West Allegan Street in Otsego, Michigan. Schanz had no particular plans in mind when he bought the building, but over the years he entertained ideas for several development projects. This lawsuit springs from an idea that Schanz's friend, Brian Winn, suggested to him. Winn told Schanz that JBS Foods USA, which operated a meatpacking facility near Otsego, was in search of housing for some of its employees. Many JBS employees were immigrants and religious refugees who required assistance in finding housing. Schanz thought that the school building could be outfitted to provide dormitory-style housing to some of these employees, so, in 2017, he arranged for several JBS representatives to tour the building with him and a developer.

Schanz claims that his idea of providing housing to JBS's immigrant employees provoked opposition from two City of Otsego officials: Dave Rayman, the Economic Development Director; and Aaron Mitchell, the City Manager. Rayman had been Otsego's Economic Development Director since 2009. But he was not on the City's Planning Commission, and he had no role with respect to building code inspections or site plan approvals. As City Manager, Mitchell was a member of the Planning

Commission. But he did not assume this role until 2018; before that, he worked for another municipality.

Schanz says that he mentioned the idea of housing JBS employees to Rayman and Mitchell repeatedly over several years, but that they insisted that it would "never happen[]," that Schanz would "get run out of town for that one," and that the "building will have to come down." R. 112-2, Schanz Dep.1, PageID 1491, 1494. Schanz characterizes these responses as racist. And Schanz's friend Winn testified that Rayman said "the city w[ould] never allow [Schanz] to run a refugee camp out of that school." R. 121-1, Winn Dep., PageID 1753. Schanz was "pissed off" and "embarrassed . . . that some person would have a problem with them nice people working over at that factory." R. 112-2, Schanz Dep.1, PageID 1491. So, he claims, he would mention the issue to Rayman or Mitchell "every couple months"—in part, he says, to "prod[] them a little after [he] knew that it offended them." *Id.* at 1493. Rayman denies ever expressing opposition to Schanz's idea of housing JBS's immigrant employees, and Mitchell says that he had never heard of the idea until this lawsuit was filed.

Despite his alleged persistent comments to Rayman and Mitchell concerning the development idea, Schanz never took steps to get his plan off the ground. He had only one meeting with JBS representatives, and he asserts that he "never met or talked to any JBS employees except for that meeting, period." *Id.* at 1492. He admits that he has no knowledge of whether "JBS had an interest in [the] building," but he notes that "[a]t the meeting they were

very nice to [him]." *Id.* at 1494. And Schanz "never filed" any application with the City of Otsego that would have been necessary to commence his contemplated project. *Id.* Nor did he ever speak to or interact with any of the immigrant employees of JBS who were, in his vision, the prospective tenants of the school building. Besides the single meeting with JBS representatives, the only tangible step that Schanz took to advance his idea was to brainstorm with his friend Winn, a contractor, which resulted in some handwritten cost estimates on a piece of notebook paper. But their brainstorming did not lead to any action—Schanz never hired a contractor or engineer, never secured financing, and never filed paperwork or attempted to appear before any local building or zoning body.

In subsequent years, Schanz explored other possible plans for the building. At one point, he tried to work with a developer to get public grants for low-income housing, but that went nowhere. Later, he entered into a purchase agreement with another housing developer, but the buyer backed out after determining that the project was not financially feasible. Still, over the years, Schanz continued to make comments to Rayman or Mitchell about housing JBS's immigrant employees.

On several occasions in 2020, Schanz experienced problems with break-ins and vandalism at the building. He says that tensions arose between him and the police department regarding his habit of leaving the windows open and unsecured. On one occasion in mid-July of that year, the police had to search the building for "a prowler

reported in the area." R. 108-17, Weber Dep., PageID 1429. The responding officer, Brandon Weber, called for backup because he was concerned about searching a large, unsecured building alone. After Weber's dispatch to the building in mid-July 2020, he wrote to several city officials, including Mitchell, complaining of Schanz's "fail[ure] to take even the most basic steps to secure the building." R. 108-7, Weber Email, PageID 1308. In his view, the building was "an attractive nuisance" and "a significant safety hazard," especially for the school children who, he said, frequented it. *Id.* at 1309. Keeping watch of Schanz's building was, Weber thought, "an egregious misuse of police resources," so he asked for advice on how to "mitigate this problem." *Id.*

Mitchell responded that, "unfortunately," a potential purchaser of the building had backed out of its deal with Schanz. *Id.* at 1308. Thus, they would have to "deal with [Schanz]" and "do something to get this building buttoned up." *Id.* According to Weber, Mitchell also separately told him that he should "get some pictures" of the building's interior the next time he did "door checks and perimeter checks." R. 108-17, Weber Dep., PageID 1431. That way, they could send the pictures to the code inspector for a health and safety evaluation. So, on July 28, 2020, Weber entered the school building and took forty photographs of what seemed to him to be health and safety concerns. Weber composed a report and sent it to Mitchell and the code inspector, Bret Reitkerk.

After receiving Weber's report, Reitkerk issued a demolition letter for the school building on August 24,

2020. The letter explained that "[a] police report shows consistent break-ins, failures in the roof system, mold, interior fall hazards, and an obvious lack of maintenance," and that "[t]he building is abandoned, neglected, and unsecured." R. 112-14, Demolition Notice, PageID 1619. The letter informed Schanz that he had "the right to appeal this notice" by sending "a written request for an appeals meeting within 20 days upon receipt of this notice." *Id.* at 1620.

Reitkerk sent the letter to Schanz by certified mail, using the mailing address listed on the tax records for the school building. As it turned out, that address was the home of Schanz's mother, and Schanz did not live there. (He lived two doors down.) His mother signed for the letter on September 4, 2020. Schanz claims that he did not receive the letter from his mother until October. However, having heard around town that he was going to be "dinged" by the City, in September Schanz texted Rayman and Mitchell asking for "a copy of this notice everybody is talking about," but to no avail. *Id.* at 1474. On September 21, he went to Reitkerk's office and "begg[ed]" for the letter. *Id.* at 1476. Schanz did not receive a copy of the letter, but he and Reitkerk exchanged words about the possibility of appealing the demolition notice or challenging it in court.

On March 23, 2021, the City of Otsego initiated an ordinance enforcement action against Schanz in state court. The day before trial was set to begin, the City and Schanz, through counsel, reached a settlement agreement by which the City would dismiss its enforcement

action without prejudice and Schanz would allow City representatives to inspect the building. Despite the parties' agreement, however, Schanz instructed his attorney to deny entry to the City's representatives when the time came for their scheduled inspection. Eventually, an inspection took place on September 8, 2022; Schanz corrected the relevant deficiencies, and the City rescinded its demolition notice. The City represents that there are currently no issues relating to the condition of the building.

In the meantime, Schanz, through different counsel, filed the instant suit in federal court, seeking damages for violations of the Fair Housing Act (FHA), the Fourth Amendment, and the Fourteenth Amendment. As relevant to this appeal, the operative complaint names as defendants the City of Otsego and Mitchell, Rayman, and Reitkerk, each in their individual and official capacities.

After extensive discovery, defendants moved for summary judgment on all claims, and Schanz moved for summary judgment on his Fourth Amendment claim. The district court granted defendants' motion and denied Schanz's motion. Schanz timely appealed.

II.

On appeal, Schanz contends that the district court erred in entering summary judgment on his claim under the FHA and on his procedural-due-process claim under the Fourteenth Amendment. He does not renew his Fourth Amendment claim. We review a district court's grant of summary judgment de novo. *Huckaby v. Priest*, 636 F.3d

211, 216 (6th Cir. 2011). "Summary judgment is proper when the 'movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Kareem v. Cuyahoga Cnty. Bd. of Elections*, 95 F.4th 1019, 1021 (6th Cir. 2024) (quoting Fed. R. Civ. P. 56(a)). Because Schanz bears the burden of proof at trial, he can survive a summary-judgment motion only if he "has presented a jury question as to each element" of his claim—that is, if he has presented "evidence on which the trier of fact could find" in his favor. *Davis v. McCourt*, 226 F.3d 506, 511 (6th Cir. 2000) (citation omitted). At this stage, we view the evidence in the light most favorable to Schanz and draw all reasonable inferences in his favor. *Rafferty v. Trumbull County*, 915 F.3d 1087, 1093 (6th Cir. 2019).

