No. 18-

IN THE

Supreme Court of the United States

TERRENCE HILL,

Petitioner,

v.

CITY OF JACKSON, MI, *et al.*,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. *Mullane v. Central Hanover Bank* requires the government provide the owner "notice and opportunity for hearing appropriate to the nature of the case," using means that "one desirous of actually informing the absentee might reasonably adopt." 339 U.S. 306, 314, 315 (1950). *Jones v. Flowers* requires the government to take additional steps to notify a property owner when notice is undelivered. 547 U.S. 264, 269 (2006). Petitioner Terrence Hill bought a home from Jackson County, at an auction. The City of Jackson and Jackson County never delivered years-old demolition notices to Terrence Hill before tearing down Hill's home. The City demolished Hill's home, knowing the County's policy and practice of (1) ignoring prior demolition notices and (2) not disclosing those notices to the citizens the County sold the property to. Does due process require the City of Jackson and Jackson County to provide notice and opportunity for hearing appropriate to the nature of the case?

2. *Parratt v. Taylor*, 451 U.S. 527 (1981), does not apply to deprivations of property allegedly not due to random and unauthorized acts. "In situations where the State feasibly can provide a predeprivation hearing before taking property, it generally must do so regardless of the adequacy of a postdeprivation tort remedy to compensate for the taking." *Zinermon v. Burch*, 494 U.S. 113, 132 (1990) (citing *Loudermill,* 470 U.S. at 542; *Memphis Light, Gas & Water Div. v. Craft,* 436 U.S. 1, 18 (1978); *Fuentes,* 407 U.S. at 80-84; *Goldberg,* 397 U.S. at 264). The City demolished Hill's home, knowing the County's policy and practice of (1) ignoring prior demolition notices and (2) not disclosing those notices to the citizens the County sold

the property to. The City of Jackson and Jackson County never delivered years-old demolition notices to Terrence Hill before tearing down Hill's home—then sent Mr. Hill the bill for the demolition costs. When the government fails to take additional steps to notify a property owner of years-old demolition notice, is a postdeprivation remedy in state tort law "all the process due" after the government demolishes a citizen's home?

PARTIES TO THE PROCEEDINGS BELOW

Terrence Hill is Petitioner in the circuit court and the plaintiff in the district court. Mr. Hill is the Petitioner in this Court.

Jackson County and City of Jackson are the respondents in the circuit court and the defendants in the district court. Jackson County and City of Jackson are the respondents in this Court.

CORPORATE DISCLOSURE STATEMENT

Terrence Hill is an individual.

Jackson County and City of Jackson are governmental entities—municipalities—located in the State of Michigan.

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PETITION FOR WRIT OF CERTIORARI

Terrence Hill respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case. In the decision below, the court held that, under *Parrott v. Taylor*, post deprivation state tort law was all the process required for the government to demolish a citizen's home, without prior notice and an opportunity to be heard on the matter. The questions presented here are of national and constitutional importance. A grant of certiorari would provide guidance and certainty for citizens, property owners, and municipalities across the country.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (Pet. App. 1a) is unreported. The District Court's opinion (Pet. App. 27a) is unreported. Terrence Hill respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered judgment on October 22, 2018. The Court has subject matter jurisdiction over this case, pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV.

42 U.S.C. §1983 provides, in pertinent part the following:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ....

42 U.S.C. §1983.

MCL 211.78m(12) provides, in part:

> For property sold under this section… all liens for costs of demolition, safety repairs, debris removal, or sewer or water charges due on the property as of December 31 immediately succeeding the sale, transfer, or retention of the property are canceled effective on that December 31.

MCL 211.78m(12). City of Jackson Ordinance 17-27 provides:

> It shall be unlawful for the owner of any building or structure alleged to be dangerous who has received a notice and order, or upon whom a notice and order has been served pursuant to subsection (c)(2) of this section, to sell, transfer, or otherwise dispose of to another until… such owner shall first furnish the grantee or transferee a true copy of said notice and order issued by the building official, and shall furnish to the building official a signed and notarized statement from the grantee or transferee **acknowledging the receipt of such notice and order, and fully accepting the responsibility, without condition, for making the required repairs, rehabilitation, or demolition to the alleged dangerous building or structure as required by such notice or order**.

City of Jackson Code of Ordinances § 17-27. Section 17-27(d)(2) provides:

> The building inspection division shall record with the county register of deeds all dangerous structure condemnation notices and orders and building code board of examiners and appeals decisions upholding notices and orders within twenty (20) days of such notice, decision or order.

City of Jackson Code of Ordinances § 17-27(d)(2).

STATEMENT

"Justice, justice thou shall pursue."

—Deuteronomy 16:20

"For more than a century the central meaning of procedural due process is clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.'" *Fuentes v. Shevin*, 407 U.S. 67 80 (1972) (quoting *Balwin v. Hale*, 1 Wall 223, 233, 17 L. Ed. 531 (1863)). The City of Jackson demolished Petitioner Terrence Hill's home on a Federal Holiday—Martin Luther King Day—without providing Mr. Hill with notice and a meaningful opportunity to save the house. The County of Jackson sold the home to Terrence Hill without disclosing the years-old demolition notices, because of County's practice of not disclosing property conditions at its auctions. The City of Jackson knew that its demolition notice failed to reach Terrence Hill, it made no other attempt to provide notice. Municipalities must be expected to provide better notice than this.

Certiorari is warranted because the City and County knew that the City's years-old demolition notice to the County would never actually reach Terrence Hill, because the County believed it had no obligation to disclose impending demolition. The City knew of the County's belief and made no additional effort to provide Hill with notice and a meaningful opportunity to avoid the demolition—either at the auction or before the demolition. While the trial court found that the City and County violated the ordinance, it granted summary judgment for

the City and County, holding that "mere wrongdoing is not enough to prevail on a due process claim." Pet. App. B. 27a. [Summary J. Order of 3/16/2017 at 8].) The trial court held that City and the County did not violate Hill's due process rights because each "has an important interest in demolishing abandoned and vacant homes." Pet. App. B. 27a. The United States Court of Appeals affirmed the trial court's decision, but on different grounds, applying *Parratt v. Taylor*. Summary judgment is improper, because Jackson County and City of Jackson failed to take reasonable steps to notify Terrence Hill that his home was on the demolition list. The decision below should be reversed because the City of Jackson and Jackson County demolished Terrence Hill's property without due process of law. The questions presented here are exceptionally important and require this Court's review.

A. Factual Background

Terrence Hill Buys 1010 Maple Street Home at Jackson County Auction

On August 22, 2012, Jackson County published a notice in the local paper, listing the 1010 Maple Street home and property, in Jackson, for sale. The notice caught the eye of Appellant Terrance Hill. Pet. App. A. 1a. There were no code violations posted when Hill visited and personally inspected the property. There were no red, cardstock postings that any municipality deemed 1010 Maple Street dangerous, uninhabitable or unsafe. There were no postings that any municipality scheduled 1010 Maple Street for demolition when Terrence Hill visited the property.

On September 27, 2012, Terrence Hill bought 1010 Maple Street—the house, the property, and land—from Jackson County, via quitclaim deed. Pet. App. A. 1a. City agents brought updated condition reports for the auction properties—but they did not provide that information to Terrence Hill. Pet. App. A. 1a. That day, Mr. Hill contacted the City of Jackson's Neighborhood and Economic Operation Department to confirm that 1010 Maple Street was not on the City's demolition list. Pet. App. 1a. The City's agent confirmed that 1010 Maple Street was not scheduled for demolition. Pet. App. 1a. But this was untrue.

A Multi-Party Property Sale Agreement Falls Apart; Jackson County's Auction Process Ensues

In 2012, the City of Jackson, Jackson County, and the Jackson County Land Bank sought to set aside 56 bundled and foreclosed properties for a multi-party agreement—in lieu of public auction. But Michigan Compiled Laws § 117.4q(3) "does not authorize a proceeding against a foreclosing governmental unit as defined under section 78 of General Property Act, 1893 PA 206, MCL 211.78." General Property Act Section 211.78 defines a "foreclosing governmental unit" in part, as "The treasurer of the county." MCL 211.78(8)(a). After several months of negotiations, the multi-party deal fell apart. Talks broke down, in part, because the parties could not agree on who would pay demolition costs. As a result, Jackson County decides to sell the 56 bundled properties at a public auction. Pet. App. A. 1a.

In its publications, Jackson County promised buyers they would receive clear title: "Title has cleared and is vested in the County Treasurer by COURT ORDER." Pet.

App. 1a. Jackson County's Parcel ID & Legal Description of Lot #380341 noted "Check with City of Jackson for any possible Condemnation Order/Ordinance Violations Pending." Pet. App. A. 1a. Terrence Hill expected to receive a deed "free and clear" from the County. Pet. App. 1a. No one[1] ever told Hill otherwise. Pet. App. A. 1a.

In January 2012, the City of Jackson condemned 1010 Maple Street, and subsequently sent a condemnation letter to the owner. At the time, Jackson County was the title owner of 1010 Maple Street—and had been so since April 18, 2011. Pet. App. A. 1a. On February 6, 2012, the City served a "Notice and Order of Dangerous Structure" upon the County Treasurer. Pet. App. 1a. The Notice[2]

1. Jackson's City Manager Patrick Burtch, on the County's nondisclosure of the impending demolition: "I thought the county was required to disclose on a condemnation order that we had recorded, but that was wrong." Pet. App. A. 1a. The County Treasurer barred City representatives from advising buyers of the condemnations. ("[P]rior to the auction, knowing the houses were condemned, I offered – I went to the auctions with the NES evaluations in hand and offered to the county treasurer to allow me to address the whole body before they even began bidding. And she would not allow me. I was given no authorization to do that."].) Pet. App. A. 1a.

2. City of Jackson Ordinance 17-27 provides:

> It shall be unlawful for the owner of any building or structure alleged to be dangerous who has received a notice and order, or upon whom a notice and order has been served pursuant to subsection (c)(2) of this section, to sell, transfer, or otherwise dispose of to another until… such owner shall first furnish the grantee or transferee a true copy of said notice and order issued by the building official, and shall furnish to the building official a signed and notarized statement

advised that 1010 Maple Street was condemned and that the County could not transfer 1010 Maple Street without providing the condemnation notice to the buyer—and affirming, "that the new owner has been advised of and will fully accept and comply outstanding code violations." Pet. App. A. 1a.

In May 2012, the City issued a "Complaint and Notice on Hearing" before the Building Board regarding the alleged dangerous conditions on the property. Pet. App. A. 1a. On May 17, 2012, the City of Jackson's Board of Examiners held a demolition hearing and set the property on course for demolition. Pet. App. B. 27a. As a policy and practice, the County does not attend or participate in the City's building code board of examiners' demolition hearings. Pet. App. 1a. It did not appeal the Board's decision to condemn the property. Pet. App. B. 27a. No one from Jackson County visited 1010 Maple Street.

On October 10, 2012, Terrence Hill received the deed from the Jackson County Treasurer. Pet. App. A. 1a. With the deed in hand, Terrence Hill began to make improvements on 1010 Maple Street—and contacted Consumer's Energy to restore utility services. Pet. App. 1a. Hill bought roofing material, kitchen appliances, and carpet for his house. Around that time, Terrence

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> from the grantee or transferee **acknowledging the receipt of such notice and order, and fully accepting the responsibility, without condition, for making the required repairs, rehabilitation, or demolition to the alleged dangerous building or structure as required by such notice or order**.

City of Jackson Ordinance § 17-27 (emphasis added).

Hill contacted the City of Jackson's Neighborhood and Economic Operation Department to obtain the necessary building permits and rehabilitation approvals needed to improve the house. Pet. App. 1a. The City's chief building official promised to provide Hill with updates—but never did so.

On January 18, 2013, Consumer's Energy disconnected 1010 Maple Street's utility services and removed the meter from Terrence Hill's home. Alarmed, Terrence Hill immediately sought answers from the City. January 18 was the first time Terrance Hill learned that the City deemed his property unworthy of Hill's improvement efforts. That day, the City advised Hill that it would not issue building rehabilitation permits for Hill's house. Three days later—January 21, 2013—the City demolished Terrence Hill's house. Pet. App. A. 1a.