We first address Schanz's FHA claim and then turn to his procedural-due-process claim.

A.

1.

Schanz brings his FHA claim against Mitchell, Rayman, and the City of Otsego. Before we reach the merits of this claim, however, we address defendants' suggestion that Schanz lacks standing. To establish Article III standing at the summary-judgment stage, Schanz must put forth evidence, with respect to each claim, showing that defendants' actions caused him an injury in fact that is redressable in these proceedings. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 431, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021).

Defendants argue that Schanz fails at this threshold step because Schanz's plans were too speculative to turn the school building into a "dwelling" covered by the FHA. *See* 42 U.S.C. § 3602(b) (defining "[d]welling" to include "any building . . . intended for occupancy as[] a residence"). This reasoning is mistaken. If the building is not a "dwelling" under the FHA, Schanz might lack a valid claim to relief under the statute.[1] But that would not defeat Schanz's standing for Article III purposes. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128, 134 S. Ct. 1377, 188 L. Ed. 2d 392 & n.4 (2014). To have standing Schanz must "show only that he 'has a right to relief *if* the Court accepts [his] interpretation of the constitutional or statutory laws on which the complaint relies.'" *Ward v. NPAS, Inc.*, 63 F.4th 576, 582 (6th Cir. 2023) (alteration in original) (quoting *CHKRS, LLC v. City of Dublin*, 984 F.3d 483, 488 (6th Cir. 2021)). In other words, "just because a plaintiff's claim might fail on the *merits* does not deprive the plaintiff of *standing* to assert it." *Id.* (brackets omitted).

We are satisfied that Schanz has standing to bring his § 3617 claim for damages. For purposes of evaluating standing, we assume that Schanz's statutory arguments are correct. *Id.* And Schanz has presented evidence that, if believed, could show that Rayman repeatedly threatened to have Schanz's building demolished and, eventually, in coordination with Mitchell, caused the City and its representatives to issue a baseless demolition notice and

1. To be clear, we express no view regarding whether or how a "dwelling" must be involved for there to be a violation of 42 U.S.C. § 3617.

enforcement action against Schanz. At this stage of the litigation, that is sufficient to establish an injury in fact. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). This injury can be redressed by an award of damages by a federal court. *See* 42 U.S.C. § 3613(c)(1) (authorizing a court to award "actual and punitive damages"). Accordingly, Schanz has standing to bring his FHA claim, and we proceed to the merits.

2.

Schanz brings his claim under 42 U.S.C. § 3617. That provision of the FHA makes it

> unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

Of these latter sections, Schanz says § 3604 is relevant here. It "prohibit[s] various forms of discrimination relating to housing" on the basis of race, color, religion, sex, familial status, or national origin—such as "mak[ing] unavailable or deny[ing] a dwelling" or "discriminat[ing] . . . in the terms, conditions, or privileges of sale or rental of a dwelling." *Hidden Village, LLC v. City of Lakewood*, 734 F.3d 519, 528 (6th Cir. 2013); 42 U.S.C. § 3604(a). To prevail on a claim under § 3617's "aided or encouraged"

clause, a plaintiff must prove that: (1) he "aided or encouraged another's enjoyment of the housing rights protected by §§ 3603-06"; (2) the defendant engaged in conduct amounting to coercion, intimidation, threat, or interference; and (3) there was a nexus between the defendant's interference and the underlying FHA rights. *Linkletter v. W. & S. Fin. Group, Inc.*, 851 F.3d 632, 638-40 (6th Cir. 2017) (cleaned up); *see Hood v. Midwest Sav. Bank*, 95 F. App'x 768, 779 (6th Cir. 2004). A plaintiff must also "demonstrate 'discriminatory animus'" on the part of the defendant. *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 613 (6th Cir. 2012) (quoting *Mich. Prot. & Advocacy Serv., Inc. v. Babin*, 18 F.3d 337, 347 (6th Cir. 1994)).

The district court concluded that Schanz failed to create a triable issue of fact on the first element, and we agree. Although we have never delineated the precise contours of the "aided or encouraged" element, Schanz's evidence fails to satisfy any plausible interpretation of it. Our most relevant case is *Linkletter*. There, the plaintiff had signed a petition supporting residents of a women's shelter in their ongoing dispute with an insurance company, which was seeking to force the shelter out of the neighborhood and acquire the property. 851 F.3d at 636, 638-39. The plaintiff had accepted an offer of employment from the same insurance company. *Id.* at 635. But the insurance company rescinded the offer, citing the plaintiff's support for the shelter as its reason. *Id.* We held that the plaintiff had adequately stated a claim under § 3617. "A plain-meaning understanding of the word 'encouraged,'" we explained, "clearly covers the act of signing a petition advocating support for a women's

shelter." *Id.* at 639. This was especially true given the "timing of the petition," which the plaintiff had signed "while the dispute between the shelter and [the insurance company] was ongoing." *Id.* at 638, 636.

Schanz, by contrast, has presented no evidence that he did anything that aided or encouraged, or that even had the prospect of aiding or encouraging, JBS's immigrant employees in their pursuit of housing. There is no evidence that any of the employees were interested in, or even aware of, Schanz's plan. Schanz admits that he never spoke to or tried to reach any such person. He also admits that he had no further contact with JBS representatives after his sole meeting with them in mid-2017, and that he does not know whether the company had any interest in the building. And Schanz never attempted to file a single application to obtain the necessary approvals to develop the building for his stated purpose.

Schanz, in short, would like to premise § 3617 liability on evidence that he manifested a speculative *desire* to aid or encourage others in the exercise or enjoyment of their FHA rights. But § 3617 prohibits interference "with any person . . . on account of his *having* aided or encouraged any other person in the exercise or enjoyment" of FHA rights, not on account of having an abstract, future intention to do so. 42 U.S.C. § 3617 (emphasis added); *see Linkletter*, 851 F.3d at 639 (considering the "plain-meaning understanding of the word 'encouraged'").

This is not to say that a plaintiff's actions can come within the protection of § 3617 only if the plaintiff's aid

or encouragement is efficacious. As *Linkletter* suggests, advocacy may constitute protected conduct. But we do not need to define the precise boundary between protected and unprotected conduct; wherever it is, we are confident that something more than stray comments or idle talk is required. Schanz's conversations with Mitchell and Rayman do not amount to protected conduct because they had no prospect of aiding or encouraging the immigrant employees at JBS. Rayman was not even a relevant decisionmaker for the fate of the building. Mitchell did have a role on the Planning Commission once he became City Manager, but he was not in office in 2017, the only year during which Schanz made even the slightest efforts to explore a plan to house the employees. Schanz is sparse on the details of what his exchanges with these men entailed, but even he does not characterize his comments as being aimed at any practical objectives: he testified that he would mention the topic to them to "prod[]" and "poke[] them a little," because he thought they were offended by the idea of "some brown folks . . . mov[ing] in there." R. 112-2, Schanz Dep.1, PageID 1493. And he denies that his comments sparked "big, long conversations"—just "the dumb look of scoff, of get real, it ain't happening." *Id.* at 1494. Schanz's comments, untethered from any indications of a practical intention to advance his hypothetical plan, could not have aided or encouraged anyone in the exercise or enjoyment of FHA rights.

Accordingly, we affirm the district court's grant of summary judgment to Mitchell, Rayman, and the City on Schanz's FHA claim.

B.

Schanz also contends that the district court erred in granting summary judgment to Reitkerk on the 42 U.S.C. § 1983 claim for a violation of procedural due process. To prevail on a procedural-due-process claim, a plaintiff must prove that: (1) he had a constitutionally protected interest, (2) the government deprived him of that interest, and (3) the government did not afford him constitutionally adequate process. *Golf Village N., LLC v. City of Powell*, 42 F.4th 593, 598 (6th Cir. 2022). Because the Constitution does not create property interests, we look to "an independent source such as state law" to determine whether a plaintiff has identified an interest protected by the Due Process Clause. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

Schanz brings this claim against Reitkerk for allegedly failing to timely provide him with the demolition notice. But Schanz has not shown that he was deprived of a property interest. The City eventually dismissed its state-court enforcement action and rescinded its demolition notice, so his building was never demolished. To the extent Schanz believes that Reitkerk did not follow the appropriate procedures before issuing the demolition notice, this gets him nowhere: he does not have a property interest in procedures themselves. *Richardson v. Township of Brady*, 218 F.3d 508, 517-18 (6th Cir. 2000). Similarly unavailing is his argument that the demolition notice reduced the market value of his property by requiring him to disclose the notice to

any buyer during the pendency of the demolition matter. Not only does Schanz fail to offer any evidence that the property value was reduced, either while the demolition matter remained pending or after its resolution; but this argument also turns on the premise that the *notice itself* deprived Schanz of a property interest. Yet Schanz has identified no authority to support the notion that state law confers on him a property interest in being free of a notice of an appealable building-code order and of any market consequences it might entail.

Schanz's procedural-due-process claim fails because he has presented no evidence that he was deprived of a protected property interest.

* * *

For the foregoing reasons, we AFFIRM the judgment of the district court.

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-1705

KALVIN SCHANZ,

Plaintiff-Appellant,

v.

CITY OF OTSEGO, MICHIGAN, A MUNICIPAL CORPORATION, BRANDON WEBER, AARON MITCHELL, DAVE RAYMAN, BRET RIETKERK, AND BRAD MISNER, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES,

Defendants-Appellees.

Before: LARSEN, READLER, and DAVIS, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court for the Western District of Michigan at Grand Rapids.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the district court's grant of summary judgment in favor of the defendants is AFFIRMED.

Appendix A

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED JULY 14, 2023

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

CASE NO. 1:21-cv-1028

KALVIN SCHANZ,

Plaintiff,

v.

CITY OF OTSEGO, MICHIGAN, *et al.*,

Defendants.

July 14, 2023, Decided;
July 14, 2023, Filed

HON. ROBERT J. JONKER

OPINION AND ORDER

Plaintiff Kalvin Schanz ("Plaintiff" or "Schanz") purchased a vacant elementary school in 2013. He says that he planned to convert that property into housing for religious refugees and Pacific Islanders who could work at a nearby meat-packing facility, but that Defendants opposed his idea out of racial animus. Defendants deny that and

say Plaintiff had no actual housing plan or opportunity in any event. Defendants admit requiring Plaintiff to secure and repair his property but only because it had become a recurring subject of nuisance calls and only in compliance with all the process legally due Plaintiff. Defendants move for summary judgment on all counts and Plaintiff moves on his Fourth Amendment Claim. The Court heard oral argument on the motions on May 17, 2023. Based on all matters of record, the Court is satisfied that there is no genuine issue of material fact, and that Defendants are entitled to judgment as a matter of law.

Factual Background

In 2013, Schanz purchased a former elementary school (hereinafter, "the Property") in Otsego, Michigan. (ECF No. 112, PageID.1441.) The Property was located in an area that is zoned for single-family residences. (ECF No. 108, PageID.1149.) Educational institutions and two-family residences are permitted under special use, but all other residential development would require rezoning. (*Id.*) As early as 2015, Schanz considered turning the facility into "dormitorystyle housing for a multitude of JBS employees," who were "all religious refuges" with national origins from "Africa, the Middle East, and Asia." (ECF No. 112, PageID.1441.) Schanz alleges that also in 2015, Defendant Dave Rayman, the Director of Development for the City of Otsego, objected to the idea, saying "That ain't happening. Get real. You'll get run out of town." (*Id.*, PageID.1442.) Schanz alleges that over the next five or so years, Plaintiff periodically approached Defendant Rayman and City Manager Aaron Mitchell about using

the school as housing and was rebuffed. (*Id.*, PageID.1443.) Schanz understood these objections to be because the potential residents were not white. (*Id.*) Schanz alleges that Mitchell and Rayman's "racist attitude" and "threats", such as "you'd get run out of town for that one" deterred him from filing an application to rezone the Property or for the permits that would be required to convert the vacant school building into housing. (*Id.*) Other development options he pursued ultimately fell through. (ECF No. 112, PageID.1446.)

On several occasions in 2020, Defendant Brendon Weber, a police officer, interacted with Schanz and the Property. (ECF No. 112, PageID.1444.) In January of 2020, Schanz called for assistance when some teenagers entered the school building. (*Id.*) Weber responded, making arrests, and authoring a report. (*Id.*) Weber recalls multiple other instances, including pursuing a fleeing suspect into the Property through a broken window. (*Id.*) On July 14, 2020, Weber sent an email to the City Manager Mitchell, Police Chief Misner, and Bret Reitkerk, a code inspector[1], about the state of the Property, noting that Schanz "routinely fails to take even the most basic steps to secure the building" only to "complain[] vociferously when vandalism and thefts occur." (ECF No. 112-8, PageID.1560.) In the same email, Weber describes open or unlocked windows, "open voids, asbestos laden floor tiles that are being haphazardly scraped off the floor, leaks in the roof" and open gates to access the playground

1. Reitkerk is employed by PCI, which is the company the City contracts with for building inspection services. (ECF No. 108, PageID.1151.)

area. Weber's email specifically notes that the Property is attractive to children and expressed concern about it posing a safety hazard because it was unsecured. (*Id.*, PageID.1560-61.)

Weber testified that during an in-person conversation after his email, Mitchell suggested that the next time Weber was in the building, he should take pictures that could be shared with city inspectors. (ECF No. 112, PageID.1445.) On July 28, 2020, Weber entered the school without a warrant or permission from Schanz. (*Id.*, PageID.1447.) Weber took photographs and prepared a report describing dangerous conditions, which he delivered to Mitchell and Reitkerk. (*Id.*)

After a review of the photos, Reitkerk sent Schanz a Notice letter of demolition dated August 24, 2020. (ECF No. 112-14, PageID.1619.) That document stated that the recipient had 120 days from receipt to have the structure demolished and all debris removed. (*Id.*) It also explained that to appeal the notice, one must send a written request for an appeal meeting within 20 days of receipt. (*Id.*, PageID.1620.) The notice was mailed to the address on the tax record for the School, which Schanz alleges is his parents' address. (ECF No. 112, PageID.1448.) Schanz's mother signed for the certified letter on September 4, 2020. (*Id.*) Schanz testified that she never told him about the letter and that he only received it in early October 2020. (*Id.*) Even so, on September 21, 2020, Schanz met with Reitkerk to discuss these issues. (ECF No. 108, PageID.1151.) During that meeting, Schanz testified that Mr. Reitkerk told him that he could appeal the Notice. (*Id.*) At no time did Schanz file that written request for appeal.

Appendix B

On March 23, 2021, the City implemented an enforcement action. (ECF No. 108, PageID.1146.) Schanz filed this action in December 2021. (ECF No. 1.) The City ultimately dismissed the enforcement action as part of a negotiated settlement which permitted the City to conduct an inspection of the building. (ECF No. 108, PageID.1152.) That inspection was originally scheduled for February 28, 2022, but Schanz, at the direction of counsel, did not permit the inspectors to enter the Property. (ECF No. 108-3, PageID.1264.) The inspection ultimately took place on September 8, 2022. (ECF No. 108, PageID.1153.) The demolition notice was rescinded in September 2022. (ECF No. 112-15, PageID.1622.)