B. Procedural Background

Terrence Hill brought suit against the City of Jackson and Jackson County, in state court for: (1) violation of his procedural due process rights; (2) violation of his substantive due process rights; (3) violation of Equal Protection; and violations of state constitutional law. Pet. App. 1a. Mr. Hill alleged, *inter alia*, that City of Jackson and Jackson County's failure to provide notice of the demolition violated procedural due process. The Municipalities removed the case to federal district court. *Id.* The City also sought reimbursement from Hill for demolition costs. *Id.*

Jackson County and the City of Jackson filed several dispositive motions against Hill. Jackson County argued

below that it has no responsibility to tell Terrence Hill that the property was condemned because the City's nuisance ordinance[3] is not enforceable against the County, an "involuntary owner." Pet. App. B. 27a. The City argued that Hill's constitutional claims failed, as a matter of law, because the City provided the County with notice of its plans to demolish the property on February 6, 2012. Pet. App. B. 27a.

Mr. Hill appealed the trial court's decision to the United States Court of Appeals for the Sixth Circuit. Pet. App. A. 1a. On October 22, 2018, the Sixth Circuit affirmed the trial court's decision, but under a different rationale than the one provided by the district court. Pet. App. 9a. In a 2-1 decision, the Sixth Circuit held that due process does not require the government cure the pre-demolition notice deficiencies. *Id.* The court found the government's actions "unauthorized," and that Mr. Hill did not "prove that there is no adequate state-law remedy for this deprivation before bringing a § 1983 claim for damages based on a procedural due process violation." Pet App. A. at 9a. Two appellate court judges held that a post deprivation tort remedy sounding in "violation of City code and deception in property conveyance" was all the process due to Mr. Hill: "The likely availability

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3. MCL 211.78m(12) provides, in part:

> For property sold under this section… all liens for costs of demolition, safety repairs, debris removal, or sewer or water charges due on the property as of December 31 immediately succeeding the sale, transfer, or retention of the property are canceled effective on that December 31.

MCL 211.78m(12).

of (and better fit of) a state law remedy, emphasizes the applicability of the *Parratt* doctrine to Hill's procedural due process claims." Pet App. A. at 12-13a.

In dissent, Judge Helene White found that "[b]oth the City and County violated § 17-27." Pet App. A. at 22a. Thus, the property deprivation was neither random nor unauthorized[4] conduct:

> Hill produced evidence that the City proceeded with its condemnation procedures, including demolition, although it had actual knowledge that the County had a policy of ignoring § 17-27(l)'s notice requirements; that the County refused to permit the City's representatives to remedy the situation; that the auction purchasers had no knowledge that the properties had been condemned or were subject to demolition; and that the City's otherwise adequate procedures were insufficient to protect the auction purchasers' due process rights.
>
> This evidence sufficiently establishes both that the City was aware of the County's routine violations of § 17-27(l)'s notice requirements,

4. Judge White noted: "The City recorded the condemnation but not the decision and order upholding the condemnation, contrary to § 17-27(d)(2). Thus, even had Hill gone to the register of deeds he would not have learned that the property had been set for demolition because the Board's decision upholding condemnation, which states that the property will be demolished, was not recorded. And, the County acknowledges that it violated § 17-27(l)…." Pet App. A. at 22a.

> and that there was nothing random about the noncompliance. "*Parratt* [*v. Taylor*, 451 U.S. 527 (1981),] does not apply to deprivations of property allegedly not due to random and unauthorized acts." *Wilson v. Civil Town of Clayton, Ind.*, 839 F.2d 375, 378 (7th Cir. 1988).

Pet. App. A. 25a-26a. The dissenting judge found "ample" evidence that "sufficiently establishes both that the City was aware of the County's routine violations of § 17- 27(l)'s notice requirements, and that there was nothing random about the noncompliance." Pet App. A. at 26a. *Parratt* was no bar, the dissenting Judge reasoned, because "Hill presented evidence that compliance with § 17-27(l) was neither impossible nor impractical, and that the City knew the County had a policy of ignoring the Code's notice requirements."

REASONS FOR GRANTING THE PETITION

Certiorari is warranted because procedural due process requires the government to notify homeowners of pending demolitions before demolishing the property. The decision below stands apart from well-worn principles of constitutional law. For centuries, our courts have held that real property is unique, and not like the common, replaceable personal property interests that concerned *Parratt v. Taylor* (prisoner's hobby kit) and *Hudson v. Palmer*, (prisoner's poster). Predeprivation due process protects real property interests threatened by government policies and practices of not disclosing pending demolition actions. As this Court explained:

> The right to prior notice and a hearing is central to the constitution's command of due process. "The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property…."

United States v. James Daniel Good Real Property, 510 U.S. 43, 53 (1993) (*quoting Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). In *Fuentes v. Shevin*, this Court held that due process required a predeprivation hearing for the loss of household furniture and kitchen appliances. 407 U.S. at 70-71. In *Connecticut v. Doehr*, we held that a state statute authorizing prejudgment attachment of real estate without prior notice or hearing violated procedural, predeprivation due process. 501 U.S. 1, 115 L. Ed. 2d 1, 111 S. Ct. 2105 (1991). Across the country, municipalities[5] are engaging citizens through auctions and demolitions. Certiorari is needed to clarify this point: When the government knows that a property owner will not get predeprivation notice of a latent demolition, because of its demolition and auction policies and procedures, that government must take additional steps to ensure that homeowners receive a fair opportunity to discover the nature of the deficiency, and cure it. *See Jones v. Flowers*, 547 U.S. 264, 269 (2006).

5. It is axiomatic that a local government entity may be sued under Sec. 1983 where the alleged constitutional deprivation was inflicted in execution of an official policy adopted by the responsible policy-making officers of that entity. *Monell v. New York City Department of Social Services*, 436 U.S. 658, 690-91, 98 S.Ct. 2018, 2035-36, 56 L.Ed.2d 611 (1978).

The Rule of Jones v. Flowers Requires The Government to Take Further Reasonable Steps to Ensure Due Process

The questions presented in this case are similar to the question presented in *Jones v. Flowers.* Under a *Jones v. Flowers* analysis, the City and County failed to take additional steps of providing notice and a meaningful opportunity to respond to the years-old—and latent—demolition notice. Chief Justice Roberts explained the requirements of tailored due process:

> We do not think that a person who actually desired to inform a real property owner of an impending tax sale of a house he owns would do nothing when a certified letter is returned unclaimed. If the Commissioner prepared a stack of letters to mail to delinquent taxpayers, handed them to the postman, and then watched as the departing postman accidentally dropped the letters down a storm drain, one would certainly expect the Commissioner's office to prepare a new stack of letters and send them again. No one 'desirous of actually informing' the owners would simply shrug his shoulders as the letters disappeared and say 'I tried.' Failure to follow up would be unreasonable, despite the fact that the letters were reasonably calculated to reach their intended recipients when delivered to the postman.

Flowers, 547 U.S. at 229. In this case, the Municipalities could have done more, under *Jones*—with little effort. There is no dispute City agents brought updated condition

reports for the auction properties—but they did not provide that information[6] to Terrence Hill. *See* Pet. App. A. 16a. Jackson County promised buyers they would receive clear title: "Title has cleared and is vested in the County Treasurer by COURT ORDER." Pet. App. A. 16a. Mr. Hill contacted the City of Jackson's Neighborhood and Economic Operation Department to confirm that 1010 Maple Street was not on the City's demolition list. The City's agent confirmed that 1010 Maple Street was not scheduled for demolition. (*Id.*) In this context, post deprivation notice and opportunities to be heard should only occur in "'extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.'" *Fuentes* 407 U.S. at 82 (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971)).

Terrence Hill has a "right to maintain control over his home, and to be free from governmental interference, is a private interest of [54] historic and continuing importance." *United States v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993) (citing *United States v. Karo*, 468 U.S. 705, 714-715, 82 L. Ed. 2d 530, 104 S. Ct. 3296 (1984); *Payton v. New York*, 445 U.S. 573, 590, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980).

The City and County knew that the City's years-old demolition notice to the County would never actually reach Terrence Hill. The Sixth Circuit misapplied

6. City Manager Patrick Burtch testified, "I couldn't understand why it would be such a problem for the City to inform people on properties that were in pretty poor condition that they were bidding on."

Parratt v. Taylor, denying predeprivation due process to a homeowner whose home was demolished and destroyed by the government. The decision stands apart from Supreme Court precedent—and circuit courts' application of—procedural due process. *See Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799 (1988)("[A] party's ability to take steps to safeguard its own interests does not relieve the State of its constitutional obligation."). The County has no real interest in preserving the due process rights of interested parties; because the County does not participate in condemnation proceedings, it is often surprised to find that the City has already demolished homes the County wants to sell. As this Court has observed, "[f]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . . No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170-172, 95 L. Ed. 817, 71 S. Ct. 624 (1951) (Frankfurter, J., concurring) (footnotes omitted).

In states throughout the country, municipalities are selling government-owned homes to citizens in auctions. Review is warranted to provide guidance on what *Parratt* and its progeny mean in this particular context—post deprivation remedies are adequate for common and ordinary personal property, but not for unique real property. There is no adequate post-deprivation remedy when the deprivation of real property is at stake. A post-deprivation remedy would not cure the permanent deprivation a demolition on real property brings.

I. The Sixth Circuit's Decision on Procedural Due Process Clashes With this Court's Precedents.

Certiorari is proper and necessary here because the lower court's decision is incorrect. The lower court's decision is incongruent with established Supreme Court precedent that procedural due process generally requires that a deprivation of property or a property right be preceded by notice and opportunity for hearing appropriate to the nature of the case. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652 (1950). The Due Process Clause of the Fourteenth Amendment prohibits states from depriving any person of property without "due process of law." U.S. Const. amend. XIV. "[D]ue process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The "'notice required will vary with circumstances and conditions.'" *Jones v. Flowers,* 547 U.S. 220, 226, 227 (2006) (quoting *Walker v. City of Hutchinson*, 352 U.S. 112, 115 (1956)); *see, e.g., Dusenbery v. United States,* 534 U.S. 161, 170 (2002)*; Tulsa Prof'l Collection Servs, Inc. v. Pope*, 485 485 U.S. 478, 484 (1988)(notice must be reasonable under the circumstances). Further, "[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane,* 339 U.S. at 315. In *Monroe v. Pape,* this Court explained:

> It is no answer that the State has a law which, if enforced, would give relief. The federal remedy is supplementary to the state remedy, and the

> latter need not be first sought and refused before the federal one is invoked.

Monroe v. Pape, 365 U.S. 167, 183 (1961) (overruled in part not relevant here, *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 664-689 (1978)). The Supreme Court "regularly turned to [*Mullane*] when confronted with questions regarding the adequacy of the method used to give notice…." *Dusenbery v United States*, 534 U.S. 161, 168 (2002). In *Mullane*, Justice Jackson explained:

> [W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is itself reasonably certain to inform those affected…

Mullane, 339 U.S. at 314 (Jackson, J.). Justice Jackson went on to note "[t]he fundamental requisite of due process of law is the opportunity to be heard," but added that "[t]his right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Id.* at 314. In other words, the process due cannot be illusory. *See Mennonite*, 462 U.S. at 798 & n.4 (constructive notice does not meet due process standards when the notice receiver's information "could have been ascertained by reasonably diligent efforts"); *Eaton v. Charter Twp of Emmett*, 317 F. App'x. 444, 448 (6th Cir. 2008)(due process notice requires a "reasonably definite

statement"); *Transco Sec. Inc. of Ohio v. Freeman*, 639 F.2d 318, 321-323 (6th Cir. 1981)(general notice does not satisfy due process).