Legal Standards

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Summary judgment is appropriate only if, "taking the evidence in the light most favorable to the non-moving party, 'the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *La Quinta Corp. v. Heartland Props., LLC*, 603 F.3d 327, 335 (6th Cir. 2010) (quoting Fed. R. Civ. P. 56). In considering a motion for summary judgment, the Court draws all justifiable inferences in favor of the non-moving party. *Bobo v. United Parcel Service, Inc.*, 665 F.3d 741 (6th Cir. 2012). On a summary judgment motion, "the ultimate question . . . is whether the evidence presents a sufficient factual

disagreement to require submission of a particular legal claim to the jury or whether the evidence on the claim is so one-sided that [the moving party] should prevail as a matter of law." *Id.* at 748-49.

When cross motions for summary judgment are filed, the court must "evaluate each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under consideration." *Taft Broad. Co. v. United States*, 929 F.2d 240, 248 (6th Cir. 1991) (quoting *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1391)). "[I]f the moving party also bears the burden of persuasion at trial, the moving party's initial summary judgment burden is 'higher in that it must show that the record contains evidence satisfying the burden of persuasion and that the evidence is so powerful that no reasonable jury would be free to disbelieve it.'" *Cockrel v. Shelby Cnty. Sch. Dist.*, 270 F.3d 1036, 1056 (6th Cir. 2001) (quoting *Moore's Federal Practice*).

Discussion

In November 2022, Schanz filed the operative Complaint in this matter, which asserts three counts: (1) a Fair Housing Act violation against Defendants Mitchell, Rayman, and the City; (2) a Due Process Violation against Defendant Reitkerk; and (3) a Fourth Amendment Violation for illegal search against Defendants Weber, Mitchell, Misner, and the City. (ECF No. 84.) Defendants have moved for summary judgment on all counts, while Schanz has cross-moved for summary judgment only regarding the allegedly illegal search by Officer Weber.

Appendix B

1) The Fair Housing Claims

The Fair Housing Act ("FHA") prohibits discrimination in the "sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604. Any "aggrieved person", which the Act defines as one who "(1) claims to have been injured by a discriminatory housing practice; or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur" may bring suit. *Id.* § 3602(i). "Under the Fair Housing Act, a plaintiff thus need show only that he or she (1) has suffered an injury in fact (2) that is causally connected to the defendants' conduct and (3) that is likely to be redressed by a favorable ruling." *Hamad v. Woodcrest Condo. Ass'n*, 328 F.3d 224, 230-31 (6th Cir. 2003) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)); *see also DeBolt v. Espy*, 47 F.3d 777, 779-82 (6th Cir.1995) (applying three *Lujan* factors to determine standing in a Fair Housing Act case). Defendants are entitled to summary judgment on this claim.

a) The Property is not a "dwelling."

Defendants argue that Schanz has no standing to assert a claim under the FHA for multiple reasons. (ECF No. 108, PageID.1154.) First, Defendants argue that the FHA does not apply because the Property is not a dwelling within the meaning of the statute. The Fair Housing Act defines "dwelling" as: "any building, structure, or portion thereof which is occupied as, or designed or intended for

occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof." 42 U.S.C. § 3602(b). Defendants argue that the Property was not designed for or intended for occupancy nor was it occupied as a residence. (ECF No. 108, PageID.1156.) Plaintiff counters that the Fair Housing Act is more broadly applicable and that the Property meets the definition. (ECF No.121, PageID.1708.) Specifically, Plaintiff argues that the language of "intended for occupancy" includes Schanz's future intention to use it for dormitory-style housing. (*Id.*)

The Supreme Court "has repeatedly written that the FHA's definition of person 'aggrieved' reflects a congressional intent to confer standing broadly" and "that the definition of 'person aggrieved' in the original version of the FHA, § 810(a), 82 Stat. 85, 'showed a congressional intention to define standing as broadly as is permitted by Article III of the Constitution.'" *Bank of Am. Corp. v. City of Miami, Fla.*, 581 U.S. 189, 197 (2017) (quoting *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972) (additional internal quotations and citations omitted). Whether, and if so how, this principle specifically applies to the term "dwelling" is not something the Supreme Court has addressed nor has the Supreme Court explicitly addressed the "intended for occupancy" prong of the term "dwelling. Neither has the Sixth Circuit. Several other circuits have. The Third Circuit relied on *Trafficante*'s "generous" interpretation of the statute when finding that a drug- and alcohol- treatment center qualified as a dwelling. *Lakeside Resort Enterprises,*

LP v. Bd. of Sup'rs of Palmyra Twp., 455 F.3d 154, 156 (3d Cir. 2006), as amended (Aug. 31, 2006). The Eleventh Circuit concluded that halfway houses were dwellings. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1214 (11th Cir. 2008). Both Circuits focused on factors like how long occupants expected to remain in the building and whether the occupants treated the building as a home. As the Eleventh Circuit put it, "the house, apartment, condominium, or co-op that you live in is a "residence," but the hotel you stay in while vacationing at Disney World is not." *Schwarz*, 544 F.3d at 1214. In Court's view, a dormitory would fall squarely within the meaning of "dwelling."

But this is not enough to answer the question here because everyone agrees the building was not and never has been a dormitory. In fact, no one has ever resided in the school on any terms.[2] Is the owner's suggestion that he plans one day to turn the school into dormitory-style housing for marginalized individuals enough to qualify? The answer on this record is "no." Schanz never had anything more than a speculative concept. Neither he, nor anyone else, including the meat-packing plant, had an

2. Before Schanz's purchase, a liberal arts college owned the Property. The Complaint alleges that previous owners "operated a Catholic liberal arts college" on the Property and that there "were dormitory rooms in part of" the Property. 3d Am. Compl. ¶ 20. But Defendants state, and Plaintiff does not dispute, that, in fact, the "project did not materialize." ECF No. 108, PageID.1149. The previous owners had applied for and received a special land use permit for the project, which expired in 2009 when the project did not proceed-- well before Schanz purchased the Property.

identified group of religious refugees or Pacific Islanders looking for worker housing. Plaintiff never filed any papers aimed at the necessary zoning changes. Schanz never spent any money demonstrating even the basic feasibility of converting a vacated elementary school into a residence for a group of adults. At most Plaintiff says he talked to a contractor (ECF No. 121, PageID.1705.) No matter how far the "intended for" prong may reach, it cannot cover Schanz's, or anyone else's, mere speculative concept without overreaching the case or controversy limit of Article III. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021).

Plaintiff argued at oral argument that Schanz's idea was enough and directed the Court to consider the many Fair Housing Act cases brought by developers. But those cases actually underscore the point because all the developer cases involve players with real skin in the game and not simply a speculative concept. In *Park View Heights v. City of Blackjack*, 467 F.2d 1208 (8th Cir. 1972), the Eighth Circuit held that two non-profits involved in sponsoring and developing a specific public housing project had standing because "[i]t is as important to protect the right of sponsors and developers to be free from unconstitutional interferences in planning, developing, and building an integrated housing project, as it is to protect the rights of potential tenants of such projects. 467 F.2d at 1212. In *Park View Heights*, the plaintiffs sought to invalidate a zoning ordinance which effectively barred the type of housing they planned to build. One of the corporate plaintiffs signed a sales contract for land and had advanced the religious organizations "seed

money" financing." *Id.* at 1210. An initial application was submitted to the federal government about building the apartments. *Id.* The federal government had even issued a feasibility letter. *Id.* at 1211. After that, the local residents incorporated into the city and ultimately passed a new ordinance prohibiting the apartments from being built. *Id.* The Eight Circuit relied on the economic interest of the corporate entities to satisfy the standing requirements, as well as having sufficiently close interests to individual plaintiffs concerned with equal protection violations to satisfy the *Brewer* test.

Similarly, in *U.S. Gen., Inc. v. City of Joliet*, 432 F. Supp. 346 (N.D. Ill. 1977), the developer plaintiff had bought or purchased options on each of the sites approved for the low-income housing projects and entered into a contract with the city's Housing Authority to construct the rental units. The contract required the plaintiff to secure a zoning change, so the developer submitted a rezoning proposal to the planning commission, which recommended it be accepted. The Council blocked it and the plaintiff developer sued.[3]

In these cases, the developer who was asserting standing under the Fair Housing Act had done far more to demonstrate that they were, in fact, going to build housing. Here, Schanz never submitted a plan or applied for a zoning ordinance. The most concrete step Schanz took here was talking to a contractor. (ECF No. 121,

3. *U.S. Gen., Inc.* also references *Warth v. Seldin*, 422 U.S. 490 (1975), but in *Warth*, the Supreme Court ultimately concluded no plaintiff had standing. *Warth* does not help Schanz.

PageID.1705.) The record simply does not support that Schanz had more than a speculative concept to ever convert the building. Faced with this record, the Court must consider the Property as it was, which was an unoccupied school building in a single-family residence district permitting special use applications for educational or two-family housing only. That is not a dwelling within the meaning of the Fair Housing Act and stretching the "intended for" prong to cover this situation would exceed the bounds of Article III standing. Therefore, Schanz's claim fails as a matter of law.

b) Schanz Did Not "Aid or Encourage" Any Protected Party.

Even if the Property qualified as a dwelling, Schanz's Fair Housing Act claims would fail. Section 3617 of the Fair Housing Act makes it "unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise of, any right granted or protected by section 3603, 3604, 3605 or 3606 of this title." 42 U.S.C § 3617. "Essentially, § 3617 allows a plaintiff to step into the shoes of the victims of certain types of housing discrimination when the plaintiff faces retribution for providing encouragement to the victims." *Linkletter v. W. & S. Fin. Grp., Inc.*, 851 F.3d 632, 637 (6th Cir. 2017).

To state a claim under § 3617, a plaintiff must establish: "(1) that he exercised or enjoyed a right guaranteed by §§ 3603-3606; (2) that the defendant's intentional conduct

constituted coercion, intimidation, threat, or interference; and (3) a causal connection between his exercise or enjoyment of a right and the defendant's conduct. *Hood v. Midwest Sav. Bank*, 95 Fed. Appx. 768, 779 (6th Cir. 2004). What's more, "[i]n this Circuit, a plaintiff is required to demonstrate 'discriminatory animus' to prevail on an interference claim under the Act." *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 613 (6th Cir. 2012) (citing *Mich. Prot. & Advocacy Serv., Inc. v. Babin*, 18 F.2d 337, 347 (6th Cir. 1994). Section 3617 should be read broadly and "is not limited to those who used some sort of 'potent force or duress,' but extends to other actors who are in a position directly to disrupt the exercise or enjoyment of a protected right and exercise their powers with a discriminatory animus." *Michigan Prot. & Advocacy Serv., Inc. v. Babin*, 18 F.3d 337, 347 (6th Cir.1994).

Schanz's claim under this act is premised on his "aid[ing] or encourage[ing]" individuals who are members of a protected class from moving into the Property. The local plant employed religious refugees of a wild variety of national origins. (ECF No. 112-3, PageID.1508). In his deposition, a former company chaplain, who was employed between 2010-2014, testified there were employees who were "Hispanic," "from the Middle East," "from Asia," and "from Africa." (*Id.* at PageID.1507, 1508.) These individuals were from a variety of religious backgrounds, including Islam. (*Id.* at PageID.1508). Per the Second Amended Complaint, there were also Pacific Islanders who were employed at the Plant. (ECF No. 22-1, PageID.433.) But there is no evidence Plaintiff knew or had contact with any of them, and no evidence any of them were looking for dormitory housing from Plaintiff.

Nor is there any evidence that JBS itself was supporting a development. In 2017, several JBS employees, including Angela Zevalink, who was in human resources at the time toured the Property. (ECF No.108-15, PageID.1403.) She recalled touring another property at the same time but did not recall any interest in moving forward with Schanz's idea. (*Id.*, PageID.1407). To her knowledge, JBS never moved forward with any housing developments in that area. (*Id.*) Schanz admitted that was the only time he ever spoke to anyone at JBS. (ECF No. 108-3, PageID.1275).

Schanz provides no evidence that he ever communicated directly with any JBS employees or prospective employees in need of such housing. On this record, no reasonable jury could find that Schanz ever "aided or encouraged" anyone of a protected class to exercise or enjoy any rights under the Fair Housing Act.[4] The unrebutted evidence is that neither JBS nor any actual protected person ever had any interest in Plaintiff's speculative concept.

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4. Schanz also asserts claims for lost profits under the Fair Housing Act. Because the Court finds that Schanz does not have a claim under the FHA at all, it need not address the parties' arguments about finality and futility. However, the Court has observed that no zoning application or building plan has ever been filed. *See Vill. Green At Sayville, LLC v. Town of Islip*, 43 F.4th 287, 297 (2d Cir. 2022) (analyzing multiple cases holding that land use queries, including under the FHA, are "not ripe" where plaintiffs "failed to submit a single variance application" or where plaintiff has "midstream abandon[ed] the zoning process.") Whether considered as a ripeness issue, a standing issue, or a speculative damages issue, the overall point is that real developers with real skin in the game are in a totally different class from Schanz, who never had more than an idea, hope, or concept.

2) The Due Process Claim

Next, Schanz asserts that Defendant Reitkerk violated his right to due process. The Due Process Clause of the Fourteenth Amendment "provide[s] a guarantee of fair procedure in connection with any deprivation of life, liberty, or property by a State." *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). On the other hand, "substantive due process protects against government actions that are 'arbitrary and capricious' even if there are adequate procedural safeguards." *Golf Vill. N., LLC v. City of Powell, Ohio*, 42 F.4th 593, 598 (6th Cir. 2022) (quoting *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012). To make a procedural or substantive due process claim, "the plaintiff must show that (1) [he] has a constitutionally protected interest, and (2) the state in some way deprived him of that interest." *Golf Vill. N., LLC*, 42 F.4th at 598. For the reasons detailed below, Schanz's claim fails under either framework.

The fundamental flaw in Schanz's due process theory is that he never actually lost anything. The City did issue a demolition notice in August of 2020. Schanz complains it was sent to his mother's address and that he did not learn about it until October of 2020. Despite that, he was able to meet personally with Reitkerk about it on September 21, 2020. So, by that time, Schanz had actual notice. But even if that would otherwise be a problem, it is of no moment here because the demolition never occurred. To the contrary, the City ultimately dismissed its efforts to enforce the demolition and rescinded the demolition order entirely in September of 2022. Plaintiff lost nothing, and

he has no property interest in the procedures themselves. *See Taylor Acquisitions LLC v. City of Taylor*, 313 Fed. Appx. 826, 832 (6th Cir. 2009).

Moreover, due process does not require perfect notice. It requires "notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action," *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 316 (1950), "actual notice is not required." *Keene Grp., Inc. v. City of Cincinnati, Ohio*, 998 F.3d 306, 311 (6th Cir. 2021) (citing *Dusenbery v. United States*, 534 U.S. 161, 170 (2002)). Schanz asserts that the Notice was mailed to the wrong address because it was mailed to his mother's home address. (ECF No. 82, PageID.973.) It is undisputed that Schanz's parents' address was on the tax record for the school. (ECF No. 121, PageID.1695.) His mother signed for the certified letter on September 4, 2020. (ECF No. 108-10, PageID.1347.) By his own admission, Plaintiff was aware that he had been "dinged with some notice about the school" in September of 2020. (ECF No. 121, PageID.1727.) And Schanz had actual notice of the pending procedures. By early October, he had received the Notice itself and, by his own description, elected to call the City and tell them "I'm going to sue your asses off," rather than file a written appeal as the Notice instructs. (ECF No. 112-2, PageID.1475.) Schanz received adequate notice in time to contest the issues.