"No Notice, No Emergency"
Demolitions Violate Due Process

There is no dispute that the municipalities' auction and demolition practices did not provide Hill with a meaningful opportunity[7] to be heard before the City demolished the home. *Harris v. Akron*, 20 F.3d 1396, 1401 (6th Cir. 1994) ("Generally, the process that is due before the state may deprive an owner of property includes notice to the owner prior to the deprivation and an opportunity for a pre-deprivation hearing). None of the auction evidence shows that 1010 Maple Street was disclosed as "imminently dangerous"[8] to Hill on auction day. There is nothing in the

7. The County admitted that the City *knew* the individuals purchasing the condemned properties did not receive the notice its ordinance would have required, and despite this knowledge, yet chose to demolish the properties anyway. *See* Pet. App. A. 23a.

8. *See, e.g., Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436(1982) ("the necessity of quick action by the State or the impracticality of providing any predeprivation process,'" may mean that a postdeprivation remedy is constitutionally adequate, *quoting Parratt*, 451 U.S. at 539); *Memphis Light*, 436 U.S. at 19 ("where the potential length or severity of the deprivation does not indicate a likelihood of serious loss and where the procedures . . . are sufficiently reliable to minimize the risk of erroneous determination," a prior hearing may not be required); *Ingraham v. Wright*, 430 U.S. 651, 682 (1977) (hearing not required before corporal punishment of junior high school students); *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 619-620 (1971) (hearing not required before issuance of writ to sequester debtor's property); *Alvin v.*

auction evidence advising Hill of his right to contest the property's condemnation at an administrative hearing—or of his right to appeal an administrative determination in a court of competent jurisdiction. What we have, instead, are two municipalities working outside the confines of due process—the City maintains that Hill cannot appeal the demolition order because the County, is an "involuntary owner." That's a due process violation. *See, e.g., Wright v. Fred Hutchinson Cancer Research Cntr.*, 269 F. Supp. 2d 1286, 1291-92 (W.D. Wash. 2002) (concluding where "the state procedures themselves operate in such a way as to deprive individuals of life, liberty, or property without due process, a § 1983 action will lie."). While a "heroic effort" is not required, *Dusenbery*, 534 U.S. at 170, one cannot conclude that the City and County made a serious or practical effort to inform Hill of the City's demolition plans. The uncontroverted evidence shows that the Jacksons' method of notice did not inform Hill of the pendency of the demolition, in fact—nor is it reasonably certain to do so when applied scientifically. The Jacksons' inaction offended due process. They knew the circumstances of this case rendered the promise of due process illusory.

Suzuki, 227 F.3d 107, 120 (3d Cir. 2000) ("[I]f the Constitution requires pre-termination procedures, the most thorough and fair post-termination hearing cannot undo the failure to provide such procedures."); *Catanzaro v. Weiden*, 188 F.3d 56, 62-63 (2d Cir. 1999) ("the government [cannot] avoid affording due process to citizens by arbitrarily invoking emergency procedures."); *Armendariz v. Penman*, 31 F.3d 860, 866 (9th Cir. 1994) ("[T]he rationale for permitting government officials to act summarily in emergency situations does not apply where the officials know no emergency exists, or where they act with reckless disregard of the actual circumstances."), *vacated in part on other grounds*, 75 F.3d 1311 (9th Cir. 1996) (*en banc*).

The City's purported interest in removing blight does not excuse its actions here—or render Terrence Hill's rights subordinate to it. The evidence shows blight removal became an imminent municipal issue only after the City (1) knew that it could not buy the property in the multi-party deal and (2) the property had a new owner. Pet. App. A. 16a. No artful argument can mute the controlling, immutable fact—the notice to Hill was insufficient: The municipalities had a policy and practice of withholding the truth about Hill's property. "[A]ssessing the adequacy of a particular form of notice requires balancing the interest of the State against the individual interest sought to be protected by the Fourteenth Amendment." *Flowers,* 547 U.S. at 229. *See also Dusenbery v United States*, 534 U.S. 161, 167 (2002)(quoting *United States v. James Daniel Good Real Property*, 510 U.S. 43, 48 (1993). Here, as in *Flowers*, reasonable steps[9] were available to the City and

9. There is no evidence that alleged dangerous condition posed an imminent threat to the public—or was an emergency situation that justified summary, *ex parte* proceedings; the City deemed the property a dangerous condition for years, yet did nothing about it—until the property was sold to Hill. In "emergency situations," moreover, notice and hearing requirements yield to the exigencies of "summary administrative action." *Hodel v. Va. Surface Mining & Reclamation Ass'n,* 452 U.S. 264, 299-300 (1981) (collecting cases). "[W]here a State must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process satisfies the requirements of the Due Process Clause." *Gilbert v. Homar,* 520 U.S. 924, 931 (1997) (collecting cases). "Protection of the health and safety of the public is a paramount governmental interest which justifies summary administrative action. Indeed, deprivation of property to protect the public health and safety is '[o]ne of the oldest examples' of permissible summary action." *Hodel,* 452 U.S. at 300 (quoting *Ewing v. Mytinger & Casselberry, Inc.,* 339 U.S. 594, 599 (1950)). In this context, "[t]he relevant inquiry is not whether a [summary action] order should have been issued . . . , but whether the statutory

County. In fact, one Jackson employee suggested that they provide updated information to Hill and others at the auction, but was rebuffed.[10] Updated information—at the auction's outset—would have been a simple, inexpensive, and effective way to tell Hill and others whether the City was going to demolish the very properties the County was offering for sale. Likewise, a condemnation/demolition letter addressed to Hill—or a "dangerous building" posting after September 27, 2012—would have provided Mr. Hill with an opportunity to address the City's apparent concerns regarding the property before the City demolished the home on Dr. King Day. Generally, posting notice is "a singularly appropriate and effective way of ensuring that a person is actually apprised of proceedings against him." *Jones*, 547 U.S. at 236. These efforts are neither "impossible or impractical obstacles in the way" of the City and County. *Mullane*, 339 U.S. 313-314. If *Memphis Light, Gas & Water Div. v. Craft,* 436 U.S. 1, 18 (1978), requires predeprivation due process before the government shuts off a citizen's utilities, then predeprivation due process is required before the government destroys a citizen's home. If prejudgment writs of replevin, based upon ex parte creditor proceedings violate procedural due process—*see Fuentes,* 407 U.S. at 80-84—then "no notice, no emergency" demolitions violate procedural due process.

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procedure itself is incapable of affording due process." *Id.* at 302 (citation omitted). *See also Greene v. Lindsey*, 456 U.S. 444 (1982).

10. Jackson City Official, Frank Donovan testified, "[P]rior to the auction, knowing the houses were condemned, I offered – I went to the auctions with the NES evaluations in hand and offered to the county treasurer to allow me to address the whole body before they even began bidding. ***And she would not allow me. I was given no authorization to do that***." Pet. App. A. 23a (emphasis added).

State statutes and municipal ordinances do not absolve Appellees of their due process obligation. The Supreme Court routinely "required the government to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case." *Flowers*, 547 U.S. at 230. Moreover, several courts have held that notice fails to satisfy due process when the sender knows the attempt to provide notice has failed. *See, e.g., Robinson v. Hanrahan*, 409 U.S. 38, 40 (1972)(notice sent to prisoner's home address inadequate when government knew prisoner was in prison); *Covey v. Town of Somers*, 351 U.S. 141 (1956)(notice by mailing, posting, and publication insufficient when government knew property owner was incompetent); *Plemons v. Gale*, 396 F.3d 569, 576 (4th Cir. 2005). *Jones* and its progeny illustrate that "the government's knowledge that notice pursuant to the normal procedure was ineffective triggered an obligation on the government's part to take additional steps to effect notice." *Flowers*, 547 U.S. at 231. The lower court erred, because the government's knowledge is "one of the 'practicalities and peculiarities of the case.'" *Flowers*, 547 U.S. at 230-231 citing *Mullane*, 339 U.S. at 314-315.

II. The Sixth Circuit's Decision on Procedural Due Process Overextends *Parratt v. Taylor*, and Conflicts With Other Circuit Courts.

The lower court's use of *Parratt v. Taylor* is incorrect, because it sweeps too broadly. *See, e.g., Parratt v. Taylor,* 451 U.S. 527 (1981), *overruled on other grounds by Daniels v. Williams,* 474 U.S. 327, 330–31, 106 S. Ct. 662, 88 L.Ed.2d 662 (1986). "The underlying rationale of *Parratt* is that when deprivations of property are effected through

random and unauthorized conduct of a state employee, predeprivation procedures are simply 'impracticable' since the state cannot know when such deprivations will occur." *Hudson v. Palmer*, 468 U.S. 517, 533, 104 S. Ct. 3194, 82 L.Ed.2d 393 (1984). Here, unlike in *Parratt* and *Hudson*, "predeprivation procedural safeguards could address the risk of deprivations of the kind" implicated in this case. *Zinermon v. Burch*, 494 U.S. 113, 132 (1990) (exhaustion of state law remedies not required to for Section 1983 claim); *Archbold-Garrett v. New Orleans City*, 893 F.3d 318 (5th Cir. 2018) (recognizing a right to predeprivation procedural due process where government sells property to a citizen without advising of known pending demolition notices). There is no evidence of a need for "quick action by the State." *Parratt v. Taylor*, 451 U.S. at 539. As the Seventh Circuit observed in *Wilson v. Civil Town of Clayton, Ind.*, "The Supreme Court could not have meant to deny every Sec. 1983 plaintiff his or her day in federal court, no matter how egregious the constitutional violation simply because of the availability of a similar tort action." *Wilson,* 839 F.2d 375, 378 (7th Cir. 1988). The deprivation bears no relation to the kind of garden-variety torts within *Parratt's* purview. In this context, a post-deprivation tort claim is constitutionally deficient. This is the kind of deprivation Section 1983 is designed to remedy.

Parratt does not Control because a Predeprivation Remedy is Possible—and the Post-deprivation Remedy is inadequate—to Protect Hill's Home from Being Demolished

In *Zinermon v. Burch*, this Court explained, "[i] n situations where the State feasibly can provide a predeprivation hearing before taking property, it generally

must do so regardless of the adequacy of a postdeprivation tort remedy to compensate for the taking." *Zinermon v. Burch*, 494 U.S. 113, 132 (1990). Hill lost his home, not a hobby kit, and not a poster. The government destroyed something unique, not a common commercial good, easily replaced in the marketplace. This Court should make clear that *Parratt* and its progeny do not apply in this particular circumstance. Nevertheless, the state's post-deprivation remedies do not satisfy due process. *See Jones v. Powell*, 612 N.W. 2d 423 (Mich. 2000) (holding that there is no state law claim against municipalities based on alleged violations of the Michigan Constitution). Real property is unique. *Bd. of Regents v. Roth*, 408 U.S. 565, 572 (1972) (identifying ownership interest in real estate as one of the fundamental property rights protected by the procedural due process clause); *In re Smith Trust*, 745 N.W. 2d 745, 749 (Mich. 2008) (specific performance proper remedy "[b]ecause real property is unique"); *K-Mart Corp v. Oriental Plaza, Inc.*, 875 F.2d 907, 914 (1st Cir. 1989) ("Real property has long been thought unique"); *Burtmeks v. City of New York*, 716 F.2d 982 n.3 (2d Cir. 1983) ("We note that any post deprivation remedy could not restore Burtmeks to the position she was in prior to the deprivation since the deprivation involved the destruction of real property, which by its nature is unique."); *see also* Dan Dobbs, The Law of Remedies 311 (1973). E. Allan Farnsworth, Contracts §12.6 at 775-776 (3d ed. 1999) ("Each parcel, however ordinary, was considered "unique," and its value was regarded as to some extent speculative. From this it followed that, if a vendor broke a promise to convey an interest in land, money would not enable the injured purchaser to buy a substitute….").