Nor does Schanz have a viable substantive due process claim. "Substantive due process 'prevents the government from engaging in conduct that shocks the conscience or

interferes with rights implicit in the concept of ordered liberty.'" *Prater v. City of Burnside*, 289 F.3d 417, 431 (6th Cir. 2002) (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)). "Substantive due process . . . serves the goal of preventing governmental power from being used for purposes of oppression, regardless of the fairness of the procedures used." *Pittman v. Cuyahoga Cnty. Dep't of Child. & Fam. Servs.*, 640 F.3d 716, 728 (6th Cir. 2011) (quoting *Howard v. Grinage*, 82 F.3d 1343, 1349 (6th Cir. 1996)). "Conduct shocks the conscience if it 'violates the "decencies of civilized conduct."'" *Range v. Douglas*, 763 F.3d 573, 589 (6th Cir. 2014) (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846-47 (1998) (quoting *Rochin v. California*, 342 U.S. 165, 172-73 (1952))). Viewing the facts in the light most favorable to Schanz, Defendant Reitkerk's actions are not even close to the "shocks the conscience" test. Mr. Reitkerk articulated a factual and legal basis for the notice and provided notice to the record address. (ECF No. 108-11, PageID.1359.) Defendant Reitkerk is entitled to summary judgment on this claim.

3) The Illegal Search Claim

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure." U.S. Const. amend. IV. A search occurs when "a government official invades an area in which 'a person has a constitutionally protected reasonable expectation of privacy.'" *Taylor v. City of Saginaw*, 922 F.3d 328, 332 (6th Cir. 2019) (quoting *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)). To establish

a Fourth Amendment search, one must establish "first that a person exhibit an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" *Katz*, 389 U.S. at 361.

Schanz says that Defendant Weber's entry into the Property on July 28 violated the Fourth and Fourteenth Amendments because Weber had no warrant. (ECF No. 112, PageID.1449.) The defense acknowledges there was no warrant but asserts that Plaintiff had no reasonable expectation of privacy in a vacant and derelict school building, and that even if he did, the community caretaker exception to the warrant requirement applies here. The defense further argues that qualified immunity and other doctrines apply to mandate summary judgment for Defendants. The Court agrees with the defense.

a) Reasonable Expectation of Privacy

In determining whether someone has a reasonable expectation of privacy for Fourth Amendment purposes, the Sixth Circuit applies a test weighing several factors. Those factors are:

> the person's proprietary or possessory interest in the place to be searched or item to be seized .... whether the defendant has the right to exclude others from the place in question; whether he had taken normal precautions to maintain his privacy; whether he has exhibited a subjective expectation that the area would

> remain free from governmental intrusion; and whether he was legitimately on the premises.

Shamaeizadeh v. Cunigan, 338 F.3d 535, 544-45 (6th Cir. 2003) (quoting *United States v. King*, 227 F.3d 732, 744 (6th Cir. 2000); *see also United States v. Trice*, 966 F.3d 506, 513 (6th Cir. 2020). Defendants do not contest Schanz's possessory interest nor that he could exclude others from the building. (ECF No. 108, PageID.1171.) However, they argue that he did not take adequate measures to maintain the space as private. (*Id.*, PageID.1172.) Between April 2017 and August 2020, police department records show thirteen separate incidents involving the old school building. Officer Weber reported that neighborhood kids entered the building through unsecured doors repeatedly. (ECF No. 108-5, PageID.1293.) "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz v. U.S.*, 389 U.S. 347, 351 (1967). Officer Weber testified that he had spoken with Schanz and that Schanz had told him that "he intentionally leaves the windows open when there is no rain expected because, according to him, with no ventilation system(s), the building will get moldy (moldier would be more appropriate) otherwise." (ECF No. 108-7, PageID.1308-09.) Schanz admitted to leaving ground floor windows open. [5] (ECF No. 108-3, PageID.1253.)

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5. Schanz has submitted an affidavit which contradicts this testimony. A party "cannot create a genuine issue of fact sufficient to survive summary judgment simply by contradicting his or her own previous sworn statement." *Aerel, S.R.L., v. PCC Airfoils, L.L.C.*, 448 F.3d 899, 907-08 (6th Cir. 2006) (quoting *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 806 (1999)).

Schanz objects that many of the statements within the police reports are hearsay. Police reports may be admissible under the public records exception but only so far as they "incorporate firsthand observations of the officer." *Dortch v. Fowler*, 588 F.3d 396, 403 (6th Cir. 2009). Schanz is correct that the statements by third parties cannot be admitted for their truth under Fed. R. Evid. 803(8). However, the reports also contain Defendant Weber's firsthand observations that he "located over a dozen open windows" and that "many have locks that are inoperable." (ECF No. 108-6, PageID.1306.) He also testified that he observed the gate to the old playground "was standing wide open" and two teenagers playing on the ground. (ECF No. 108-17, PageID.1430.) In fact, Schanz himself testified that he told Defendant Weber that he had "no problem" with the teenagers being on the Property. (ECF No. 108-3, PageID.1252-53.) Even ignoring the parts of the reports which record accounts from third parties, the admissible statements in the record are sufficient to establish the Property was deliberately unsecured and routinely accessible to the public. Moreover, the third-party reports are admissible to the extent they demonstrate that public officials were on notice of issues or potential issues at the Property, which is in itself circumstantial evidence undercutting any reasonable expectation of privacy.

Defendants also stress that the Property was not Schanz's residence but is, at best, a commercial property. (ECF No. 118, PageID.1662). Because "the expectation of privacy that the owner of commercial property enjoys in such property differs significantly from the sanctity

accorded to an individual's home," "the Government has greater latitude to conduct warrantless inspections of commercial property." *Dow Chem. Co. v. U.S.*, 476 U.S. 227, 237-38 (1986).

Here, in fact, the evidence—including Schanz's own admission that he left windows open and had no problem with teenagers accessing the site—defeat any subjective expectation of privacy and converts the Property to an "open field" for Fourth Amendment purposes. To qualify as an "open field" for the purposes of Fourth Amendment protection, the area need be neither a literal field nor an unfenced area. The Sixth Circuit has "held that the following factors had no bearing on whether the property was an open field: that the property was surrounded by a fence and a tall hedgerow of cleared debris, that entry onto the land could be made only through a locked gate, that the land had undergone "extensive alteration and development for one economic purpose or another and was clearly 'commercial property,' " and that the landowner was present." *United States v. Mathis*, 738 F.3d 719, 730 (6th Cir. 2013) (quoting *United States v. Rapanos*, 115 F.3d 367, 373 (6th Cir. 1997). The key question is simply whether the property owner's conduct before the litigation evinced a subjective expectation of privacy that society is prepared to accept. Here, Schanz repeatedly and deliberately left his property unsecured such that local youth felt at liberty to avail themselves of it. Schanz himself said he had no problem with this, which is direct evidence he did **not** have a subjective expectation of privacy. As in *Mathis*, Schanz did not have a reasonable expectation of privacy and as such, there was no Fourth Amendment Violation.

b) Qualified Immunity

Under the doctrine of qualified immunity, "'government officials performing discretionary functions generally are shielded from liability from civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Phillips v. Roane County*, 534 F.3d 531, 538 (6th Cir. 2008) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "As the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Determining whether the government officials in this case are entitled to qualified immunity generally requires two inquiries: "First, viewing the facts in the light most favorable to the plaintiff, has the plaintiff shown that a constitutional violation has occurred? Second, was the right clearly established at the time of the violation?" *Id.* at 538-39 (citing *Silberstein v. City of Dayton*, 440 F.3d 306, 311 (6th Cir. 2006)); *cf. Pearson v. Callahan*, 555 U.S. 223 (2009) (holding that the two-part test is no longer considered mandatory; thereby freeing district courts from rigidly, and potentially wastefully, applying the two-part test in cases that could more efficiently be resolved by a modified application of that framework). As discussed in the previous section, Schanz had no reasonable expectation of privacy based, among other things, on the fact that he had no problem with teenagers accessing the Property. But even if Plaintiff had such an expectation here, qualified immunity would certainly protect Defendant Weber because his actions did not violate a "clearly established"

law. *Mathias* alone creates more than enough ambiguity to support a reasonable officer's conclusion that the Property was subject to search without a warrant. But here, there is even more.

i) The Community Caretaker Exception

Defendants assert that Defendant Weber relied on the community caretaker exception when he entered the Property. Community caretaking describes police work that is not related to crime. As the Sixth Circuit recently described:

> Much of an officer's day-to-day work in truth involves community service of a different order. Officers help lost children return home, find missing persons, rescue pets, deal with domestic disputes before they get out of hand, keep an eye on a home when the resident travels, lock an unlocked door, arbitrate disagreements between neighbors about loud music, respond to health emergencies, check in on the elderly or those facing addiction challenges on behalf of their relatives, and help inebriates by preventing them from placing others at risk and by ensuring that they get home safely. Law enforcement has served these watchman's roles long before the dawn of the Republic.

United States v. Morgan, No. 22-1445, 2023 WL 4175235, at *2 (6th Cir. June 26, 2023) (internal citations and quotations omitted). In *Cady v. Dombrowski*, the Supreme

Court first acknowledged this role, describing actions that are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." 413 U.S. 433, 411 (1973). To be sure, "the community caretaker exception does not provide the government with refuge from the warrant requirement except when delay is reasonably likely to result in injury or ongoing harm to the community at large." *United States v. Washington*, 573 F.3d 279, 289 (6th Cir. 2009).

In *Cady*, the defendant, who appeared to be intoxicated, was involved in a car accident. 413 U.S. at 436. He informed the officers at the scene that he was a police officer from a different jurisdiction. *Id.* Before letting the tow truck take the car, officers looked for the defendant's service weapon, as they believed that officers were required by regulation to carry it at all times. *Id.* They did not locate the weapon and the car was towed to a private lot without police guard. *Id.* The defendant was taken to a police station and formally arrested for drunk driving. *Id.* One of the officers returned to the car to try to locate the service weapon, concerned about leaving a gun somewhere unsecured. *Id.* at 437. During his more thorough search of the car, he found a variety of blood-spattered items. *Id.* The defendant was ultimately charged with murder. *Id.* at 438. At issue before the Supreme Court was whether the bloodied items and all the evidence stemming from them (including an admission the defendant knew where the body was and the body itself) needed to be suppressed in the criminal case as a warrantless search and seizure. Ultimately, the Court held in *Cady* that when the officer was looking through the car, he was not investigating a

crime but concerned for the safety of the general public should the gun fall into the wrong hands. There was no Fourth Amendment violation.

In *Caniglia v. Strom*, police officers entered a private home to escort the plaintiff to a hospital for psychiatric evaluation and seized his guns without a warrant and over his express objections. 141 S. Ct. 1596, 1600 (2021). Here, the Court concluded there was a Fourth Amendment violation because the community caretaker exception did not reach to warrantless searches of the home. *Id.* The Court stressed the constitutional difference between a car and a residence. *Id.* at 1598. Concurring Justices noted that a community caretaking role might still justify some entries to a home without a warrant, but such circumstances were not present in the case. *See* 141 S. Ct. at 1600 (Roberts, C. J., concurring). To the extent *Caniglia* limits the exception in cases involving homes, it is inapplicable to this case involving a vacant commercial property. It also came down more than a year after the challenged entry here.

Neither the Supreme Court nor the Sixth Circuit directly addressed how the exception might apply to entry of an unoccupied commercial building that was the subject of repeated public safety reports that required police responses. Overall, the Circuit's precedent[6] has

6. The Sixth Circuit very recently issued an opinion on the community caretaker exception in *United States v. Morgan*, No. 22-1445, 2023 WL 4175235 (6th Cir. June 26, 2023), holding that the exception did not apply where an officer, without investigating further or taking any action to rouse the driver, opened the door of

emphasized three factors in determining when the exception applies. "The community-caretaking exception applies most clearly when the action of the police is totally divorced from the detection, investigation, or acquisition of evidence related to the violation of a criminal statute." *United States v. Lewis*, 869 F.3d 460, 463 (6th Cir. 2017) (internal quotations omitted). Secondly, the relative constitutional protection afforded to the location of the search, often noting that a car is afforded a lesser degree of constitutional protection than a home. *Id.* Thirdly, the cases often involve a concern that delay may result in some harm to the general public. *United States v. Washington*, 573 F.3d 279, 289 (6th Cir. 2009). Some cases characterize this last prong as a reasonableness analysis, weighing the degree of the intrusion against the community's interest. *See, e.g., Lewis*, 869 F.3d at 464.

ii) Application to Defendant Weber

Here, the search was not made in furtherance of a criminal investigation. The constitutional status of the Property is both disputed and unsettled, as discussed at length *supra*, but it certainly is not entitled to the particular protections afforded to one's home. The record establishes that Defendant Weber was concerned about the safety hazards posed by the Property based on repeated public reports requiring police response. Defendant Weber's actions were likely protected by the community caretaker exception.

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a stopped but running car with the driver seemingly unconscious at the at wheel. While this decision certainly suggests caution in applying the exception going forward, any cautionary message came long after Defendant Weber's decision here.

However, it is not necessary to make that holding here. Rather, to apply qualified immunity, it is only necessary to decide whether the constitutional right was clearly established at the time the violation occurred. Here, there was no such clearly established right. Neither the Court nor the parties have identified a pre-entry holding that precluded an officer from relying on the community caretaker exception to enter an unoccupied school building on the facts of record here. Officer Weber's own observations and reports from local children[7] amply supported a basis for public safety concern. The amount of ink spilled in this case analyzing the Property's potential constitutional status is demonstration enough of the lack of clarity. Under the community caretaker exception as it stood in July 2020, it was not clearly established that Defendant Weber needed a warrant to enter a vacant structure frequently accessed by local youth to document what he saw as an attractive nuisance and safety hazard. Therefore, even assuming a constitutional infringement occurred, Defendant Weber is entitled to qualified immunity.

iii) Application to Defendants Mitchell & Misner

Schanz also asserts individual claims against Defendants Mitchell and Misner for allegedly improperly supervising Defendant Weber.[8] To state a claim under

7. Reports from third parties are relevant and admissible to establish Defendant's state of mind in entering the property.

8. To the extent that Schanz sets out claims against Misner and Mitchell in their official capacities, those are "analogous to a

42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

Schanz argues both Mitchell and Misner are liable because when Defendant Weber asked what could be done about the building, Mitchell indicated that the next time that he was in the building, he should take photographs of the condition. Defendant Misner was present during the conversation but did not say anything.

Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior or vicarious liability. *Ashcroft v. Iqbal*, 556 U.S. 41, 47 (1957); *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 691(1978); *Everson v. Leis*, 556 F.3d 484, 495 (6th Cir. 2009). A claimed constitutional violation must be based upon active unconstitutional behavior. *Grinter v. Knight*, 532 F.3d 567, 575-76 (6th Cir. 2008); *Greene v. Barber*, 310 F.3d 889, 899 (6th Cir. 2002). The acts of one's subordinates are not

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suit against the local entity," *Pineda v. Hamilton Cnty., Ohio*, 977 F.3d 483, 494 (6th Cir. 2020) (citing *Kentucky v. Graham*, 473 U.S. 159, 166-67, 167 n.14 (1985)), and are therefore addressed under the municipal liability section, *infra*.

enough, nor can supervisory liability be based upon the mere failure to act. *Grinter*, 532 F.3d at 576; *Greene*, 310 F.3d at 899; *Summers v. Leis*, 368 F.3d 881, 888 (6th Cir. 2004). A plaintiff must show that "each Government official defendant, through the official's own individual actions, has violated the Constitution." *Iqbal*, 556 U.S. at 676.