The lower court erred because the pre-auction demolition notices were inadequate—and did not run with the land; Terrence Hill was not provided a reasonable time to abate the alleged nuisance before the City demolished his property. The deprivation was born of *policy*, not negligence or randomness. Those municipal policies deprived Hill of his opportunity[11] to be heard on 1010 Maple Street's latent-yet-pending demolition. The City and County's use of the statutory scheme made the City's initial demolition letter to the County, a dead letter—it does not compel the County to act[12], attend the condemnation hearings—or even comply with the usual presale disclosure requirements. Mr. Hill's property deprivation was predictable—and preventable—because it occurred "at a specific… point in the… [auction and demolition] process." *Zinermon v. Burch*, 494 U.S. 113, 132 (1990). *See also Piatt v. MacDougall*, 773 F.2d 1032, 1036 (9th Cir.1985) (en banc) (*Parratt* inapplicable to cases involving deliberate, considered, planned or prescribed conduct by state officials, whether or not such conduct is authorized); *DiLuzio v. Vill. of Yorkville, Ohio*, 796 F.3d 604, 608 (6th Cir. 2015) (holding that the official's action must be "unpredictable"). Certainly, there is a significant

11. *See Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 171-72, 71 S. Ct. 624, 95 L. Ed. 817 (1951) (Frankfurter, J., concurring) ("No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done.").

12. The County describes the statutory scheme, which allows it to ignore the City's demolition notices, as a "fundamental flaw in the legal posture." See Pet. App. A. 16a, 23a. (R. at 51, Pg ID # 2277 [Jackson County Br. Mot. Sum. J. at 7].)

property interest at stake, as property encumbrances have historically warranted procedural due process guarantees. See, *e.g., Peralta v. Heights Medical Center, Inc.,* 485 U.S. 80, 85, 108 S.Ct. 896, 899, 99 L.Ed.2d 75 (1988).

Certiorari is warranted, because the deprivation was irreversible. *See, e.g., Mackey v. Montrym,* 443 U.S. 1, 21, 99 S.Ct. 2612, 61 L.Ed.2d 321 (1979) ("When a deprivation is irreversible—as is the case with a license suspension that can at best be shortened but cannot be undone—the requirement of some kind of hearing before a final deprivation takes effect is all the more important."). No post-deprivation remedy, standing alone, would satisfy procedural due process guarantees.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted.

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED OCTOBER 22, 2018

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

File Name: 18a0523n.06

No. 17-1386

TERRENCE HILL,

Plaintiff-Appellant,

v.

CITY OF JACKSON, MICHIGAN;
JACKSON COUNTY, MICHIGAN,

Defendants-Appellees.

October 22, 2018, Filed

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN.

BEFORE: GIBBONS, WHITE, and STRANCH, Circuit Judges. HELENE N. WHITE, Circuit Judge, concurring in part and dissenting in part.

JULIA SMITH GIBBONS, Circuit Judge. This appeal concerns the demolition of a home at 1010 Maple Avenue in Jackson, Michigan, as a part of the efforts of the City and County of Jackson to remove blight. Terrence Hill purchased 1010 Maple Avenue via quitclaim deed at a public auction held by the County, but he did not receive the required seller's notice that the property was condemned. The City then demolished the home subject to an existing demolition order that had been issued while the County was the property owner. Hill argues that this unnoticed demolition was without due process of law and violated his equal protection rights. We conclude that the district court correctly held for the City and the County on Hill's claims.

I.

The City of Jackson, Michigan, (the "City"), contains many dilapidated and abandoned homes and has adopted programs to deal with such dangerous and unsafe buildings. Under Chapter 17 of the City Code, City inspectors investigate the dwellings, and if a home is found to be dangerous, inspectors will condemn it, and the City may order it demolished. Jackson City Code § 17-27(b) (stating that if a property is found to be a dangerous building, then the City Code requires that "the division [] commence proceedings to cause its repair, rehabilitation, or demolition"). The County of Jackson (the "County") is often the owner of such condemned buildings, as the County forecloses on and takes possession of blighted properties on which an owner has failed to pay taxes. The County periodically holds public tax foreclosure sales of

these properties, including of properties with condemned structures. Mich. Comp. Laws § 211.78m(2). Section 17-27(l) of the Jackson City Code[1] requires that an owner of a condemned property inform any purchaser of the property's condemned status prior to sale and that the purchaser sign a notarized statement acknowledging the receipt of this notice and accepting responsibility for the property's condition.[2] Jackson City Code § 17-27(l).

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1. In its entirety, the provision states:

> *Transfer of ownership*. It shall be unlawful for the owner of any building or structure alleged to be dangerous who has received a notice and order, or upon whom a notice and order bas been served pursuant to subsection (c)(2) of this section, to sell, transfer, or otherwise dispose of to another until the provisions of the notice and order have been complied with, or until such owner shall first furnish the grantee or transferee a true copy of said notice and order issued by the building official, and shall furnish to the building official a signed and notarized statement from the grantee or transferee acknowledging the receipt of such notice and order, and fully accepting the responsibility, without condition, for making the required repairs, rehabilitation, or demolition to the alleged dangerous building or structure as required by such notice and order.

Jackson City Code § 17-27(l). The referenced "notice and order" also includes a condemnation-notice requirement and the filing of an "Affidavit of Disclosure." DE 26-5, Not. & Order, Page ID 370.

2. One reason for mandating this disclosure is the City Code's authorization of the City's seeking reimbursement for the cost of demolition from owners of condemned properties. *See* Jackson City

In April 2011, the County became the owner of 1010 Maple Avenue (the "Property") through tax foreclosure. In January 2012, building inspectors for the City found that the dwelling on the Property was a "[d]angerous [b]uilding or [s]tructure" as defined by the Jackson City Code. DE 26-3, Dangerous Bldg. Rep., Page ID 366-67; Jackson City Code § 17-27(b). In accordance with City Code procedures, the City then issued a "Notice and Order" of this condemnation to the owner of the Property—the Jackson County Treasurer—and posted this Notice on the Property. Jackson City Code § 17-27(c)-(d). The Notice and Order alerted the County that the structure was deemed "Dangerous and Unsafe," informed the County of its ability to attend a "hearing before the Building Code Board of Examiners and Appeal [to] show cause why this Notice and Order should not be upheld," and advised the County of its legal disclosure obligations. DE 26-5, Not. & Order, Page ID 369-70. Specifically, the Notice and Order instructed the County "not [to] transfer the property or structure to another person without first giving notice to the buyer and filing an 'Affidavit of Disclosure' indicating that the new owner has been advised of and will fully accept and comply with outstanding code violations"—i.e., advised the County that it must comply with the provisions of City Code § 17-27(l). *Id.* at 370. A notice to this effect was also publicly filed with the Jackson County Register of Deeds. The City notified the County by a "notice of hearing" dated February 27, 2012, that the Building Code

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Code § 27-17(f)(5). Indeed, the City sought such reimbursement from Hill as a counterclaim in this action. The district court dismissed this counter-claim *sua sponte*, citing the lack of notice provided Hill. The City has not appealed this determination.

Board of Examiners and Appeals would hold a hearing on March 8, 2012. The City sent the County a second "notice of hearing" dated May 4, 2012, stating that a hearing would take place on May 17, 2012. The County chose not to contest the Property's condemnation, and, in May 2012, the City's Board of Examiners upheld the condemnation and set the home on the Property for demolition.

In September 2012, before the demolition was carried out, the County sold the Property to Terrence Hill for $400 through its public auction process. Although the Auction Booklet instructed prospective purchasers to "[c]heck with the City of Jackson for any possible Condemnation Order/ Ordinance Violations Pending," the County did not notify Hill that the structure on the Property was condemned, and it did not provide or file the affidavit of disclosure required by § 17-27(l) and the Notice and Order. DE 37-8, Auction Booklet, Page ID 1672. After winning the auction, Hill checked with the City's Neighborhood and Economic Operation department and learned for the first time that the structure on the Property was condemned—though at that time he was erroneously told that it was not on a demolition list.

Hill received a quitclaim deed to the Property on October 10, 2012, and, believing that he could get the home up to code, began working on improvements. Hill restored utility services, bought roofing material, kitchen appliances, and carpeting, and he contacted the relevant City department to obtain required building permits for the home—though the permits were not issued. On January 18, 2013, the energy provider disconnected the

Property's utility services and removed the meters. Hill then contacted the City, at which time the City advised Hill that it would not issue the building rehabilitation permits for the Property and informed him that the structure was slated to be demolished. Three days later, on January 21, 2013, a City contractor demolished the home.

Hill then brought this suit in Michigan state court, alleging procedural due process, substantive due process, and equal protection violations and seeking injunctive relief and damages under 42 U.S.C. § 1983.[3] The City and County then removed to the U.S. District Court for the Eastern District of Michigan. The district court granted the County's motion to dismiss the equal protection claims against it. The district court then granted summary judgment for the City on all of Hill's claims,[4] and later granted summary judgment for the County on Hill's remaining due process claims.[5]

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3. Hill's complaint also included claims for violation of equal protection and due process rights under the Michigan Constitution, though it does not appear that these claims were discussed or briefed in the district court, nor are they raised in this appeal.

4. In granting the City's summary judgment motion, the district court entered an order "adopt[ing] the reasoning" from an opinion it issued the same day in a companion case, *Schwab v. City of Jackson*, No. 14-cv-11074, as "the briefing, facts, and legal issues in each case appear essentially identical." DE 43, Order Granting City's Mot. Sum. J., Page ID 1773. The citations to that opinion's reasoning therefore reference the relevant docket entry for *Schwab*—14-cv-11074, DE 44, Sum. J. Order for City, Page ID 1841.

5. In granting the County's motion for summary judgment, the district court similarly "adopt[ed] the reasoning from [an]

II.

We review a district court's grant of a Rule 12(b)(6) motion to dismiss for failure to state a claim *de novo. Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428, 435 (6th Cir. 2012). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Grant of a motion to dismiss is proper if this plausibility standard is not met. *See id.*

We review a district court's grant of summary judgment *de novo. Kalich v. AT&T Mobility, LLC*, 679 F.3d 464, 469 (6th Cir. 2012). Summary judgment is appropriate "if 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." Fed. R. Civ. P. 56(a). In considering a motion for summary judgment, we "draw all reasonable inferences in favor of the nonmoving party." *Int'l Union v. Cummins, Inc.*, 434 F.3d 478, 483 (6th Cir. 2006) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538

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order" issued in *Schwab*. DE 60, Order, Page ID 2614. Unlike the opinion for the grant of the City's motion, the opinion and order related to the County's motion for summary judgment *is* available on Hill's docket at DE 64, though the opinion and order references and discusses the plaintiff in the companion case, Monika Schwab.

(1986)). In doing so we ask "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

III.

A.

Hill first argues that the City and County deprived him of his property without due process of law in violation of the Fourteenth Amendment. The Fourteenth Amendment states that "[n]o State shall . .. deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Thus, "[p]rocedural due process generally requires that the state provide a person with notice and an opportunity to be heard before depriving that person of a property or liberty interest." *Warren v. City of Athens*, 411 F.3d 697, 708 (6th Cir. 2005). Hill argues that because the City and the County willfully chose not to tell him about the demolition order for the Property, they violated his procedural due process rights.

The district court granted summary judgment for the City after concluding that the City's condemnation procedure satisfied due process, as it gave sufficient notice to the owner of the Property—which at the time of the condemnation was the County—that the Property had been condemned and gave the owner the opportunity to contest the condemned status. Moreover, it held that the § 17-27(l)'s mandatory condemnation-notice requirement

"adequately protect[ed] future purchasers of the property (so long as owners comply with the procedures)." 14-cv-11074 DE 44, Sum. J. Order for City, Page ID 1857-58. In granting summary judgment for the County, the district court concluded that, although it did not comply with the City ordinance requiring condemnation notice, "[i]n doing so, it functioned as a seller—nothing more" and that "[Hill] has not shown that the County deprived h[im] of any property interest by its failure to comply with the ordinance's disclosure requirement." DE 64, Amended Order, Page ID 2628.

Although we appreciate Hill's situation, we conclude that judgment for the defendants here was proper, though under different reasoning than that applied by the district court. Under our precedent interpreting *Parratt v. Taylor*, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981),[6] Hill was required to plead and prove that there is no adequate state-law remedy for this deprivation before bringing a § 1983 claim for damages based on a procedural due process violation. Because he has not done so, he cannot succeed on his claims here. *See Daily Servs., LLC v. Valentino*, 756 F.3d 893, 904 (6th Cir. 2014).

The *Parratt* doctrine divides procedural due process claims between those that "'involv[e] a direct challenge to an established state procedure' and 'those challenging random and unauthorized acts.'" *Id.* at 907 (quoting *Mertik*

6. *Parratt* was overruled on another point of law by *Daniels v. Williams*, 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986), but continues to apply to procedural due process claims. *See e.g., Daily Servs., LLC v. Valentino*, 756 F.3d 893, 896 (6th Cir. 2014).

v. Blalock, 983 F.2d 1353, 1365 (6th Cir. 1993)). As to the latter, we require that before bringing a § 1983 claim for damages, the plaintiff show "a loss for which available state remedies would not adequately compensate the plaintiff." *Id.* (quoting *Warren*, 411 F.3d at 709). This is because "[w]hen a deprivation occurs through an established state procedure, 'then it is both practicable and feasible for the state to provide pre-deprivation process, and the state must do so regardless of the adequacy of any post-deprivation remedy,'"; however, "when a random and unauthorized deprivation occurs, 'the pre-deprivation procedures are simply impracticable and an adequate post-deprivation remedy affords all the process that is due.'" *Silberstein v. City of Dayton*, 440 F.3d 306, 316 (6th Cir. 2006) (quoting *Walsh v. Cuyahoga Cty.*, 424 F.3d 510, 513 (6th Cir. 2005)).

Here, the County, by failing to comply with § 17-27(l), committed an unauthorized act that undermined otherwise robust procedures ensuring adequate notice of condemnation to purchasers. The "established [City] procedure" itself was not flawed—instead, the County prevented the correct operation of these procedures by its violation of the disclosure ordinance. Hill was therefore required to show that there is no adequate state-law remedy for this violation before bringing a § 1983 action for damages.

As the district court observed in granting summary judgment for the City:

> [T]he real issue in the present case is not the procedures that the City used to condemn and demolish [Hill]'s property; rather, the issue is the County's alleged failure to provide [Hill] notice of, and obtain [his] acknowledgment of, the condemnation order. Under the circumstances present, the County's alleged failure undermined the framework designed to ensure that prospective buyers are aware of and comply with condemnation notices.

14-cv-11074 DE 44, Sum. J. Order for City, Page ID 1859. The City employs comprehensive procedures for condemnation and demolition actions—providing notice and opportunity appear and present evidence at a hearing before the Building Code Board of Examiners—and this process was afforded the County, who was the owner of the Property at the time of condemnation. The City's procedures likewise ensure that owners are not able to offload such condemned properties to unwitting buyers by mandating an affidavit of disclosure before a transfer in ownership. *See* Jackson City Code § 17-27(l). Had the County followed this ordinance, then Hill would have been able to assess whether it was worthwhile to acquire the Property in light of the condemnation and could have purchased (or declined to purchase) it with the knowledge that the structure on it was condemned.

The tension between the facts of this case and conventional procedural due process analysis also

highlights the applicability of the *Parratt* doctrine.[7] As discussed, the City provided extensive condemnation procedures, including notice and opportunity to appear to the then-owner, the County, and it was only the County's unauthorized violation of § 17-27(l) that prevented Hill from receiving notice of the Property's condemnation status. And Hill fails to conceptualize any property interest of which the County deprived him, as the County simply failed to comply with § 17-27's mandatory disclosure requirements in its capacity as a seller—it was the City that demolished the structure. Hill instead leverages his critiques at the County's failure to disclose the Property's condemned status. But violation of City code and deception in property conveyance—at least as

7. By "conventional procedural due process analysis" we mean the two-step analysis that first asks whether a protected property or liberty interest exists and then determines what procedures are required to protect that interest. *Johnston-Taylor v. Gannon*, 907 F.2d 1577, 1581 (6th Cir. 1990). In the second step of this analysis, we employ the balancing test outlined in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), to determine what process is due. *See id.* at 335. Although the Supreme Court has stated that "*Parratt* is not an exception to the *Mathews* balancing test, but rather an application of that test to the unusual case in which one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue," *Zinermon v. Burch*, 494 U.S. 113, 129, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990), functionally, a finding that the *Parratt* doctrine applies results in disposition of the case before engaging in the conventional procedural due process analysis, *see Daily Servs.*, 756 F.3d at 907-09 (holding for defendant without engaging in complete procedural due process analysis after finding *Parratt* applicable).

articulated here—seems more properly characterized as a tort. *Cf. DePiero v. City of Macedonia*, 180 F.3d 770, 788 (6th Cir. 1999) ("Failure of the citation to comply with state law does not, however, automatically translate into a deprivation of procedural due process under the United States Constitution."). Without knowing that there is otherwise no available remedy for the County's violation here, a § 1983 claim is incongruous.

And though the burden rested with Hill to plead and prove the absence of state-law remedies, there is reason to believe that such a remedy would be available here. We find compelling the district court's careful analysis concluding that the County has not shown it is immune from the notification obligations of § 17-27(l)—an argument the County has not raised on appeal. DE 64, Amend. Order, Page ID 2622-26; *see* Jackson City Code § 17-27(l). Moreover, in assessing this claim, the district court noted that, even if it did accept the County's argument on this point, it "would only preclude the Board of Examiners from authorizing a proceeding against the County . . . not necessarily immunize the County from a suit brought by a private party . . . arising out of a violation of [§ 17-27(l)]." DE 64, Amend. Order, Page ID 2623-24. The likely availability of (and better fit of) a state law remedy, emphasizes the applicability of the *Parratt* doctrine to Hill's procedural due process claims.

Thus, because the County's failure to inform Hill—the real issue in this case—was not an "established state procedure" but more akin to a "random and unauthorized" act, it falls within the ambit of the *Parratt* doctrine. *See*

Daily Servs., 756 F.3d at 907; *Mitchell v. Fankhauser*, 375 F.3d 477, 483-84 (6th Cir. 2004). Hill was therefore required to "explain why the ability to be heard in state court . . . even in the absence of damages, is insufficient to remedy [his] process violations" prior to the district court hearing this claim. *Daily Servs.*, 756 F.3d at 910; *see also Vicory v. Walton*, 721 F.2d 1062, 1063 (6th Cir. 1983) ("[I]n section 1983 damage suits for deprivation of property without procedural due process the plaintiff has the burden of pleading and proving the inadequacy of state processes, including state damage remedies to redress the claimed wrong."). Because he has not done so, his procedural due process claims against the City and County should have been dismissed. We therefore affirm judgment for the defendants on these claims.

B.

Hill also challenges the district court's grant of summary judgment for the City and County on his substantive due process claim. We affirm.

"Substantive due process claims are of two types. The first type includes claims asserting denial of a right, privilege, or immunity secured by the Constitution or by federal statute . . . . The other type of claim is directed at official acts which may not occur regardless of the procedural safeguards accompanying them." *Mertik*, 983 F.2d at 1367. Hill has alleged the latter type, claiming that the City and County violated substantive due process by demolishing the structure without providing effective notice to him. The test is therefore whether the

government action complained of is arbitrary or "shocks the conscience." *Id* at 1367-68 (quoting *McMaster v. Cabinet for Human Res.*, 824 F.2d 518, 522 (6th Cir. 1987)); *see also Rochin v. California*, 342 U.S. 165, 172, 72 S. Ct. 205, 96 L. Ed. 183 (1952).

The district court granted summary judgment for the City after concluding that the City enacted and followed specific ordinances governing demolition of abandoned buildings and provided the then-Property owner, the County, with adequate notice.[8] We agree that the City's actions are not conscience-shocking, particularly given the City's important interest in controlling blight by demolishing abandoned homes. *See Harris v. City of Akron*, 20 F.3d 1396, 1405 (6th Cir. 1994) ("So far as we know, or have been informed, no court has held that it shocks the conscience for municipal authorities, acting pursuant to an unchallenged ordinance, to order the destruction of a building found by responsible officers to be a nuisance or threat to public health or safety."). As to the County, although it violated ordinance § 17-27(l) in failing to provide Hill the affidavit of disclosure, this does not shock the conscience so as to amount to a substantive due process violation. *See Cty. of Sacramento v. Lewis*, 523 U.S. 833, 848, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998) ("[T]he due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm.").

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8. Hill does not challenge the validity of the City's condemnation and demolition procedures, but instead the City's means carrying them out here.

Moreover, nothing in Hill's briefs in the district court or in this appeal raises a comprehensible argument otherwise. In opposing the City's and County's motions for summary judgment on his substantive due process claims in the district court, Hill mounted no argument at all, but merely re-stated the count from his complaint. DE 54, Hill Br. Opp. County's MSJ, Page ID 2335 (stating "Count 2: Violation of his substantive due process rights," which is the only mention of substantive due process in the brief); DE 34, Hill Br. Opp. City's MSJ, Page ID 1026 (same).) His substantive due process arguments could likewise be considered waived. *Scottsdale Ins. Co. v. Flowers*, 513 F.3d 546, 552 (6th Cir. 2008) ("[A]n argument not raised before the district court is waived on appeal to this Court.").

C.

Hill lastly claims that the City and County violated his right to equal protection. The Equal Protection Clause prohibits discrimination by the government that "burdens a fundamental right, targets a suspect class, or intentionally treats one differently than others similarly situated without any rational basis for the difference." *TriHealth, Inc. v. Bd. of Comm'rs*, 430 F.3d 783, 788 (6th Cir. 2005). In the district court, Hill argued that the City and the County violated his right to equal protection under the third theory—a class-of-one violation—because similarly situated property owners were issued building permits to make necessary improvements to their properties, while Hill's request was denied. The district court granted the County's motion to dismiss the equal protection claim against it, and later granted summary

judgment in favor of the City on this claim. The district court was correct in its rulings for the County and City.

Hill's complaint does not state a plausible claim against the County for an equal protection violation. *See Iqbal*, 556 U.S. at 678. As the district court noted, "[a]ll of the relevant facts and allegations relating to the failure to issue a rehabilitation permit apply solely to the City." DE 20, Order Granting Mot. Dismiss, Page ID 184. In his complaint Hill did not allege, nor did he demonstrate to the district court, that the County had any role in such permitting decisions, and the claim was therefore properly dismissed.

As to the City, even drawing all reasonable inferences in his favor, Hill cannot succeed in his equal protection claim. *See Int'l Union*, 434 F.3d at 483. As an initial matter, to bring a class-of-one equal protection claim, a party "must claim that the government treated similarly situated persons differently," *Braun v. Ann Arbor Charter Twp.*, 519 F.3d 564, 574 (6th Cir. 2008), and that "it and other individuals who were treated differently were similarly situated in all material respects," *Taylor Acquisitions, L.L.C. v. City of Taylor*, 313 F. App'x 826, 836 (6th Cir. 2009). Here, Hill has not done so, as his only evidence in support of differing treatment is his own allegation that the City issued a rehabilitation permit to the owner of 1201 East Ganson Street, while denying his request. The record, however, indicates that the owner of 1201 East Ganson Street entered into a written agreement with the City to fully rehabilitate that property prior to being issued a permit. Hill was offered, but did not enter

into, such an agreement with the City and therefore has not shown that he is similarly situated to this other owner.

Even were Hill able to show that he was similarly situated to the other owner, the City's differing treatment of Hill would still be subject to rational basis review only. *See TriHealth, Inc.*, 430 F.3d at 788. As recognized by the district court, Hill "has not presented evidence that the City acted irrationally or arbitrarily when it denied [his] permit application." 14-cv-11074 DE 44, Sum. J. Order for City, Page ID 1862. To do so, he would need to "negat[e] every conceivable basis which might support the government action." *TriHealth, Inc.*, 430 F.3d at 788. Hill has not met this burden. The record supplies rational reasons for denying the permit application, such as Hill's refusal to enter into a rehabilitation agreement, and Hill does not provide reasons why this denial was irrational.

Indeed, in his brief on appeal, Hill does not even argue that the district court was incorrect in its conclusion that there was no equal protection violation regarding Hill's request for a permit—Hill's brief does not mention the permitting process or the district court's reasoning at all. Instead, Hill attempts to recast his equal protection claim as one for animus arguing that the "municipalities arbitrarily created a situation where Hill could not get notice," in addition to making general complaints about the public auction process for foreclosed homes. CA6 R. 15, Hill Br., at 31-32. These animus-related arguments, in addition to being undeveloped, have been waived, as they were not raised in the district court. *Scottsdale Ins. Co.*, 513 F.3d at 552; *see also Galinis v. Cty. of Branch*,

660 F. App'x 350, 356 (6th Cir. 2016). And because Hill's brief on appeal does not raise any argument related to the permitting process, the district court's reasoning on that point is conceded. *See Youghiogheny & Ohio Coal Co. v. Milliken*, 200 F.3d 942, 955 (6th Cir. 1999) ("[A]rguments not raised in the proponent's opening brief on appeal are generally considered abandoned."); *see also Galinis*, 660 F. App'x at 356 (argument not raised in initial brief is waived). We therefore affirm the district court's resolution of Hill's equal protection claims.

IV.

For the reasons stated, we affirm the district court.

HELENE N. WHITE, Circuit Judge, concurring in part and dissenting in part. I agree with the majority's disposition of Hill's substantive-due-process and equal-protection claims. I respectfully dissent regarding Hill's procedural-due-process claim.

As the majority notes, the City's Code of Ordinances contains various provisions aimed at protecting prospective buyers of condemned property. Section 17-27(d)(2) requires the building inspection division to record all dangerous building notices, orders, and decisions upholding those orders with the county register of deeds within 20 days of the notice, decision, or order.[1]

Section 17-27(l)[2] requires an owner of a condemned

1. Section 17-27(d)(2) provides:

> The building inspection division shall record with the county register of deeds all dangerous structure condemnation notices and orders and building code board of examiners and appeals decisions upholding notices and orders within twenty (20) days of such notice, decision or order.

Jackson Code of Ordinances § 17-27(d)(2).

2. Section 17-27, titled "Abatement of nuisances; procedure," provides in pertinent part:

> (l) *Transfer of ownership*. It shall be unlawful for the owner of any building or structure alleged to be dangerous who has received a notice and order . . . to sell . . . to another until the provisions of the notice and order have been complied with, or until such owner shall first furnish the . . . transferee a true copy of said notice and order issued by the building official, and shall furnish to the building official a signed and notarized

property (here, the County) to inform any purchaser (here, Hill) of the property's condemned status prior to

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> statement from the . . . transferee acknowledging the receipt of such notice and order, and fully accepting the responsibility, without condition, for making the required repairs, rehabilitation, or demolition to the alleged dangerous building or structure as required by such notice and order.
>
> (m) *Penalties*. Any person who . . . causes or allows such a building to be reoccupied without satisfying all requirements of a notice and order . . . or who transfers property in violation of subsection (l), shall be guilty of a misdemeanor and punished upon conviction thereof as provided in section 1-18 of this Code.
>
> . . . .

Jackson Code of Ordinances, § 17-27 (l) & (m). Section 1-18 provides in pertinent part:

> every person convicted of a violation of any provision of this Code . . . shall be punishable by a fine of not more than five hundred dollars . . . and costs of prosecution or by imprisonment for not more than ninety (90) days, or both[;] such fine, costs and imprisonment in the discretion of the court . . . . Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.

Jackson Code of Ordinances § 1-18; *see also* Mich. Comp. Laws Ann. § 117.4i, which limits penalties of persons who violate city ordinances to a fine of $500 or imprisonment for 90 days, or both. The City asserts, and Hill acknowledges, that the Michigan legislature excluded a Home Rule City like Jackson from imposing sanctions against a tax foreclosing body such as Jackson County's Treasurer. *See* Mich. Comp. Laws Ann. § 117.4q(3) ("This section does not authorize a proceeding against a foreclosing governmental unit."). City Br. 7; Hill Br. 23.

sale and obtain from the purchaser a notarized statement acknowledging the receipt of this notice and accepting responsibility for the property's condition. Maj. Op. at 2-3.

Both the City and County violated § 17-27. The City recorded the condemnation but not the decision and order upholding the condemnation, contrary to § 17-27(d)(2). Thus, even had Hill gone to the register of deeds he would not have learned that the property had been set for demolition because the Board's decision upholding condemnation, which states that the property will be demolished, was not recorded. And, the County acknowledges that it violated § 17-27(l), claiming that compliance was "impractical, if not impossible given the context of the auction process," presumably referring to the large number of houses it auctioned. County Br. 10. But Hill presented evidence that compliance with § 17-27(l) was neither impossible nor impractical, and that the City knew the County had a policy of ignoring the Code's notice requirements.

Frank Donovan, the City's Assistant Director of the Department of Neighborhood and Economic Operations, testified at deposition that he was present at the County auction at which Hill purchased the property and that he sought, but was denied, the County Treasurer's permission to address the attendees *before* the auction began so that he could announce his presence and the fact that he could provide information regarding whether individual properties had been condemned, and, if so, the work that would be required to remove the property from the condemnation list:

> I went to the auction with NES evaluations [reports of property conditions and needed repairs] in hand and offered to the county treasurer to allow me to address the whole body before they even began bidding. And she would not allow me . . . .
>
> So I was there with my tablet and the NES evaluations. And a lot of the people that came to the auction recognized me and knew me as the chief building official . . . .
>
> But the [Jackson County] treasurer [Karen Coffman] would not allow me to have that conversation before the auction.
>
> . . . .
>
> My concern is you're going to buy a piece of property that's condemned and we're going to be taking it down. I knew there would be a battle there. And so I was trying to circumvent the battle.

PID 1161-62/Donovan. Dep.

In addition, Patrick Burtch, the City's Director of Community Development and Assistant City Manager beginning in May 2011 and later City Manager, testified at deposition that he too was present at the September 2012 auction:

[W]e didn't want people to purchase homes [at a County auction] that were condemned already. You know, that creates a lot of other problems. And people were actually - I've actually sat in auctions and watched people purchase homes that were already condemned.

Q Why didn't you want people to do that?

A Because we knew at some point when they're condemned it's very difficult. You know, we don't condemn houses because . . . it just isn't painted. We condemn houses because - at that time, because they were absolutely dangerous. And we knew that fixing these things were going to be nearly impossible.

And a lot of people would bid on houses thinking they'd get a house for a couple thousand dollars or less, thinking that now I can move into this house. And we knew that the house didn't have any utilities in it, most of the windows were gone. There was just no - it was going to be impossible to fix.

. . . .

Michelle and Frank [Donovan] had never been to an auction as far as I knew. And we were going to see—we had known that a number of these houses were condemned that were going up for sale and we wanted to look at how the process is.

PID 2343, 2363-65/Burtch dep. Burtch testified that his staff took NES reports to the auction, and his recollection was that Jackson County Treasurer Coffman told his staff they could not distribute the reports before bidding began. PID 2367. Burtch expected that the County would tell bidders which properties were condemned, but at that time (September 2012) the County did not do so.[3]

On October 10, 2012, Jackson County Treasurer Karen Coffman, the same official who refused to permit Donovan to notify bidders of the status of auction properties and who had received the City's notices of condemnation and demolition regarding the 1010 Maple Street property, transferred the property to Hill knowing that the County had not notified Hill about the property's condemnation or that the City had set the property for demolition in May 2012.

Although aware of the notice problems and that Hill had attempted to obtain building permits, the City did not inform Hill of the demolition order until January 18, 2013, without providing a demolition date even then. Three days later a City contractor demolished the home.

Donovan's and Burtch's testimony of good intent notwithstanding, Hill produced evidence that the City proceeded with its condemnation procedures, including

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3. When Burtch was deposed in April 2015, the County's practice was to disclose to bidders that houses had been condemned, although his testimony is unclear whether he meant that the County discloses condemnations before bidding begins or the County follows § 17-27(l)'s notice requirements. PID 2369.

demolition, although it had actual knowledge that the County had a policy of ignoring § 17-27(l)'s notice requirements; that the County refused to permit the City's representatives to remedy the situation; that the auction purchasers had no knowledge that the properties had been condemned or were subject to demolition; and that the City's otherwise adequate procedures were insufficient to protect the auction purchasers' due process rights.

This evidence sufficiently establishes both that the City was aware of the County's routine violations of § 17-27(l)'s notice requirements, and that there was nothing random about the noncompliance. "*Parratt [v. Taylor*, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981),] does not apply to deprivations of property allegedly not due to random and unauthorized acts." *Wilson v. Civil Town of Clayton, Ind.*, 839 F.2d 375, 378 (7th Cir. 1988). Under the circumstance that Hill presented ample evidence that the County's violation of § 17-27(l) was not a random and unauthorized act, I do not agree with my colleagues to affirm the district court's grant of summary judgment under *Parratt*.

APPENDIX B — AMENDED OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED MAY 15, 2017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 2:14-cv-11074
Case No. 2:14-cv-11072

MONIKA SCHWAB,

Plaintiff,

v.

CITY OF JACKSON, *et al.*,

Defendants.

TERRENCE HILL,

Plaintiff,

v.

CITY OF JACKSON, *et al.*,

Defendants.

HONORABLE STEPHEN J. MURPHY, III,
United States District Judge.

May 15, 2017, Decided
May 15, 2017, Filed

AMENDED OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [52] AND GRANTING SUMMARY JUDGMENT TO PLAINTIFF ON DEFENDANT'S COUNTERCLAIM [5]

The case concerns the efforts of the City and County of Jackson to removed blighted homes and the claims of Monika Schwab, a woman who bought one of those homes. Many of Schwab's claims have already been resolved. Now before the Court is the County's motion for summary judgment. The Court held a hearing and will grant the motion for the reasons stated below.[1]

BACKGROUND

The Court's previous order laid out most of the underlying background in the case and need not be repeated here. *See* Order 2-8, ECF 44. Only a brief recitation of the chronology is necessary.

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1. The Court resolved the motion in a previous order. *See Schwab v. City of Jackson*, 2:14-cv-11074, ECF 62. That order, however, misstated the status of the City of Jackson's Building Code Board of Examiners and Appeals. This amended order corrects the misstatement, while retaining the Court's original conclusion.

In 2011, 1045 South Jackson St. (the Property) was subject to a tax foreclosure and in 2012, title vested in the Jackson County Treasurer pursuant to the General Property Tax Act (GPTA).

In January 2012, the City of Jackson condemned the Property and a few days later, the City served the County a Notice and Order. The Notice explained that the home was condemned and ordered the County not to transfer the property or structure to another person without first giving notice to the buyer and filing an "Affidavit of Disclosure." The affidavit was to confirm "that the new owner has been advised of and will fully accept and comply with outstanding code violations." Notice and Order, ECF 28-3.

In May 2012, the Board of Examiners held a hearing on the Notice and upheld it. The County did not appeal the decision.

In August 2012, the County published a notice in the local newspaper, announcing a public auction of several parcels, including the Property. After seeing the notice, Schwab visited the Property and attended the auction on September 27, 2012. She purchased the Property at the auction and received a quit claim deed from the County Treasurer on October 25, 2012. The County did not provide notice to Schwab before her purchase that the City had condemned the building on the Property.

During November of 2012, Schwab sought building permits to make repairs to the home, but was unsuccessful.

In February 2013, the City slated the house on the Property for demolition and on February 18, 2013, it demolished the house.

STANDARD OF REVIEW

Summary judgment is proper if there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A fact is material if its resolution would establish or refute an "essential element[] of a cause of action or defense asserted by the parties." *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984).

In considering a motion for summary judgment, the Court must view the facts and draw all inferences in the light most favorable to the non-moving party. *Stiles ex rel. D.S. v. Grainger Cnty., Tenn.*, 819 F.3d 834, 848 (6th Cir. 2016). At the summary judgment stage, the judge's function is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Jackson v. VHS Detroit Receiving Hosp., Inc.*, 814 F.3d 769, 775 (6th Cir. 2016) (quoting *Anderson*, 477 U.S. at 249). But a mere "scintilla" of evidence is insufficient to survive summary judgment; "there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252.

DISCUSSION

Both the State of Michigan and the City of Jackson have provisions addressing dangerous structures that are subject to demolition. Michigan law controls how an owner is to be notified that its property may be condemned and when the owner is entitled to a hearing. *See* Mich. Comp. Laws §§ 125.540 & 125.541. Additionally, a City of Jackson ordinance establishes a method for the City to eliminate blight and creates safeguards to protect unsuspecting buyers. *See* City of Jackson, Code of Ordinances, Pt. II, Ch. 17, Nuisances, Art. II(c)-(d), ECF 27-21. Under the ordinance, the City can require an owner to repair blighted property. The ordinance also provides that if the owner of a condemned building wishes to sell or transfer the property, it must first make any repairs required by the City or inform the buyer that the building is dangerous. The City referenced that ordinance in the Notice it served upon the County. ECF 28-3.

There is no dispute that the County did not take the actions listed in the City ordinance. After the Property was foreclosed upon, title eventually vested in the County, and it became the owner of the Property, albeit involuntarily. But the County then sold the Property to Schwab, without informing her of the previous Notice and Order and without obtaining from her an affidavit of understanding.

The County argues that its non-compliance is of no consequence because the County is not bound to follow the City's ordinance. And it concludes that absent a duty

to comply with the ordinance, there can be no due process violation. The Court will address its arguments in support below.

I. Enforceability of the City ordinance against the County

The County argues that "the City of Jackson's ordinance is not applicable or enforceable against Jackson County or the Jackson County Treasurer for properties involuntarily held under the [General Property Tax Act]," and therefore "those same ordinances cannot form the basis of a due process violation claim against the County." Mot. Summ. J. 16, ECF 52.

The City of Jackson is a "Home Rule City" and thus bound by the Michigan Home Rule City Act, Mich. Comp. Laws § 117. Under the Act, a city "may establish an administrative hearings bureau to adjudicate and impose sanctions for violations of the charter or ordinances designated in the charter or ordinance as a blight violation." *Id.* § 117.4q(1). The Act lays forth the powers and procedures for those bureaus, but also explicitly notes that it "does not authorize a proceeding against a foreclosing governmental unit as defined under section 78 of the general property tax act[.]" *Id.* § 117.4q(3).

The County relies upon section 117.4q(3) to argue that the City's ordinance is unenforceable against the County. The reliance is misplaced because 117.4q(3) does not apply here. Although the Jackson County Treasurer is a foreclosing governmental body under the General

Property Tax Act, the City of Jackson's Building Code Board of Examiners and Appeals ("Board of Examiners") is not an "administrative hearings bureau" created under the Home Rule City Act. Instead, it is a board of appeals created pursuant to the Housing Law of Michigan. *See* Mich. Comp. Laws § 125.541c. And although home rule cities are permitted to designate certain ordinance violations as "blight violation[s] in accordance with section 4q of the home rule city act," *id.* § 125.541b(2), the City of Jackson has not done so. Thus, the Home Rule City Act's prohibition on proceedings against foreclosing governmental bodies does not necessarily preclude a similar proceeding initiated by a board of appeals created under the Housing Law of Michigan.

Even if section 117.4q(3) did bar the Board of Examiners from bringing a proceeding against the Jackson County Treasurer, this would not resolve whether the County is nonetheless bound to follow the City's ordinance. Rather, by its terms, section 117.4q(3) would only preclude the Board of Examiners from authorizing a proceeding against the County. Thus, the County could still violate the ordinance, even though the Board of Examiners would be powerless to bring an action against it. And the statutory limit placed upon the Board of Examiners would not necessarily immunize the County from a suit brought by a private party — here, Monika Schwab — arising out of a violation of the ordinance.

The County argues otherwise and directs the Court to *City of Jackson v. Jackson County Treasurer*, a case that arose in the Jackson County Circuit Court. ECF

52-9. The case is inapposite. There, a bureau created under the Home Rule City Act — the Administrative Hearings Bureau — found that a portion of the Act was unconstitutional. The circuit court judge overruled the Board's ruling because it was "in excess of the authority conferred it by the Home Rule Cities Act[.]" *Id.* at 2. No other question was addressed in that case, and the judge made that point clear. *See id.* ("The only question before the Court is whether the Administrative Hearings Bureau Hearing Officer has the authority to rule a state statute unconstitutional."). Here, no hearings bureau has made a constitutional ruling, so the case provides little guidance.

The County also argues that it is statutorily restricted from complying with the ordinance's requirement that owners pay for rehabilitation and repair of properties. The County concludes that it therefore has no obligations under the ordinance. The County explains that the General Property Tax Act "only provides the County with authority to 'maintain' properties," and only permits the County to expend "repair" costs for "environmental remediation." Mot. Summ. J. 14-15, ECF 52 (quoting Mich. Comp. Laws 211.78m(8)(e)) (internal quotation marks omitted). Moreover, the County notes that it held the Property "involuntarily" and cites a Michigan Court of Appeals case for the proposition that it cannot be compelled to comply with the ordinance as an involuntary owner. *See* Mot. Summ. J. 10-11, ECF 52 (citing *Harbor Watch Condo Ass'n v. Emmet Cty. Treasurer*, 308 Mich App. 380, 863 N.W.2d 745 (2014)).

In *Harbor Watch*, the plaintiff condominium association was demanding that the defendant county pay association fees for the general maintenance of a condominium community. Pursuant to the bylaws of the condominium association and Michigan's Condominium Act, all property owners were required to pay fees. The County came to own several condominiums through foreclosures, but argued that, as an involuntary owner, it had no contractual obligations to pay the fees, and even if it did, the GPTA did not authorize the County to pay the fees. *See id.* at 382-83. The Court of Appeals held that, as an involuntary owner, the County was not obligated to pay the assessments. *Id.* at 385. The Court also held that because the GPTA did not authorize the County to pay condominium assessments, the County could not be compelled to perform an ultra vires act. *Id.* at 388.

Under *Harbor Watch*, the Defendant is correct that it cannot be compelled to comply with the ordinance's repair and rehabilitation mandate. But *Harbor Watch* did not address disclosure obligations. Compliance with ordinance's obligation did not require it to expend funds, but merely to inform buyers of certain liens on the property. The reasoning and holdings of *Harbor Watch* do nothing to mitigate that obligation. Accordingly, the County has not shown that, as a matter of law, it is immune from the disclosure requirements of the City of Jackson's ordinance.

Even so, the County argues that there was nothing to disclose, because at the time of the sale to Schwab, there were no active liens. Under the GPTA, when a foreclosing

governmental unit (such as the County) takes title to a property, "all liens for costs of demolition, safety repairs, debris removal, or sewer or water charges due on the property as of the December 31 immediately succeeding the sale, transfer, or retention of the property are canceled effective on that December 31." Mich. Comp. Laws 211.78m(12). According to the County, after December 31, 2012, the liens were canceled and its liability — to the extent it existed — ended.

That argument is also unavailing. The County took title through foreclosure in 2012. Under the GPTA, liens for the cost of demolition and repair were canceled as of December 31, 2012. But the County sold the property to Schwab prior to December 31, 2012 — thus, any liens were still in place at the time of the sale, when the County was required to make its disclosure. Moreover, the ordinance's disclosure requirement is not contingent on the existence of a lien. Rather, the ordinance makes it unlawful to sell the property without first complying with the notice and order or furnishing the buyer with a true copy of the notice and order and furnishing the building official with a signed and notarized statement from the buyer acknowledging the receipt of the notice and order and accepting full responsibility for the requirements within it. Jackson Ordinance § 17-27(l). Nothing in the ordinance's requirement is contingent upon whether the lien remains in effect.

The County did not comply with the disclosure requirement of the ordinance. The County has not shown that it had no obligations under the ordinance and it

has not shown that it is immune from liability for non-compliance. But mere wrongdoing is not enough to prevail on a due process claim, so the Court must now evaluate the merits of Schwab's claims.

II. Due Process Under the 14th Amendment

Schwab's Complaint alleged three counts against the City and County: violation of procedural due process, violation of substantive due process, and violation of equal protection — all under the 14th Amendment of the United States Constitution and Article 1, Section 17 of the Michigan Constitution. Compl. 5-8, ECF 1. In a previous order, the Court dismissed the equal protection claim against the County. *See* Order, ECF 21. Later, the Court granted the City's Motion for Summary Judgment on all three counts. Order, ECF 44. In that order, the Court explained the requirements to prevail on a claim for substantive due process — namely, that the governmental entity's actions must have been arbitrary or conscience-shocking. *See* Order 19-20, ECF 44 (citing *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998)). The Court determined that the City has "an important interest in demolishing abandoned and vacant homes" and that the City's actions concerning Schwab's house did not constitute a substantive due process violation. *Id.*

The same reasoning applies to the County's actions. The County's failure to provide notice to Schwab as required by the ordinance was neither conscience-shocking nor arbitrary. At oral argument, the County

explained that it faced practical constraints in complying with the statute. Although their reasons fail to immunize the County against any blame, they do preclude a finding of arbitrariness. *See Cty. of Sacramento*, 523 U.S. at 848 (explaining that "the due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm"). Simply put, the County's noncompliance with the ordinance did not violate Schwab's substantive due process rights.

This leaves only Schwab's procedural due process claim. Under the Fourteenth Amendment, no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Am. XIV. "[T]o establish a procedural due process claim, a plaintiff must show that (1) he had a life, liberty, or property interest protected by the Due Process Clause; (2) he was deprived of this protected interest; and (3) the state did not afford him adequate procedural rights prior to depriving him of the property interest." *Women's Med. Prof'l Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006).

The County sold Schwab a property without complying with the ordinance's disclosure requirement. In doing so, it functioned as a seller — nothing more. Schwab received the property she bid upon. The City demolished her house after according due process to the party entitled to it: the County. Schwab has not shown that the County deprived her of any property interest by its failure to comply with the ordinance's disclosure requirement. The Court will therefore award summary judgment in favor of the County.

III. The City's Lingering Counterclaim

In its answer to the complaint, the City filed a counterclaim for the costs associated with demolishing Schwab's house. ECF 5. The City later filed a motion for summary judgment on the counterclaim. ECF 27. The Court denied the motion, and explained that it was "inclined to dismiss the counterclaim against Schwab" but did not "because Schwab has not filed a motion for summary judgment on the issue." Order 13 n.2, ECF 44. Nonetheless, the Court finds that the City's counterclaim fails to raise a genuine dispute of material fact, and will therefore grant summary judgment in Schwab's favor sua sponte. *See Shelby Cnty. Health Care Corp. v. S. Council of Indus. Workers Health & Welfare Trust Fund*, 203 F.3d 926, 932 (6th Cir. 2000) (recognizing that a district court may grant summary judgment to a nonmoving party sua sponte where the parties had fully briefed the determinative issue and there is no factual dispute).

ORDER

WHEREFORE, it is hereby **ORDERED** that Defendant's Motion for Summary Judgment [52] is **GRANTED**.

IT IS FURTHER ORDERED that summary judgment on Defendant's counterclaim [5] is **GRANTED** in favor of Plaintiff.

IT IS FURTHER ORDERED that the case is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

/s/ Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: May 15, 2017

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED MARCH 9, 2016

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 14-cv-11072

TERRENCE HILL,

Plaintiff,

v.

CITY OF JACKSON, AND COUNTY OF JACKSON,

Defendants.

HONORABLE STEPHEN J. MURPHY, III

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (DOCUMENT NO. 26)**, GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** (DOCUMENT NO. 27)**, DENYING DEFENDANT'S MOTION TO DISMISS** (DOCUMENT NO. 29)**, AND DENYING MOTION TO CERTIFY CLASS** (DOCUMENT NO. 37)

The case is a companion to *Schwab v. City of Jackson*, Case No. 14-cv-11074. The attorneys are the same, and the briefing, facts, and legal issues in each case appear

essentially identical. Today the Court issued an opinion in *Schwab* adjudicating three motions for summary judgment and a motion to certify class. The Court adopts the reasoning from that opinion, and will reach the same conclusions with regard to pending motions here.

WHEREFORE, it is hereby **ORDERED** that Defendant's Motion For Summary Judgment to Recover the Costs of Demolition (document no. 26) is **DENIED**.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment on the Constitutional Issues (document no. 27) is **GRANTED**.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss Based on Mootness (document no. 29) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Certify Class (document no. 37) is **DENIED WITHOUT PREJUDICE.**

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: March 9, 2016

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED FEBRUARY 17, 2015

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 14-cv-11072

TERRENCE HILL,

Plaintiff,

v.

CITY OF JACKSON AND COUNTY OF JACKSON,

Defendants.

HONORABLE STEPHEN J. MURPHY, III

ORDER GRANTING IN PART AND DENYING IN PART COUNTY OF JACKSON'S MOTION TO DISMISS (DOCUMENT NO. 13)

Plaintiff Terrence Hill purchased a home at a foreclosure sale in 2012. Several months later, the City of Jackson demolished the house. Hill then brought suit against both the County of Jackson ("County") and the City of Jackson ("City"), alleging due process and equal protection violations under the Fourteenth Amendment and Michigan Constitution. The County filed a motion to

dismiss. ECF No. 13. The Court has jurisdiction under 28 U.S.C. §§ 1331 & 1367. Having reviewed the briefs, the Court finds that a hearing is not necessary. See E.D. Mich. LR 7.1(f)(2). The Court will grant the County's motion to dismiss the equal protection claim and deny the County's motion to dismiss the due process claim.

BACKGROUND

According to the complaint, in August of 2012 the County published a notice stating it intended to sell a residence at 1010 Maple Street in the City of Jackson at a foreclosure sale. Hill was interested in buying and renovating the property so that he could rent or resell it. Prior to the sale, Hill and his brother "personally inspected the property" and "found no posted notice regarding code violations, dangerous or unsafe structure or scheduled demolition." Notice Removal, Compl. ¶ 6, ECF No. 1.

Hill purchased the property at the foreclosure sale in September of 2012. The complaint states that the County never provided "any notice of code violations, dangerous buildings condemnation or demolition by the auctioneer or any other representative of the Treasurer." *Id.* ¶ 8. Shortly after the sale, Hill asked the Neighborhood and Economic Operations Department of the City of Jackson if the property was scheduled for demolition; the Deputy City Attorney assured Hill that it was not. *Id.* ¶¶ 9 & 10. A few days later the County presented Hill with a Quit Claim Deed to the property.

Hill then applied for building permits to rehabilitate the structure. He met with the City's Chief Building Official, Frank Donovan, who took his personal information and promised to contact him after a meeting with the City Manager. *Id.* ¶ 13. Hill then had the utilities restored and expended $3500 in needed materials to start rebuilding the property.

On January 18, 2013, the energy company shut off the property's utilities. Hill immediately went to talk with Donovan, who told Hill that "because the Property was not worth the cost of repair, no building permits would be issued for rehabilitation of the Property." *Id.* ¶ 16. Hill then went to the City Ombudsman, who promised to speak with Donovan on Hill's behalf.

Three days later, the City demolished the house. Because it was the Martin Luther King Jr. holiday, Hill was unable to access the state courts or talk with members of City government. According to the complaint, the demolition occurred "without any notice of any kind whatsoever to Plaintiff." *Id.* ¶ 19.

STANDARD OF REVIEW

In assessing a motion brought under Civil Rule 12(b)(6), the court must presume all well-pleaded factual allegations in the complaint to be true and draw all reasonable inferences from those allegations in favor of the non-moving party. *Bishop v. Lucent Techs.*, Inc., 520 F.3d 516, 519 (6th Cir. 2008). To determine whether a plaintiff has stated a claim, the court will examine the complaint

and any written instruments that are attached as exhibits to the pleading. Fed. R. Civ. P. 12(b)(6) & 10(c). Although the pleading standard is liberal, the court need not accept as true any legal conclusion alleged therein, even if couched as a factual allegation. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

The Federal Rules of Civil Procedure do not require a claimant to set out in detail every fact upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 552 (2007). Although "a complaint need not contain detailed factual allegations, its factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." *Ass'n of Cleveland Fire Fighters v. City of Cleveland*, Ohio, 502 F.3d 545, 548 (6th Cir. 2007) (quotation marks and citations omitted). Therefore, the Court will grant a motion for dismissal under Civil Rule 12(b)(6) only in cases when there are simply not "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Iqbal*, 566 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

DISCUSSION

I. Procedural Due Process

The Fourteenth Amendment to the U.S. Constitution provides "[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Cont. amend. XIV. According to the Supreme Court, "[b]efore a State may take property . . . the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner 'notice and opportunity for hearing appropriate to the nature of the case.'" *Jones v. Flowers*, 547 U.S. 220, 223 (2006) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)).

The County urges the Court to dismiss Hill's procedural due process claim. It argues that Hill did not have a cognizable interest in the property. It contends that it provided adequate notice by posting a notice of demolition on its website. And it states that, at most, Hill has alleged the County did not follow state and local procedures relating to notice of demolition—but that failure to follow state law is not unconstitutional. The Court will address each argument in turn.

A. Interest In the Property

The complaint states Hill purchased the property from the County at a foreclosure sale. The County then transferred to Hill a Quit Claim Deed, giving Hill ownership in the property.

The County argues Hill "never had a property interest in the building of which he now claims to have been deprived. Rather, he merely received a quitclaim deed to the real property." Mot. Dismiss 5, ECF No. 13. Because a Quit Claim Deed only transfers the conveyor's interest in the land, "[t]he County could only transfer that interest which it had as of the date of the tax sale; the real estate, and a blighted structure situated on the real estate, previously condemned and set for demolition." *Id.*

The County argues the Quit Claim deed only gave an interest to the land, not the building. Whether Hill had an interest in the building turns on the extent of the interest the County had at the time it transferred the deed. The extent of Hill's property interest is a factual question: Hill alleges he purchased the home at a foreclosure sale and therefore has an interest in the building. That sort of factual allegation is sufficient to survive a motion to dismiss.

B. Sufficiency Of Notice And Opportunity For A Hearing

The next issue is whether the complaint plausibly alleges the County failed to provide notice and an opportunity for a hearing prior to the property's demolition. "[D]ue process requires the government to provide notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Jones*, 547 U.S. at 226 (internal quotations omitted). When "notice is a person's due . . .

[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it, and that assessing the adequacy of a particular form of notice requires balancing the 'interest of the State' against the 'individual interest sought to be protected by the Fourteenth Amendment.'" *Id.* at 229 (quoting *Mullane*, 339 U.S. at 314–15). The Supreme Court has found the government failed to give adequate notice of a tax foreclosure sale when it sent notice through certified mail, but the letter was returned unopened. The Court explained the government's failure to take additional steps was not commensurate with its obligation to ensure the property owner had notice of the sale. *Jones*, 547 U.S. at 229–30. Similarly, the Sixth Circuit has held the government failed to give adequate notice when it served an attorney that had represented a party eight years prior. *Lampe v. Kash*, 735 F.3d 942, 943 (6th Cir. 2013). It reasoned that serving a party's previous attorney was not a "method of notice 'reasonably certain to inform those affected.'" *Id.* (quoting *Mullane*, 339 U.S. at 315).

According to the complaint, the County failed to provide Hill with notice that the property was set to be demolished. Allegedly, the County did not put notices around the property. It did not include any notice of demolition on the Deed. The auctioneer at the foreclosure sale did not mention the property's encumbered status. And in Hill's conversations with County and City officials, no one told him they intended to destroy his property.

The County argues Hill was on constructive "notice that the structure was condemned and subject to

demolition" because "purchasers at a delinquent tax sale should use diligence to determine the condition of any dwelling." Mot. Dism. 5, ECF No. 13. The only case it cites for support is *Hashmi v. City of Chattanooga*, 2008 WL 4974885 (Tenn. Ct. App. 2008). In *Hashmi*, the court found the City of Chattanooga complied with due process prior to demolishing the plaintiff's home, emphasizing "[t]he record is clear that the Owner not only had actual notice but he also had an opportunity to be heard on at least three occasions." *Id.*, at *6. Here, by contrast, the complaint alleges the County provided neither notice nor an opportunity to be heard prior to the destruction of Hill's property.

Furthermore, the Supreme Court has rejected the argument that local governments can circumvent the Constitution's notice requirements by placing a duty on citizens to seek out information. In *Jones*, the Arkansas Commissioner of State Lands argued that a homeowner who had not paid taxes was on constructive notice of a tax foreclosure and sale. 547 U.S. at 231. The Supreme Court disagreed, explaining that "as for the Commissioner's inquiry notice argument, the common knowledge that property may become subject to government taking when taxes are not paid does not excuse the government from complying with its constitutional obligation of notice before taking private property." *Id.* Here, the County can not excuse its alleged failure to provide Hill with notice that the property was going to be demolished by arguing Hill should have done more research before purchasing the property.

C. Failure To Comply With State Law

The County's final argument is that the complaint only alleges the County failed to comply with local laws delineating the method of notice, and that "[f]ailure to comply with state law does not . . . automatically translate into a deprivation of due process under the United States Constitution." Reply 2, ECF No. 16 (citing *Mullane*, 339 U.S. at 314). Both the State of Michigan and the City of Jackson have provisions detailing how to notify a building's owner that it is a dangerous structure subject to demolition. See Mich. Comp. Laws §§ 125.540 & 125.541; City of Jackson, Code of Ordinances, Pt. II, Ch. 17, Nuisances, Art. II(c)-(d). These provisions are coterminous with the Constitution's due process requirements; the laws provide specific methods of service reasonably certain to inform the property owners of the pending demolition, and give the owners an opportunity to contest the destruction of their property. The County did not comply with the statutory requirements. And it allegedly did not it replace the statutorily mandated methods of notice with any other procedure that would provide Hill notice and an opportunity to be heard. In short, the complaint sufficiently alleges the County made no effort to inform Hill of the pending demolition, in violation of both local law and the United States Constitution.

II. Equal Protection

The Fourteenth Amendment provides "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. The

Supreme Court has found that a party adequately states a claim under the equal protection clause when "the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam); see also *Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n of Webster Cnty., W.Va.*, 488 U.S. 336 (1989) (holding taxation scheme that taxed comparable properties at grossly disparate rates violated equal protection clause).

In the present case, the complaint alleges the City of Jackson issued permits to owners of comparably situated dilapidated homes. Yet, the City refused to issue a rehabilitation permit to Hill. The complaint alleges the disparate treatment was "based on the City's arbitrary and capricious determination that the repairs would cost more than the values for which the property was assessed on the City tax records." Notice Removal, Compl. ¶ 44, ECF No. 1.

The Court will grant the County's motion to dismiss the equal protection claim. All of the relevant facts and allegations relating to the failure to issue a rehabilitation permit apply solely to the City. *Id.* ¶¶ 42–52. There is no allegation the County had the ability to issue a building permit, or that it failed to do so in an arbitrary manner. Accordingly, because the County did not have the ability to issue a permit, the Court will dismiss the claim.

Hill's arguments to the contrary implicitly rewrite the complaint. Hill contends the County acted arbitrarily by

providing appropriate notice of demolition to some home owners but not to him. Resp. Mot. Dismiss 16–17, ECF No. 15. According to Hill, this disparate treatment is irrational and violates the equal protection clause. Paragraphs 42 through 52 of the complaint, however, are premised only on the City's grant of permits to some homeowners but not others; the claims do not mention and are not based on the County's failure to give adequate notice. Furthermore, Hill's theory—that the County violated the equal protection clause by complying with due process in some cases but not in others—needlessly muddles the due process and equal protection analysis. Under Hill's theory, any time a local government fails to provide adequate notice, it has violated both the due process and equal protection clauses. That result would marginalize the different harms the constitutional provisions are designed to address. Accordingly, the Court will dismiss the equal protection claim against the County.

CONCLUSION

The complaint adequately alleges the County took Hill's property without due process of law. Accordingly, the Court will deny the County's motion to dismiss that claim. The Court will, however, grant the County's motion to dismiss the equal protection claim.

ORDER

WHEREFORE, it is hereby **ORDERED** that County of Jackson's Motion to Dismiss (document no. 13) is **DENIED IN PART** and **GRANTED IN PART**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: February 17, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 17, 2015, by electronic and/or ordinary mail.

s/Carol Cohron
Case Manager