The Sixth Circuit has repeatedly summarized the minimum required to constitute active conduct by a supervisory official:

> "[A] supervisory official's failure to supervise, control or train the offending individual is not actionable *unless* the supervisor either encouraged the specific incident of misconduct or in some other way directly participated in it." *Shehee*, 199 F.3d at 300 (emphasis added) (internal quotation marks omitted). We have interpreted this standard to mean that "at a minimum," the plaintiff must show that the defendant "at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the offending officers."

Peatross v. City of Memphis, 818 F.3d 233, 242 (6th Cir. 2016) (quoting *Shehee*, 199 F.3d at 300, and citing *Phillips v. Roane Cnty.*, 534 F.3d 531, 543 (6th Cir. 2008)); *see also Copeland v. Machulis*, 57 F.3d 476, 481 (6th Cir. 1995) (citing *Rizzo v. Goode*, 423 U.S. 362, 375-76 (1976), and *Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984)); *Walton v. City of Southfield*, 995 F.2d 1331, 1340 (6th Cir.

1993); *Leach v. Shelby Cnty. Sheriff*, 891 F.2d 1241, 1246 (6th Cir. 1989).

Schanz cannot show that Defendant Misner "implicitly authorized, approved, or knowingly acquiesced" to Weber's allegedly unconstitutional entry into the Property. The entire basis of such liability would be his presence during the conversation where Mitchell suggested Weber take pictures of the Property. Schanz did not depose Defendant Misner, but Misner submitted an affidavit asserting that he had no prior experience with the Property or knowledge of its condition, and so did not participate in the discussion. (ECF No. 108-4, PageID.1288.) Schanz argues that his silence amounts to "ratification" of Defendant Weber's subsequent entry into the Property. This theory is neither supported by the record nor by the controlling case law in this circuit. Mitchell's suggestion that Weber take pictures of the Property the next time he observed it was unsecured cannot be fairly characterized as an order that Weber violate the law. Nor has Schanz shown Misner's so-called "ratification by silence" was "a moving force in causing the constitutional violation." *Feliciano v. City of Cleveland*, 988 F.2d 649, 656 (6th Cir. 1993) (internal quotations omitted). Misner's silence cannot be reasonably characterized as either the actual or proximate cause of Schanz's alleged injury. Nor is Schanz's argument that Misner knew or should have known of Weber's alleged "penchant for unconstitutional behavior" availing. (ECF No. 127, PageID.2089.) None of the incidents described in Schanz's brief involve even marginally similar facts. Schanz provides no authority to support the suggestion that an alleged misconduct by an

officer makes his superiors liable for future, unrelated, and dissimilar deeds. *Cf. Burgess v. Fischer*, 735 F.3d 462, 478 (6th Cir. 2013) (holding that a failure-to-train theory of municipal liability requires knowledge of insufficiency in "this particular area" or of "similar claims.") The Court is aware of none. Misner is entitled to summary judgment on this claim.

Defendant Mitchell is also not individually liable for Officer Weber's actions. Even assuming that Defendant Weber's entry into the building was improper, Mitchell was not personally involved in entering the building. Mitchell testified that he had no knowledge one way or the other regarding whether a warrant would be necessary to enter the building. (ECF No. 108-8, PageID.1323-1324.) The conversation was in the context of Defendant Weber describing frequent calls for him to be in the building. Suggesting that he take photos the next time he was there is not plausibly read as a direction to violate the law, even if one assumes that Weber's entry onto the Property for the purpose of taking photos was a constitutional violation. Therefore, Mitchell is entitled to summary judgment on this claim. Finally, even if Misner and Mitchell weren't clearly entitled to summary judgment for the above reasons, they would be entitled to qualified immunity for the same reasons set forth *supra* for Defendant Weber.

c) Municipal Liability

A local government such as a municipality or county "cannot be held liable solely because it employs a tortfeasor—or, in other words, a municipality cannot be

held liable under § 1983 on a respondeat superior theory." *Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658, 691 (1978). Instead, a municipality may only be liable under § 1983 when its policy or custom causes the injury, regardless of the form of relief sought by the plaintiff. *Los Angeles Cnty. v. Humphries*, 562 U.S. 29, 35-37 (2010) (citing *Monell*, 436 U.S. at 694 (1974)). In a municipal liability claim, the finding of a policy or custom is the initial determination to be made. *Lipman v. Budish*, 974 F.3d 726, 747 (6th Cir. 2020); *Doe v. Claiborne Cnty.*, 103 F.3d 495, 509 (6th Cir. 1996). The policy or custom must be the moving force behind the constitutional injury, and a plaintiff must identify the policy, connect the policy to the governmental entity and show that the particular injury was incurred because of the execution of that policy. *Turner v. City of Taylor*, 412 F.3d 629, 639 (6th Cir. 2005); *Alkire v. Irving*, 330 F.3d 802, 815 (6th Cir. 2003); *Doe*, 103 F.3d at 508-509.

A single act or decision, in appropriate circumstances, "may qualify as an official government policy, though it be unprecedented and unrepeated." *Holloway v. Brush*, 220 F.3d 767, 773 (6th Cir. 2000). For a single decision to qualify as a policy, the decision must have been directed by someone who is a decisionmaker for the government or who established governmental policy on that issue. *See Pembaur v. City of Cincinnati*, 475 U.S.469, 481 (1986). Furthermore, the decisionmaker must have "possesse[d] final authority to establish municipal policy with respect to the action ordered." *Id.* "[W]hether an official had final policymaking authority is a question of state law." *Id.* at 483. "The fact that a particular official—even a policymaking official—has discretion in the exercise

of particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion." *Id.* at 481-82. Instead, "[t]he official must also be responsible for establishing final government policy respecting such activity before the municipality can be held liable." *Id.* at 482-83.

Schanz alleges that the City of Otsego is responsible for Officer Weber's actions, as well as Defendants Misner and Mitchell. Specifically, Schanz argues that Defendant Mitchell had "final decision-making authority" and ordered Officer Weber to illegally enter the Property. (ECF No. 112, PageID.1455-56). Defendants counter that even assuming a constitutional violation occurred, Mitchell, as City Manager, did not have final decision-making authority. (ECF No. 108, PAgeID.1171-1173; ECF No. 118, PageID.1666-1668.)

The Charter of the City of Otsego states that "The Mayor shall be the chief executive of the city and shall see that the ordinances thereof are enforced." (ECF No. 108-18, PageID.1435.) The City Manager, the role Mitchell occupied, "shall by virtue of his office be Commissioner of Police, Commissioner of Streets, and Commissioner of Water Works, and shall have the general supervision and direction of the administrative operation of the city government and shall supervise and direct the official conduct of all appointive city officers and employees whom he shall appoint or employ." (*Id.*) But the City Manager is supervised by and reports to the Mayor and the City Commission. (*Id.*) Mitchell's testimony supports this. (ECF No. 108-8, PageID.1314.)

Schanz argues that in practice, the City Manager was the final policymaker, relying on the affidavits of two former city officials - one former mayor and one former city commissioner. Neither was in any position for the city during the timeframe relevant to this case. Neither individuals' experience is relevant to this case. The City Charter clearly shows that the City Manager's decisions were not "final and unreviewable" nor were they "not constrained by the official polices of superior officials." *Adair v. Charter Cty. Of Wayne*, 452 F.3d 482, 493 (6th Cir. 2006). Therefore, the City of Otsego is entitled to judgment as a matter of law.

Conclusion

For the foregoing reasons, Defendants' Motion for Summary Judgment (ECF No. 107) is **GRANTED** and Plaintiff's Motion for Partial Summary Judgment (ECF No. 111) is **DENIED**.

A separate judgment will issue.

Dated: July 14, 2023

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE