No. 25-1782

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAURENCE WOLF, dba
LAURENCE WOLF PROPERTIES, individually,
and on behalf of a class of similarly-situated
persons and entities,

Plaintiff-Appellant,

v.

CITY OF DETROIT, MI
a municipal corporation,

Defendant-Appellee.

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

BRIEF OF APPELLANT LAURENCE WOLF

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellant, Laurence Wolf d/b/a Laurence Wolf Properties (hereinafter, "Wolf" or "Plaintiff"), respectfully requests oral argument in this case to advance the merits of his case. While the issues on appeal are admittedly narrow, involving Article III standing and seemingly well-settled precedent, Wolf seeks oral argument due to the complexities of the factual issues involved in this case and to best edify the panel regarding the errors of fact and law contained in the District Court's August 18, 2025 Opinion an Order Dismissing Case For Lack Of Standing (R. 69). Wolf believes that this Honorable Court will benefit from holding an oral argument wherein the parties are present to answer pertinent questions.

Accordingly, Wolf requests that the Court schedule this matter for oral argument.

I. STATEMENT OF JURISDICTION

The District Court had jurisdiction pursuant to 28 U.S.C. 1331, because district courts have original subject matter jurisdiction of all civil actions arising under the U.S. Constitution and Wolf's claims include a claim arising under the 5th Amendment Takings Clause of the U.S. Constitution, with applies to the City through the 14th Amendment to the U.S. Constitution, and an Illegal Exaction claim arising from the City's deprivation of Wolf's rights under the Relief Acts. Plaintiff is entitled to enforce these rights through a civil action under 42 U.S.C. § 1983. Second Amended Class Action Complaint, R. 47, PageID.1504.

This Court has jurisdiction under 28 U.S.C. § 1291 because the District Court's August 18, 2025 Opinion and Order Dismissing Case For Lack Of Standing (R. 69) (the "Opinion") and Judgment (R. 70) constitute the final order and judgment in the case. Wolf's Notice of Appeal was timely filed on August 28, 2025 within 30 days of the entry of the Opinion and the Judgment.

II. STATEMENT OF ISSUES PRESENTED

1. Did the District Court err when it held that Wolf did not have Article III standing to pursue his claims on behalf of himself and the Putative Class, finding that the harm inflicted was not "fairly traceable" to Defendant-Appellee City of Detroit (hereinafter, the "City")?

2. Did the District Court apply the wrong standard when evaluating Article III standing by failing to view the evidence in the light most favorable to Wolf?

3. Have Wolf and the Putative Class suffered an injury-in-fact that is fairly traceable to the City's actions for which a judgment in favor of Wolf and the Class will likely redress the harm?

4. Is Wolf's injury "fairly traceable" to the City's conduct?

5. Is the City's conduct in establishing its "80/20" Policy the "but for" cause of Wolf's harm?

6. Can an injury be fairly traced to more than one actor?

7. Is it likely that the harm experienced by Wolf through the HARA's illegal seizure of 20% of awarded CERA funding will be redressed by a favorable decision of the Court against the City that requires payment of just compensation under circumstances where the HARAs operated as agents of the City?

III. STATEMENT OF THE CASE

This is a putative class action brought by and on behalf of residential landlords in the City of Detroit (the "City") challenging the City's unconstitutional directive that required two Housing Assessment and Resource Agencies—Wayne Metropolitan Community Action Agency ("Wayne Metro") and United Community Housing Coalition ("UCHC" collectively with Wayne Metro, the "HARAs") to withhold in escrow 20% of awarded Covid emergency rental assistance funds (the "CERA Funds") authorized by federally-funded rental assistance programs set forth in the Consolidated Appropriations Act ("CARES" Act) and the American Rescue Plan Act ("ARPA," collectively with CARES, the "Relief Acts"). This requirement, commonly referred to as the City's "80/20" Policy, was imposed by the City upon all CERA Programs operating in the City regardless of whether the Grantee[1] was the State of Michigan ("MSHDA") or the City, and regardless of whether the program was funded under CARES or ARPA.

The Relief Acts were designed to keep tenants in their homes "while facilitating prompt payment to landlords" during the pandemic lockdown—ensuring by their express language that rent payments were made directly to landlords whose tenants demonstrated eligibility for CERA payments (the "Approved Landlords"). *See* 15 USCS § 9058a(c)(2)(C), R. 50-1, PageID.1721; PageID.1732, Executive Order No. 2020-134.

[1] 15 USC § 9058a(k)(2).

The undisputed and expressly stated purpose for the Relief Acts was to "protect vulnerable tenants and landlords" and "to aid the struggling landlords and renters most at risk for eviction." *See* R. 50-1, PageID.1765, Biden Administration "Fact Sheet" dated August 25, 2021 (emphasis added). Here, the Federal Government clearly emphasized the need for accelerated, rapid rental assistance—explicitly stating that "no state or locality should delay distributing resources that have been provided by Congress to meet families' critical need and prevent the tragedy of unnecessary eviction." *Id.* (Emphasis added). Thus, distribution of the CERA Funds under the Relief Acts was intended to be implemented quickly, without obstruction by state or local government, and that CERA Funds were designed to both protect eligible households from eviction and benefit Approved Landlords by securing rent payments owed by tenants that were financially harmed by the pandemic lockdown.

But that is not what the City did.

Incredibly, despite the urgency of the Federal Government's dictate that "no state or locality should delay distributing resources," the City exploited Congress' emergency rental relief program as an opportunity to enforce the City's unsuccessful "Certificate of Compliance" program that it has been trying to bolster since at least 2018. Thus, instead of simply heeding the federal mandate to expedite distribution of CERA Funds "to aid struggling landlords and renters" the City did the exact opposite by mandating an "80/20" Policy that required the two HARAs in charge of distributing the CERA Funds within the City's limits to escrow 20% of the emergency funding in

order to coerce Approved Landlords into compliance with additional local requirements that were wholly untethered to the Relief Acts' stated objectives.

Specifically, the City required Approved Landlords to first obtain a Certificate of Compliance ("CoC", or exception to same) prior to all awarded CERA Funds being distributed. If the Approved Landlord did not have a CoC, then the City mandated that the HARA escrow 20% of the Approved Landlord's awarded CERA Funds until a CoC (or exception) was somehow obtained by the Approved Landlord.

Leaving aside the fact that obtaining a CoC was within the sole control of the City and that it was a virtually impossible requirement to achieve even under nonemergency circumstances,[2] the City's actions in foisting this requirement upon Approved Landlords as a precondition to obtaining the full amount of awarded ***emergency relief*** funds—funds that Congress intended to be distributed without delay—clearly shows that the City impeded the stated objective of the Relief Acts and deprived Approved Landlords of full payment of emergency relief funds awarded to, and owed to, these landlords under the Relief Acts. Indeed, to this day, Wolf and the Putative Class have not been paid the 20% escrowed pursuant to the City's "80/20" Policy.

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[2] Data from the City's Open Data Portal demonstrates only approximately **10% of residential rental properties** have obtained a CoC. *https://data.detroitmi.gov/datasets/detroitmi::residential-certificates-of-compliance/explore* (website snapshot) R. 50-1, PageID.1774; calculated with data from PageID.1788.

Accordingly, Wolf's Complaint alleges that the City has effected an unconstitutional taking in violation of the 5th Amendment and/or effected an illegal exaction of these funds.

A. STATEMENT OF FACTS RELEVANT TO THE ISSUES PRESENTED

1. Emergency Rental Assistance Under the Relief Acts.

Under the Relief Acts, billions of rental assistance funds were provided directly to states and local governments (the "Grantees") for distribution to qualifying landlords, utility providers, and renters. Grantees were expressly charged with using Federal rental assistance funds to aid eligible households through existing or newly created rental assistance programs. The State of Michigan and the City are both "Grantees" under the Relief Acts. 15 USC § 9058a(k)(2); R. 16, PageID.368 and PageID.376 (City's Answer to FAC ¶ 9; ¶ 30, admitting the State and City were Grantees under the Relief Acts, "utilizing local HARAs to facilitate distribution of CERA funds").

Emergency Rental Assistance ("ERA") Grantees were obligated to comply with the requirements outlined in their ERA Award Terms, including the relevant ERA statute, all other applicable federal statutes, regulations, executive orders, and Treasury's guidance (FAQs, reporting guidance, etc.). *See* US Treasury Guidance (R. 50-1, PageID.1761); R. 16, PageID.376 (City's Answer to FAC ¶ 31, admitting same).

Michigan's Covid Emergency Rental Assistance Program ("CERA") was established by the Michigan State Housing Development Authority ("MSHDA"). R.

15, PageID.212 (FAC ¶ 32); R. 16, PageID.376 (City's Answer to FAC ¶ 32); R. 50-2, PageID.1812, State of Michigan's COVID Emergency Rental Assistance Program Guidance.

As a Grantee, the City operated as a fiduciary over the CERA Funds distributed by the Federal Government through MSHDA's CERA program. R. 15, PageID.204, 212-213 (FAC ¶¶ 9, 36); R.16, PageID.368 (City's Answer to FAC ¶ 9, objecting to the term "fiduciary" as a "legal conclusion"—but not denying that the City operated as one.

Under the plain language of the Relief Act statutes, Grantees were **required** to pay rental assistance **directly** to Approved Landlords—except and unless the Approved Landlord refused to accept payment from the grantee. *See* 15 U.S.C. § 9058a (c)(2)(C)(i)(1): "an eligible grantee **shall make payments to a lessor**…on behalf of the eligible household, **except that**, if the lessor…does not agree to accept such payment from the grantee…the grantee may make such payments directly to the eligible household **for the purpose of making payments to the lessor**." [Emphasis added.] *See also* R. 50-1, PageID.1772, City Document acknowledging that rental assistance was to be paid directly to landlords; R. 16, PageID.365 (City's Answer to FAC ¶ 2, admitting that the "Relief Acts were designed to keep tenants in their homes and that one way of accomplishing this was to allow direct payments to landlords on behalf of households that demonstrated eligibility for CERA payments").

The City used local HARAs to facilitate distribution of the CERA Funds to Approved Landlords. R. 15 PageID.204 (FAC ¶ 9); R. 16, PageID.368 (City's Answer

to FAC ¶ 9). A HARA was generally the first point of contact for an applicant seeking relief under the CERA program and was charged with collecting the required documentation to prove eligibility for CERA Funding. *See* R. 50-2, PageID.1848.[3] Landlords, like Wolf, were encouraged to apply to recover back rent on behalf of their tenants, and eligibility for federal assistance was based upon the tenant's financial hardship. *See* R. 50-2, PageID.1869, "Help for Landlords;" R. 16, PageID.376 (City's Answer to FAC ¶ 33, admitting that Landlords "were encouraged to apply to recover back rent on behalf of their tenants").

Wolf applied for, and was awarded, CERA relief on behalf of certain of his tenants based upon these applications making him an "Approved Landlord."[4] R. 15,

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[3] The HARAs, Wayne Metro and UCHC, at all times acted as agents and representatives of the City and acted at the direction and under the control of the City's "80/20" Policy, in approving, administering, distributing and withholding the CERA Funds. *See* R. 16, PageID.387-388 (City's Answer to FAC ¶¶ 73 and 74, admitting that "the HARAs were delegated authority by the City to carry out the provisions of the City's CERA protocol" and that the City "City admits that it authorized the HARAs to carry out the CERA program in accordance with federal, state and local guidelines and requirements.") Neither the City nor the HARAs had a property interest in the CERA Funds once they were awarded to Approved Landlords, who had a vested property right to receive CERA Funds under the Relief Acts. *See* R. 41 PageID.1264-PageID.1265 (determining that Plaintiff had sufficiently alleged a property interest in awarded CERA funds); 15 U.S.C. § 9058a (c)(2)(C)(i)(1)(Relief Act provision requiring direct payment to landlords).

[4] Plaintiff was denied full payment of awarded CERA Funds because of the City's requirement that HARAs escrow 20% of CERA Funds awarded until a CoC or exception to same was acquired. Plaintiff tried to comply with the City's conditions—he registered his property, applied for and attempted to acquire a CoC, but was unable to obtain a CoC from the City despite efforts to do so over a period of months.

PageID.212, 217 (FAC ¶¶ 34, 47); R. 16, PageID.376 (City's Answer to FAC ¶ 34, admitting Plaintiff applied for CERA relief on behalf of his tenants).

Once a CERA application was granted and CERA Funds approved by the HARA, the Approved Landlord who rented to that tenant had a property interest in—*i.e.*, was the legal owner of—100% of the allocated CERA Funds (the "Approved Landlord's CERA Funds"). 15 U.S.C. § 9058a(c)(2)(C)(i)(1) ("an eligible grantee **shall** make payments to a lessor…"); R. 41 PageID.1264-PageID.1265 (determining that Plaintiff had sufficiently alleged a property interest in awarded CERA funds). At that point Grantees, like the City, were fiduciaries over the Approved Landlord's CERA Funds, holding these Funds as a trustee for the benefit of the Approved Landlord. R. 15, PageID.204, 212-213 (FAC ¶¶ 9, 36); R. 16, PageID.368 (City's Answer to FAC ¶ 9, objecting to the term "fiduciary" as a "legal conclusion"—but not denying that the City operated as one).

Local administration of CERA Funds, under MSHDA's guidance, permitted a Grantee to impose additional rules and restrictions, specifically providing that: "local programs may administer the CERA program with additional rules to coincide with existing local codes/ordinances so long **as the additional rules do not conflict with US Treasury regulations or slow the pace of serving eligible tenants and landlords**." *See* R. 50-2, PageID.1812; MSHDA CERA Guidelines; R. 50-2, PageID.1877, (emphasis added); R. 16, PageID.377 (City's Answer to FAC ¶ 37, admitting same).

U.S. Treasury guidelines applicable to Emergency Rental Assistance specifically state that a Grantee may not impose additional eligibility criteria as a condition for households successfully applying for CERA funding—clearly prohibiting Grantees from "augmenting ERA eligibility requirements" by imposing conditions that are more restrictive than those permitted by the Relief Acts:

> 44. May ERA grantees impose additional eligibility criteria, including employment or job[1]training requirements, as a condition of providing ERA assistance to households?
>
> The statutes that authorize the ERA1 and ERA2 programs provide specific criteria for establishing a household's eligibility. These eligibility requirements include financial hardship, risk of homelessness or housing instability, qualifying income, and an obligation to pay rent. **While the statutes authorizing the ERA programs and Treasury's policy guidance afford grantees discretion in structuring their programs, grantees do not have the authority to augment the ERA eligibility requirements by conditioning assistance on a tenant's employment status, compliance with work requirements, or acceptance of employment counseling, job-training, or other employment services**. **To the extent that grantees would impose other eligibility criteria or would require tenants to be employed, accept employment services, or comply with work requirements, such additional requirements are not permissible**. [R. 50-2, PageID.1897 to PageID.1898, Department of Treasury Frequently Asked Questions No. 44. Emphasis added. *See also* R. 16, PageID.376, 377 (City's Answer to FAC ¶¶ 31 and 37-39, admitting the City was obligated to comply with applicable federal statutes, regulations, executive orders, and Treasury guidelines and that "U.S. Department of Treasury Frequently Asked Questions No. 44 speaks for itself").]

2. The City's Wrongful "80/20" Policy

In contravention to the Treasury guidelines, under the City's additional rules and restrictions, even Approved Landlords, like Wolf, whose tenants had satisfied **all** of the

requirements of the Relief Acts (and thus entitling these Landlords to full payment of the Relief Funds awarded), still could not receive all of the CERA Funds to which they were awarded and entitled to unless and until their residential rental properties were: (a) registered with the City, (b) subject to periodic inspections for code compliance, and (c) had obtained a Certificate of Compliance. *See* R. 50-2, PageID.1903, COVID19 Emergency Rental Assistance (CERA) Rental Compliance Guide. (Found at: Detroit CERA Rental Compliance Guide). *See also* R. 16, PageID.369 and PageID.378-379 (City's Answer to FAC ¶ 11, admitting that "instead of distributing the entire amount of potential CERA funds, the City's HARAs applied additional requirements that had to be met before 100% of the CERA funds would be released" and ¶¶ 44 and 45, admitting that "the City's implementation and oversight of the CERA program included additional requirements not expressly contained in the federal statute, which had to be met before HARAs would fully release the CERA Funds to eligible Households" and further admitting that ¶ 45 of Plaintiff's FAC "states requirements necessary before 100% of CERA Funds would be released by the HARAs").

Specifically, the City required Approved Landlords to first obtain a Certificate of Compliance (or "accepted exception" to same) prior to all CERA Funds being distributed. The City's Certificate of Compliance ("CoC") was purportedly required to ensure that the leased premises were habitable. *Id.* *See also* R. 16 PageID.370-371 (City's Answer to FAC ¶¶ 12, ¶ 14, admitting that that "the property being rented ("the Rental Property") had to receive either (1) a Certificate of Compliance or (2) a rental

registration certificate and an accepted Certificate of Compliance Exception before 100% of the CERA funds would be released" and further that this "requirement that the Rental Property have either a Certificate of Compliance or a rental registration certificate and an accepted Certificate of Compliance Exception before the remaining 20% of potential CERA funds were released **is not contained in the Relief Acts or specifically mandated by the federal government**…")(emphasis added).

If no Certificate of Compliance was obtained by an otherwise Approved Landlord and no "accepted exception" applied, then, under the City's directive, the HARA distributed only 80% of CERA Funds to the Approved Landlord and placed the remaining 20% into an escrow account until the Approved Landlord obtained a Certificate of Compliance. *Id. See also* R. 16, PageID.387-388 (City's Answer to FAC ¶¶ 73 and 74, "the City admits that the HARAs were delegated authority by the City to carry out the provisions of the City's CERA protocol" and further admits that it "authorized the HARAs to carry out the CERA program in accordance with federal, state and **local** guidelines and requirements."

Thus, regardless of whether an applicant landlord met all of the requirements set forth under the Relief Acts and became an Approved Landlord who was entitled to full payment of emergency funding awarded under the Relief Acts, the City imposed yet another hurdle—the elusive Certificate of Compliance (or "accepted exception" to same)—that the City simply could not timely provide even if the Approved Landlord applied for it. *Id. See* R. 50-1, PageID.1774 to PageID.1775 (showing that the City was

only able to issue approximately 2200 CoCs in the span of a year not impacted by the pandemic. R. 50-2, PageID.1937 Detroit News Article documenting the City's struggle with enforcing its CoC program.

In fact, in order to obtain distribution of ***any*** of the CERA Funds to which the Approved Landlord demonstrated it is entitled, the City, through its HARAs, coerced Approved Landlords, like Wolf, to "agree" to the 20% escrow in "consent agreements" that required Approved Landlords to obtain a CoC within a certain number of days—or forfeit the remaining funding.[5] R. 15, PageID.218-219 (FAC ¶ 51).

When the Approved Landlord failed to obtain the CoC (a process that was totally within the City's control), the CERA Funds were either held in escrow or, in some cases, paid directly to the tenant to be used as the tenant sees fit—depriving Approved Landlords access to specific funds awarded to them that are rightfully theirs under the Relief Acts and providing a windfall to tenants who are not required to, and have no

[5] Such consent agreements reflect the Approved Landlord's effort to mitigate the financial consequences of the City's unlawful actions. Predictably, however, though Approved Landlords attempted to obtain a CoC (or "accepted exception") pursuant to these "consent agreements" they were unable to—primarily because of the City's sheer inability or unwillingness to timely provide the CoC (or "accepted exception"). R. 15, PageID.218-219 (FAC ¶ 51). Worse, if an Approved Landlord balked at the 20% escrow requirement imposed by the City and did not "agree" to the unilaterally imposed and non-negotiable "consent agreement," then that otherwise Approved Landlord received no CERA funding. Simply, if the Approved Landlord "agreed" to the "consent agreement" in order to obtain 80% of the CERA Funds owed to that Approved Landlord it was virtually impossible for that otherwise Approved Landlord to obtain a CoC (or "accepted exception") and receive the remaining 20% owed. R. 15, PageID.219 (FAC ¶ 52).

legal incentive to, forward these funds to Approved Landlords to pay their rental arrears. R. 15, PageID.219-220 (FAC ¶ 53).

Thus, despite the fact that the Relief Funds were designed to "help struggling landlords" by paying rent to Approved Landlords, alleviate rental arrearage, and avoid tenant eviction—keeping people housed during the pandemic—the City arbitrarily withheld, escrowed, or reallocated to tenants 20% of the rent that rightfully belonged to Approved Landlords who were without recourse to collect it.[6] Worse, Approved Landlords were not provided notice of when the HARA reallocated the CERA Funds to tenants and were not provided an opportunity to contest the reallocation of 20% of their CERA Funds to a tenant who has failed to pay rent in the first instance. Based upon the City's actions, which contravened the stated objectives of the Relief Acts, Wolf, and those similarly situated, were deprived full payment of awarded Relief Funds that rightfully belonged to them.

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[6] The City's CERA protocols in actual practice and effect deprived Approved Landlords of full payment of Relief Funds by design. Here, it is worth noting that the City could have issued a temporary CoC to Approved Landlords, which (as the City admits) would have been a proper exception to the more stringent (impossible) requirement of obtaining a CoC under the City's CERA program. Moreover, a temporary CoC would have entitled Approved Landlords to immediate payment of 100% of the CERA Funds awarded. *See* R. 50-2, PageID.1985, City's Response to Plaintiff's Request for Admission No. 4. However, the City did not issue any temporary CoCs. *See* R. 50-2, PageID.1986, City's Response to Plaintiff's Request for Admission No. 5. Thus, though the City's CERA Protocols readily permitted this "exception" no effort was made in this regard to protect an Approved Landlord's right to 100% payment of the awarded Relief Funds—another clear example of the City's protocols thwarting the intent and purpose of the Relief Acts.

3. Facts Supporting Wolf's Article III Standing to Pursue Claims Against the City.

The documentary and testimonial evidence developed in this case establishes that Wolf has Article III standing to pursue claims against the City. Here, as recognized by the District Court, the unlawful "80/20" Policy is the City's "brainchild" (R. 69, PageID.3138)—for which the City is both the author and administrator though its implementation by the HARAs (who were under the control of the City's Policy while distributing CERA Funds within the City) directly caused harm to Plaintiff and the Putative Class by depriving them of full payment of awarded Relief Funds that rightfully belonged to them. **Put simply, if not for the City's "80/20" Policy, the Approved Landlords would have received 100% of the CERA Funds awarded to them**.

First, only two "Grantees" distributed Federal emergency funding in the City of Detroit: MSHDA and the City. The evidence shows that while MSHDA was a Grantee, the City actually "spearheaded" MSHDA's program's operations. Here, prior to this lawsuit, the City touted in the press that there was no distinction between MSHDA's "CERA" and the City's "ERAP" programs—which admittedly were operated by the same HARAs, uniformly applying the same "80/20" Policy as virtually one program.[7]

[7] *See* R. 64-7, PageID.2988 (Wayne Metro's CFO testifying that there was no distinguishing operational characteristics between MSHDA's CERA Programs and the City's ERAP Program; R. 65-4, PageID.3044 City representative testifying that there was no distinction between the City's ERAP and MSHDA programs as they related to Wayne Metro. R. 69, PageID.3123-PageID.3124, discussing the "overlap" between the programs identified and admitted to by the City.

Specifically, the City acknowledged in a press release dated June 16, 2022 that the MSHDA and City programs were indistinguishable—or at least commingled—with the City having "spearheaded" the MSHDA CERA program within the City of Detroit. R. 65-3, PageID.3041; R. 74, PageID.3194-PageID.3195. Indeed, the City further admitted the "CERA program" that it "spearheaded" was "funded by the U.S. Department of Treasury and **administered by MSHDA *and* the City**." *Id.* Thus, at least prior to this lawsuit, the City was willing to acknowledge its "spearheading" role in administering the MSHDA CERA Program within the City.

Second, the City admits that the HARAs implemented and executed the "80/20" Policy for all CERA programs operating within the City—regardless of whether the Grantee was MSHDA or the City. See Neblett Tx. 1 [R. 64-4, PageID.2962] (acknowledging uniform application of the City's "80/20" Policy and noting "it was important that the policies of the CERA program followed the policies of [the City's] code requirements.") See also *Id.*, Neblett Tx. 1 [R. 64-4, PageID.2964]:

> Q. Okay. …the city expected Wayne Metro to, with respect to any monies that were escrowed pursuant to the 80/20 policy that Wayne Metro or UCHC would comply with the requirements about the dispersal of the 20 percent?
> A. That is correct, yes.

Third, multiple City documents demonstrate that the City's "80/20" Policy was imposed upon all Approved Landlords operating in the City—regardless of who the Grantee was and regardless of funding source. Indeed, the City's efforts to get MSHDA to agree to enforce the "80/20" Policy were admittedly key to uniform implementation

and success of the City's "80/20" Policy. *See e.g.* R. 64-5, PageID.2972, a working City memo dated on or around May 12, 2021 (yellow highlighting in original; green highlighting added) that addresses MSHDA's CERA programs by: (a) stressing the importance of MSHDA support for the "80/20" Policy; (b) stating a "No Back Door" provision **to ensure that the "same 80/20 rules for expenditure of CERA funds in Detroit**…"; and (c) noting that "Coordination is Key"—*i.e.* "**the program will be coordinated among the organizations implementing CERA in Detroit**..."

Fourth, and perhaps most importantly, the HARAs did not voluntarily implement—and would not have implemented—the "80/20" Policy **absent** the City's requirement to do so. *See e.g.* Piszker Tx. [R. 64-6, PageID.2983]:

> Q. All right. When you started administering the program, were you told that you were going to have to adhere the 80-20 policy? And let's agree what we're talking about. **The 80-20 policy, first of all, was dictated by the City of Detroit, correct**?
> A. **Yes**.
> Q. All right. **And you were required to apply that policy in administering all three programs, correct**?
> A. **The programs that related to city – in the City of Detroit tenants, yes**.
> Q. **So you were required to do it for MSHDA, CERA 1, MSHDA CERA 2 and the City of Detroit ERAP program**? [8]
> A. **Correct**.
> Q. **And that was by the City of Detroit; you didn't come up with it yourself?**

[8] When another City representative, Michele Oberholtzer Zimmerman, who worked for the Mayor and was involved in establishing the City's "80/20" Policy was asked about Mr. Piszker's testimony, she expressly stated: "I do not recall **any distinction between those programs as it related to Wayne Metro.** So no, I don't have any basis to disagree" [with his testimony]. R. 65-4, PageID.3044, June 18, 2025 Deposition Tx. Michele Oberholtzer Zimmerman (emphasis added).

A. **No. That's above our pay grade**.
Q. **But it was a dictate by the City?**
A. **Yes**.
Q. **And you adhered to the dictate?**
A. **We adhere[d] to it, yes**.

See also, Piszker Tx. [R. 64-6, PageID.2984-PageID.2985]:

> Q. **Why did you then feel compelled to follow their 80-20 policy under the MSHDA programs through HAND**?
> A. …**I was told or what I believe to be the case, that the City of Detroit went to MSHDA, MSHDA approved the 80-20 split; therefore, the 80-20 split would be administered consistently to all programs operated in the City of Detroit and that was my understanding**. [Emphasis added.]

Wayne Metro's current CFO, Thomas Sperti also identified the City's "80/20" Policy as a required directive: "…So if there's no certificate of compliance included in that packet, or if it's not valid…then automatically the amount would be at 80 percent, **based on the directive from the City**." [R. 64-7, PageID.2988.]

B. Description of Relevant Procedural History

The District Court detailed the entire procedural history of this case in its Opinion and Order Dismissing the Case for Lack of Standing, R. 69, PageID.3131-PageID.3133. Wolf adopts and relies upon that statement of procedure here.

C. Rulings Presented For Review

Wolf Appeals the August 18, 2025 Opinion and Order Dismissing the Case for Lack of Standing (R. 69), which is founded upon a primary fundamental error to wit: that "any directive of the HARAs requiring them to apply the 80-20 requirement…came from the State. Therefore the issue for traceability is whether the

State decided to adopt the 80-20 requirement on a voluntary and independent basis, at its own discretion, and without any coercion, cajoling, or command by the City." R. 69, PageID.3148. This is the fundamental error which pervades the District Court's opinion in one form or another – that the "coercion" must be employed by the City against MSHDA, and not the HARAs.

Indeed, the District Court's finding that Wolf lacked standing to pursue his claims directly relies upon this erroneous premise, framed differently: that because MSHDA purportedly agreed to the City's "80/20" Policy, Wolf's claims lack traceability. As such, the District Court reasoned, the City cannot be held accountable for the harm caused by its "80/20" Policy because MSHDA's "independent and voluntary decision to apply the 80-20 requirement severs any traceability to the City." R. 69, PageID.3136. This faulty premise—that MSHDA's "agreeing" to the City's harmful policy absolves the City from responsibility—permeates the entirety of the District Court's Opinion and Order, fatally undermining the entire ruling.

As discussed more fully below, the District Court's holding distorts the facts, ignores the evidence presented by Wolf, and is a crucial example of the District Court viewing the facts and evidence in the light most favorable to the City—contravening the governing standards of review. Accordingly, this Court should reverse the District Court's decision and remand for further proceedings.

IV. SUMMARY OF THE ARGUMENT

The District Court's holding that Wolf lacks standing to pursue his claims against the City is erroneous and not supported by the evidence presented nor the governing law. Initially, when rendering its decision, the District Court failed to adhere to the governing standards of review with regard to consideration of the facts and evidence required to sustain the test for Article III—specifically viewing the facts and evidence in the light most favorable to the City and not Wolf, as the standard requires.

Next, the fundamental flaw in the Opinion is the District Court's conclusion that MSHDA "independently and voluntarily" implemented the 80/20 policy and/or that the City's actions must have had a "determinative or coercive effect" upon MSHDA. The Court then misapplied the governing traceability standard because (1) Plaintiff adduced evidence that "but for" the City's conduct Plaintiff and the Class would have received 100% of the funds, (2) the district court erroneously believed that an injury can be "fairly traced" to only one actor, and (3) Plaintiff presented substantial evidence that the City dictated that the HARAs follow the 80/20 policy. For these reasons the District Court erred when it dismissed Wolf's case for lack of standing.

Simply, Wolf has standing to pursue his claims because Wolf has suffered an injury in fact and there is a "fairly traceable connection" between the injury suffered by Wolf and the City's conduct that is redressable by the Court. *Vt Agency of Natural Resources v United States ex rel Stevens*, 529 US 765, 771; 120 S Ct 1858; 146 L Ed 2d 836, 844 (2000).

V. ARGUMENT

A. STANDARD OF REVIEW

This Court "reviews a district court's standing determination de novo." *Hammoud v Equifax Info Servs, LLC*, 52 F.4th 669, 673 (6th Cir. 2022); *Pedreira v. Ky. Baptist Homes for Children, Inc.,* 579 F.3d 722, 728-29 (6th Cir. 2009).

The standard for establishing Article III standing is well-established. To have standing, Wolf must "allege personal injury fairly traceable to the [City's] allegedly unlawful conduct and likely to be redressed by the requested relief." *See DaimlerChrysler Corp. v. Cuno,* 547 U.S. 332, 342, 126 S. Ct. 1854, 164 L. Ed. 2d 589 (2006). That is, Wolf must have: (1) suffered an injury in fact; (2) that is fairly traceable to the [City's] challenged conduct; and (3) that is likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins,* 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016).

The evidence required to sustain the test for Article III standing corresponds "with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). For example, at trial, controverted facts must be "supported adequately by the evidence[.]" *Id.* At summary judgment, however, it is enough for Wolf to set forth "by affidavit or other evidence specific facts" supporting each element. *Id.*; *McKay v. Federspiel*, 823 F.3d 862, 867 (6th Cir. 2016). As the district court recently stated in *Green v Equifax Info Servs, LLC,* 2025 U.S. Dist. LEXIS 53946 (E.D. Mich. 2025):

> Courts review standing challenges "in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). And at the summary judgment stage, "the plaintiff can no longer rest on…'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts,' **which for purposes of the summary judgment motion will be taken to be true**." *Id.* (quoting Fed. R. Civ. P. 56(e), 28 U.S.C. app. (1988) (amended 2007)). 2025 U.S. Dist. LEXIS 53946, at *3-4 (ED Mich. 2025)(emphasis added).]

Finally, it bears noting that the standing inquiry is separate from the merits question of whether the injurious actions of the HARAs (who operated the "80/20" Policy at the City's dictate) or MSHDA (who, at best, allowed it to occur) subject the City to liability under the Takings Clause or for an illegal exaction. Proximate causation is not required to establish Article III standing even if proximate cause is an element of the cause of action. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 n.6, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014). The standing inquiry "is *not*…an assessment of the merits of a plaintiff's claim." *Red River Freethinkers v. City of Fargo*, 679 F.3d 1015, 1023 (8th Cir. 2012).

B. THE DISTRICT COURT FAILED TO APPLY THE PROPER STANDARD OF REVIEW TO THE ISSUE OF STANDING.

Because the issue of standing arose *sua sponte* at the summary judgment stage, when determining the issue of Article III standing, the District Court was required to consider the evidence in the light most favorable to Wolf and draw all reasonable inferences in Wolf's favor. *McKay,* 823 F3d at 866; *Chapman v. UAW Local* 1005, 670 F.3d 677, 680 (6th Cir. 2012). This the District Court did not do. Indeed, in its Opinion

and Order (R. 69) the Court viewed all of the facts in the light most favorable to the City, primarily relying on the City's representative's self-serving declaration—and outright ignoring and/or disregarding the evidence presented by Wolf in support of his standing to pursue claims against the City.

By way of example, in direct contravention of the governing standard, the District Court cites to City representative Chelsea Neblett's Declaration, ECF No. 55-2, PageID.2153-PageID. 2154—accepting as true the City's unsupported, self-serving statements that the City (a) "couldn't control how the HARAs processed applications for ERA-1 funds;" (b) that the City merely "informed MSHDA, HAND, and the HARAs that it was 'developing its own CERA program' for funds it 'expected to receive through [the] ARPA,' including mention of a policy that would require retention of a portion of an award of funds if a rental property lacked a 'Certificate of Compliance;'" and simply "asked MSHDA, HAND, and the HARAs to follow 'the same process' for 'applications involving Detroit tenants under the CAA. MSHDA, HAND[,] and the HARAs did so." R. 69, PageID.3121 (internal citations to record omitted).

By way of another example, at PageID.3139-PageID.3141, the Court turned evidence of the City's dictate of its "80/20" Policy upon the HARAs, the testimony of Louis Piszker, on its head—viewing it in the light most favorable to the City and misconstruing it to support the untenable position that the just because "Wayne Metro had to apply the 80-20 requirement in each round of funding doesn't mean the City "dictated" it during each of those rounds." Indeed, the Court chastised Wolf for

omitting "crucial testimony" from his supplemental brief—to wit, Piszker's statement that MSHDA had to agree to the City's "80/20" Policy too.

But the District Court's reasoning is flawed.

It is irrelevant whether MSHDA allowed the City to implement its "80/20" Policy. MSHDA's agreement to allow the policy does not mean that MSHDA in fact implemented the 80-20 requirement, or that it required the HARAs to apply it to Detroit-based applicants—there is absolutely no evidence of MSHDA dictating or implementing the City's "80/20" Policy.

A final example of how the Court failed to view evidence in the light most favorable to Wolf, at PageID.3151 the District Court states that the "evidence that matters" is a "dictate from the City that the State apply it to every Detroit applicant." However, as discussed below, that is not the standard to establish traceability. The City does not have to dictate that the State apply the "80/20" Policy under the MSHDA program. Here, MSHDA merely acquiesced to the City's dictate of its "80/20" Policy upon the HARAs—who implemented and operated the City's "80/20" Policy within the CERA/ERAP programs.

Simply, the District Court ignored the plethora of evidence presented by Wolf demonstrating such crucial facts as: the HARAs acting as agents of the City, that the HARAs would not have implemented the "80/20" Policy absent the City's dictate, how the City deliberately "spearheaded" a coordinated, uniform CERA program within its city limits, to ensure the same "80/20" rules would apply "among the organizations

implementing CERA in Detroit," (R. 64-5, PageID.2972) with no "backdoor" exceptions (*id.*) and how critical it was to the City to having MSHDA's support (but never actually receiving MSHDA's express written blessing)[9] of the "80/20" Policy.

Instead, the District Court's Opinion is replete with examples of discrediting Wolf's evidence and adopting the City's—viewing the facts and evidence in the light most favorable to the City—and contravening the proper standard of review.

C. WOLF'S INJURY IN FACT IS FAIRLY TRACEABLE TO THE CITY'S ACTIONS.

The District Court ordered supplemental briefing on the issue of standing because it was concerned with the second prong of the test for standing—traceability. R. 60, PageID.2679.

1. Traceability Standard

Traceability requires Wolf to "demonstrate a causal nexus between the [City's] conduct and the injury." *Chevron Corp. v. Donziger*, 833 F.3d 74, 121 (2d Cir. 2016). "Traceability is a lower bar than proving causation on the merits." *In re Unite Here Data Sec. Incident Litig.,* 740 F. Supp. 3d 364, 376 (S.D.N.Y. 2024) (citing *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771, 120 S. Ct. 1858, 146 L. Ed. 2d 836 (2000)); *Idaho Conservation League v. Bonneville Power Admin.*, 83 F.4th 1182, 1188 (9th Cir. 2023) (The bar for traceability is low and can be met as long as the links in the proffered

[9] *See* Addendum, Excerpt from Chelsea Neblett Deposition Transcript at pp. 40-41. Q. But did you ever get a document from MSHDA that says, we approve the city's policies as it relates to withholding funds? ….A. I'm not sure if we ever received a document that stated that, but we did have conversations, correct.

chain of causation are not hypothetical or tenuous and remain plausible). As recently stated in *LE v Lee,* 728 F Supp 3d 806 (MD Tenn 2024):

> Simply put, traceability requires that a plaintiff's claimed injury flows from the defendant's conduct rather than the plaintiff's own actions or the actions of a third party. See *Turaani v. Wray*, 988 F.3d 313, 316 (6th Cir. 2021) ("[T]raceability…looks at whether the defendant's actions have a 'causal connection' to the plaintiff's injuries. Indirect harms typically fail to meet this element because harms resulting from the independent action of some third party not before the court are generally not traceable to the defendant."). **"Beyond that threshold, however, the plaintiff's burden of alleging that their injury is fairly traceable to the defendant's challenged conduct is relatively modest."** *Grow Mich., LLC v. LT Lender, LLC*, 50 F.4th 587, 592 (6th Cir. 2022) (quoting *Buchholz v. Meyer Njus Tanick, PA*, 946 F.3d 855, 866 (6th Cir. 2020)) (internal quotation marks omitted). "**Any harm flowing from the defendant's conduct, even indirectly, is said to be 'fairly traceable**.'" *Id.* [728 F Supp 3d, pp. 824-25 (emphasis added).]

Traceability is also "akin to 'but for' causation" and is met even where the conduct in question might not have been a proximate cause of the harm, due to intervening events. *The Pitt News v. Fisher*, 215 F.3d 354, 360-361 (3d Cir. 2000) (finding traceability requirement met where regulation was cause-in-fact of newspaper's lost revenue when third parties stopped buying advertisements because of the regulatory action). A 'but for' causal relationship requires proof "that the harm would not have occurred in the absence of—that is, but for—the defendant's conduct." *Burrage v United States*, 571 US 204, 211; 134 S Ct 881; 187 L Ed 2d 715, 723 (2014).

Finally, "[i]n the nebulous land of 'fairly traceable,' where causation means more than speculative but less than but-for, the allegation that a defendant's conduct was a motivating factor in the third party's injurious actions satisfies the requisite standard."

Parsons v. United States DOJ, 801 F.3d 701, 714 (6th Cir. 2015). Thus, at a minimum, even if *arguendo,* the City did not strictly direct or control the HARAs actions, at the very least the City's "80/20" Policy dictate was the "motivating factor" in the "injurious actions" and Wolf has met Article III standing's "traceability" requirement. However, here, the evidence amply shows that the City authored and dictated the "80/20" Policy to the HARAs, even if MSHDA was also on board, and as such, the City in fact directed and controlled the HARAs' injurious actions. Simply, Wolf's harm is fairly and directly traceable to the City's "80/20" Policy—regardless of Grantee or funding source.

2. The District Court's Fundamental Error That Undermines Its Determination That Wolf 's Injury Is Not Fairly Traceable To The City's Actions

The foundation for the District Court finding that Wolf's injury is not fairly traceable to the City appears at page 20 of the District Court's Opinion (R. 69 PageID.3136), where it rejected Wolf's contention that his injury was traceable to the City because "it required the HARAs to apply the 80-20 requirement to CERA fund applicants from Detroit":

> The Court disagrees – the City didn't control the funds that Wolf received or applied for, MSHDA did. And that State entity's independent and voluntary decision to apply the 80-20 requirement severs any traceability. [R.69, PageID 3136]

This ruling flowed ineluctably from the District Court's conclusion that traceability required that the City "cajole, coerce, [or] command" **MSHDA** "into taking some action." R.69, Page ID 3137.

The District Court's fundamental ruling is contrary to the facts and legally erroneous. For the reasons discussed below, it was the HARAs – not MSHDA – that seized 20% of Plaintiff's funds at the direction of the City. There is ample evidence that the City at the very least "cajoled, coerce, or commanded" the HARAs to take those actions. The District Court's requirement that Plaintiff demonstrate that the City induced MSHDA to take "some action" that injured Plaintiff was erroneously based on the Court's erroneous finding that MSHDA made an "independent and voluntary decision to apply the 80-20 requirement." There is overwhelming evidence that the City – by requiring the HARAs to implement and follow the 80-20 Policy – did in fact control the funds that Wolf received. Finally, regardless of MSHDA's role, the District Court's Opinion wrongly concludes that a party's injury can only be traceable to one actor. To the contrary, "a plaintiff does not lack standing merely because the defendant is one of several persons who caused the harm." *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 500 (7th Cir. 2005).

3. Wolf Readily Meets the Traceability Standard.

Viewed through the right lens, Wolf has alleged an injury that is fairly traceable to the City's unlawful conduct—here the City's dictating its "80/20" Policy—which is not the consequence of the independent actions of a third party that is not before the court (*i.e.* MSHDA or the HARAs). *Lujan*, 504 Uat 560. Indeed, there is no question that, but for the City's actions, neither MSHDA nor the HARAs would have

implemented the "80/20" Policy which caused Plaintiff's injuries. *The Pitt News*, 215 F.3d at 360-361; *Burrage* 571 US at 211.

a. The City's "80/20" Policy Is The "But For" Cause Of Wolf's Harm

First, the City's "80/20" Policy is the direct cause of Wolf's harm regardless of the Grantee or funding source—because absent the City's "80/20" directive, Wolf and the putative Class would have received full payment of awarded CERA Funds—as did thousands of landlords operating outside of the City's limits.[10] Put simply, if not for the City's "80/20" Policy, no harm would have occurred—thus, the City's "brainchild" is the "but for" cause of Wolf's harm.

b. Injury Can Be Fairly Traced To More Than One Actor

Second, traceability exists even if MSHDA "agreed" to the "80/20" Policy. If that is true, then at worst MSHDA merely becomes a co-bad actor. Here, in its myopic focus on MSHDA's alleged actions, the District Court failed to appreciate that an injury can be fairly traced to more than one actor. *See Maron v Chief Fin Officer of Fla*, 136 F.4th 1322, 1331 (11th Cir. 2025)discussing Article III standing in the context of a 5th Amendment Takings claim and ultimately holding that "standing is not defeated merely because the alleged injury can be fairly traced to the actions of both parties and non-

[10] *See e.g* Piszker Tx., R. 64-6, PageID.2983, discussion of Wayne Metro's separate Wayne County CERA Program that operated outside of the City's limits, where the City's "80/20" Policy did not apply: "…because that wasn't the program. Q. Right. Because [the "80/20" Policy] was dictated by Detroit and Detroit wasn't part of that program? A. Correct."

parties."); *Haymarket Dupage, LLC v Village of Itasca*; 2024 U.S. Dist. LEXIS 33271, at *31 (ND Ill, Feb. 27, 2024)(A "plaintiff does not lack standing merely because the defendant is one of several persons who caused the harm").

In *Maron*, plaintiffs alleged a taking by the State of Florida of monies owed to them under Florida's Unclaimed Property Act. Florida asserted that there could be no traceability because of the Marons independent action of failing to file a claim. The 11th Circuit found that the Marons had standing because they alleged a concrete, particularized, and actual injury (inability to use their refund) that was fairly traceable to the Unclaimed Property Act and redressable by a favorable decision:

> The State argues that there is no traceability because the Marons' lack of access to their refund stems from their failure to file a claim with the Department. But this argument misunderstands the injury. The Marons suffered an injury when Florida received the refund into its custody. The Marons' failure to file a claim with the Department did not cause Florida to take those actions. The Act did. And, even if the Marons' own failure to file a claim prolonged their lack of access to the refund, their contribution to their injury would not sever its causal connection to the Act. Cf. Loggerhead Turtle v. Cnty. Council of Volusia Cnty., Fla., 148 F.3d 1231, 1247 (11th Cir. 1998) ("[S]tanding is not defeated merely because the alleged injury can be fairly traced to the actions of both parties and non-parties."). [*Maron*, 136 F.4th at 1331 (emphasis added).]

See also Bennett v. Spear, 520 U.S. 154, 169, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997)(an injury is not "fairly traceable" when it is the result of an independent action of a third party—however, "that does not exclude injury produced by a determinative or coercive effect upon the action of someone else.") (Emphasis added.)

As in *Maron*, Wolf's injury (inability to access full payment of awarded CERA

Funds) is fairly traceable to the City's "80/20" Policy (and redressable by court action). Thus, arguably, even if MSHDA "agreed" to the "80/20" Policy, Wolf's injury still can be fairly traced to the actions of both the City and MSHDA— which, at best for the City, is what happened here. The District Court's determination that MSHDA was the sole cause of Wolf's injuries that "severed traceability" is clear error because at the very least Wolf has adduced evidence (described above § III(A)(3) and throughout) that the City caused Wolf's injuries, even if MSHDA also was a participant in the wrongdoing.[11]

c. The Evidence Shows That The City Dictated The "80/20" Policy.

Third, traceability exists because the evidence gleaned thus far shows that the HARAs were dictated the "80/20" Policy by the City and had no choice but to implement it—regardless of the Grantee and regardless of the funding source (ARPA or CARES). Indeed, Wayne Metro's admissions alone show that the City's actions had a determinative or coercive effect upon the HARAs. R. 64-6, PageID.2983. Again, MSHDA did not require the HARAs to adhere to the City's 80/20 policy—the City did. Thus, the City's self-serving assertions that it had no control over the emergency funds distributed under the MSHDA programs in the City (*see e.g.* R. 55-2, PageID.2152) are not only irrelevant but untrue. Regardless of whether the City or MSHDA was the

[11] Again, there is no evidence that MSHDA chose to unilaterally impose the City's "80/20" Policy. There is also no evidence that MSHDA "voluntarily agreed" to the "80/20" Policy—at most, MSHDA tolerated it. This fact is supported by the criticisms lodged by MSHDA early on that the "80/20" Policy (*i.e.* the "Certificate of Compliance issue") would need to be revisited "to remove any unnecessary barriers" because it was slowing the distribution of emergency funds within the City. *See* R. 68-2, PageID.3115.

Grantee under the Relief Acts, the evidence shows that the City directed the HARAs to withhold and escrow 20% of awarded CERA Funds in order to force landlords, like Wolf, to comport with local rental ordinances.

Moreover, implementation of the "80/20" Policy by the HARAs was not "voluntary" based upon a mere "request" as suggested by City representative Chelsea Neblett in a declaration that the District Court heavily, but erroneously, relied upon to reach its holding.[12] To the contrary, the City mandated that the HARAs follow the "80/20" Policy in order for them to operate CERA Programs in the City. As attested to by Wayne Metro's CEO—the "80/20" Policy was dictated by the City and Wayne

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[12] In her declaration Chelsea Neblett stated what has proved to be her opinions—not supportable, objective facts—on multiple key issues in this case. These opinions loyally serve the City's interests but ultimately are undermined by the plethora of documentary and testimonial evidence developed in this case—only some of which was presented in support of Wolf's brief in the District Court.

Pertinent here is Neblett's mischaracterization of the "80/20" requirement as a "request" or otherwise "voluntarily" engaged in by the HARAs, MSHDA, and HAND. R. 55-2, PageID.2153-PageID.2154—a mischaracterization that the District Court relied heavily upon it its ruling. In contrast to Neblett's declaration, there is no evidence that MSHDA or HAND agreed to implement the "80/20" Policy. Indeed, MSHDA and HAND did not operate the CERA or ERAP Programs—the HARAs did. As such, it is irrelevant whether MSHDA or HAND "approved" the "80/20" Policy because it was the HARAs that actually implemented and operated it.

Indeed, internal City emails demonstrate that far from just "mentioning the "80-20" requirement, the City (and Ms. Neblett personally) worked tirelessly to ensure that the City's "80/20" requirement was implemented and followed by the HARAs and approved by MSHDA—even before the City implemented its own ERAP program. *See e.g.* R. 64-5, PageID.2972. Thus, the "80/20" Policy was not merely a "request," to the HARAs but a **requirement** performed at the City's direction. *See e.g.* Piszker Tx. R. 64-6, PageID.2983-PageID.2984.

Metro was obligated to follow that dictate when dispersing funds to Detroit residents. *See* R. 64-6, PageID.2983.

Indeed, the evidence shows that, contrary to Ms. Neblett's declaration, the City had control and influence over the State's CERA Programs operating in the City—to the extent that under the City's "80/20" Policy, the City's ERAP and MSHDA's CERA programs operated in tandem within the City, commingled resources—using the same HARAs—and sometimes even exchanged federally granted funds. *See e.g.* R. 65-2, PageID.3034, email correspondence "UCHC ERAP to CERA funding swap" through which the City effected a funding "swap" between the City's ERAP funds with MSHDA so that their HARA, UCHC, could "maximize assistance." Again, the City acknowledged its significant role in MSHDA's CERA programs in a public press release—stating the City **spearheaded** MSHDA's CERA Programs operating in the City, **partnering** with local nonprofits such as HAND, Wayne Metro and UCHC. *See* R. 65-3, PageID.3041, June 16, 2022 City Press Release. Finally, from the HARAs' perspective, the City's ERAP and MSHDA's CERA programs were virtually interchangeable—as stated by Wayne Metro's CFO, there was no distinguishing operational characteristics between MSHDA's CERA Programs and the City's ERAP Program. *See* April 25, 2024 Deposition Tx. Thomas Sperti. R. 64-7, PageID.2988.

4. Because The HARAs Were Required To Adhere To The "80/20" Policy, This Court's Decision In Turaani Makes Clear That Wolf Has Standing To Sue The City.

The District Court relied heavily on this Court's decision in *Turaani v Wray*, 988 F3d 313, 315 (6th Cir. 2021) in both ordering supplemental briefing and in its Opinion and Order which warrants a discussion of the case here.

Contrary to the District Court's Opinion and Order, the issue of standing in this case turns on whether or not the HARAs—not MSHDA—could have independently chosen to "opt out" of the City's "80/20" Policy.[13] If, as the City would have the Court believe, the "80/20" Policy was "a request" or "optional" then the voluntary actions of the HARAs may not be ascribed to the City. *See e.g. Turaani v Wray*, 988 F3d 313, 315 (6th Cir. 2021)(gun dealer's decision not to sell plaintiff a firearm was independent of FBI intervention, harm flowed from the actions of the dealer). The evidence escribed above does not support the City's position.

Initially, the facts of *Turaani v Wray* are readily distinguishable from the case at bar—demonstrating by comparison that the City is directly responsible for Wolf's (and the putative Class's harm). In *Turaani*, the plaintiff's attempt to purchase a gun from a

[13] Here, the acts of the HARAs can be attributed to the City if either (1) they were acting as agents of the City or (2) they acted pursuant to the direction and authorization of the City. *See, e.g.*, *Lion Raisins, Inc v United States*, 416 F3d 1356, 1362-63 (Fed. Cir. 2005); *Yearsley v. W.A. Ross Constr. Co.,* 309 U.S. 18, 21-22; 60 S. Ct. 413 (1940); *CLogic LLC v United States*, 170 Fed Cl 450, 457 (2024)(government direction to third party not to return property to plaintiff was not merely "friendly persuasion" and could create Fifth Amendment takings liability for the government).

dealer at a gun show went south when his application was flagged and a hold placed upon it. The FBI visited the gun dealer the next day to inquire after plaintiff's application. *Turaani,* 988 F3d at 315. Plaintiff followed up with the gun dealer a few days later to complete the purchase. However, the "dealer explained that he had received a visit from the FBI" and "while he 'technically could sell the gun'…the dealer told [plaintiff] that he was 'no longer comfortable doing so.'" *Id.* Under these facts, this Court held that plaintiff lacked standing because there was "no traceable harm" to the government noting that the FBI left discretion to complete the sale with the gun dealer and that "[a]n indirect theory of traceability requires that the government cajole, coerce, command." *Id.* p. 316 (*citing Crawford v. U.S. Dep't of Treasury,* 868 F.3d 438, 457 (6th Cir. 2017)).

It is clear from the foregoing that plaintiff's direct and indirect injuries in the *Turaani* case flowed from the gun dealer's independent and voluntary decision not to sell him a gun—that any "injury stems from the actions of the gun dealer," not the government. *Id.* p. 316. Simply, the gun dealer could have completed the transaction—but chose not to. Moreover, the gun dealer was not acting at the direction of the FBI—who the Sixth Circuit expressly noted had left discretion to complete the sale.

In this case, unlike *Turaani,* there is ample evidence that the City in fact directed the HARAs to implement the "80/20" Policy and the HARAs acted pursuant to the direction and authorization of the City when they escrowed CERA Funds under the City's Policy. Indeed, the HARAs, Wayne Metro and UCHC, at all times acted as agents

and representatives of the City and acted at the direction and under the control of the City's "80/20" Policy, in approving, administering, distributing and withholding the CERA Funds. *See* R. 16, PageID.387-388 (City's Answer to FAC ¶¶ 73 and 74, admitting that "the HARAs were delegated authority by the City to carry out the provisions of the City's CERA protocol" and that the "City admits that it authorized the HARAs to carry out the CERA program in accordance with federal, state and local guidelines and requirements.") Put another way, the HARAs actions in implementing the "80/20" Policy are not independent of the City's—**and only occurred <u>because</u> of the City's directive.**

Thus, unlike in *Turaani,* here there is a <u>causal connection</u> between the injury (*i.e.*, not receiving full payment of CERA Funds), and the conduct complained of (here, the City's "80/20" Policy—which directed the HARAs to escrow 20% of CERA Funds). In this case, the injury is not just fairly traceable, but clearly traceable to the challenged action of the defendant (the City's "80/20" Policy), and not the result of the independent action of some third party (here, the HARAs would not have escrowed any CERA Funds absent the City's "80/20" Policy). Piszker Tx., *supra.*

D. WOLF'S INJURY IN FACT IS REDRESSABLE BY THE COURT.

While the issue of redressability was not ordered to be briefed by the Court, the City raised the issue in its supplemental brief and the District Court determined the issue in its Opinion and Order (R. 69, PageID.3151- PageID.3153). The crux of the District Court's ruling on redressability is that "because Wolf's applications were

processed under the MSHDA program with MSHDA's funds, the City didn't have any control over the disposition of these funds. ECF No. 66, PageID.3058. An order directing the City to disburse to Wolf the allegedly owed 20% would therefore fail to redress his injury." R. 69, PageID.3152- PageID.3153.

The District Court erred in its ruling on redressability because (1) the Opinion is based on the erroneous factual finding that "the City didn't have any control over the disposition of these funds," and (2) the Court misapplied basic principles of takings jurisprudence governing situations where the government authorizes or directs a third-party to take property.

1. The "Redressability Standard"

The third prong of the Article III standing test is redressability, *i.e.* the relief the plaintiff is seeking must provide redress for the injury. An injury is redressable if a court order can provide "substantial and meaningful relief." *Larson v. Valente*, 456 U.S. 228, 243, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982). "[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his *every* injury." *Id.* at 244 n.15; *accord. Massachusetts v. EPA*, 549 U.S. 497, 525, 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007). The relevant standard is likelihood—whether it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC) Inc.*, 528 U.S. 167, 181, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000). For the reasons discussed below, Plaintiff's claims amply

satisfy the redressability requirement.

2. The District Court Erred By Ruling That "The City Didn't Have Any Control Over The Disposition" Of The CERA Funds.

In § III (A)(3) *supra*, Wolf addresses at length the evidence which demonstrates that the City exercised control over the HARAs' use of the CERA Funds. Among other things, the CEO of Wayne Metro testified clearly that the HARAs did not voluntarily implement—and would not have implemented—the "80/20" Policy **absent** the City's requirement to do so. *See e.g.* Piszker Tx. [R. 64-6, PageID.2983]:

> Q. All right. When you started administering the program, were you told that you were going to have to adhere the 80-20 policy? And let's agree what we're talking about. **The 80-20 policy, first of all, was dictated by the City of Detroit, correct**?
>
> A. **Yes**.
>
> Q. All right. **And you were required to apply that policy in administering all three programs, correct**?
>
> A. **The programs that related to city – in the City of Detroit tenants, yes**.
>
> Q. **So you were required to do it for MSHDA, CERA 1, MSHDA CERA 2 and the City of Detroit ERAP program**?
>
> A. **Correct**.
>
> Q. **And that was by the City of Detroit; you didn't come up with it yourself?**
>
> A. **No. That's above our pay grade**.
>
> Q. **But it was a dictate by the City?**
>
> A. **Yes**.
>
> Q. **And you adhered to the dictate?**
>
> A. **We adhere[d] to it, yes**. [Emphasis added.]

Because at the very least there are genuine issues of fact as to whether the City exercised "control over the disposition" of the CERA Funds, the District Court erred

in finding that redressability was not established on this ground.

3. The HARAs' Illegal Seizure Of Wolf's Funds Requires The City To Pay "Just Compensation."

The District Court further erred by ruling that "[a]n order directing the City to disburse to Wolf the allegedly owed 20% would therefore fail to redress his injury." While the Opinion is far from crystal clear on this point, it appears that the District Court believed that an order requiring the City to pay the 20% of CERA Funds withheld by the HARAs could not redress Plaintiff's injury because the City was not in possession of those Funds. If that is the case, the District Court's ruling was legally incorrect because the City is liable for the HARAs illegal seizure of the Funds even if the City does not possess the Funds.

Here, it is undisputed that the HARAs, not MSHDA, retained Plaintiff's funds pursuant to the 80-20 Policy. The acts of the HARAs can be attributed to the City if either (1) they were acting as agents of the City or (2) they acted pursuant to the direction and authorization of the City. *See, e.g.*, *Lion Raisins, Inc v United States*, 416 F3d 1356, 1362-63 (Fed. Cir. 2005); *Yearsley v. W.A. Ross Constr. Co.,* 309 U.S. 18, 21-22; 60 S. Ct. 413 (1940); *CLogic LLC v United States*, 170 Fed Cl 450, 457 (2024)(government direction to third party not to return property to plaintiff was not merely "friendly persuasion" and could create Fifth Amendment takings liability for the government).

The Federal Circuit in *Lion Raisins* described the government's liability under these circumstances as follows:

There is no question that the United States, in general, incurs takings liability for the acts of its agents. That is, a takings "claim against the United States" may be based on the acts of an agent of the United States.

The Supreme Court has held that if agents of the federal government accomplish takings of private property, "the action of the agent is the act of the government" and it is the federal government that is liable for suit, not the agent. *Yearsley v. W.A. Ross Constr. Co.*, 309 U.S. 18, 21-22, 84 L. Ed. 554, 60 S. Ct. 413 (1940) (citation and quotation marks omitted). In *Yearsley*, a private company, carrying out a government contract, built river dikes which destroyed privately-owned land. The property owners brought suit against the company, and the Supreme Court found that "if what was done was within the constitutional power of Congress, there is no liability on the part of the contractor for executing its will." *Id.* at 20-21. Because the government had "impliedly promised to pay [compensation for any taking] and has afforded a remedy for its recovery by a suit in the Court of Claims…there is no ground for holding its agent liable who is simply acting under the authority thus validly conferred." *Id.* at 21-22. Rather, the suit must be brought against the United States.

Thus, for example, when separate corporate entities act for the United States, the United States is liable for their takings. *See, e. g.*, *Russian Volunteer Fleet v. United States*, 282 U.S. 481, 489, 75 L. Ed. 473, 51 S. Ct. 229, 71 Ct. Cl. 785 (1931) (United States bound to pay just compensation when Shipping Board Emergency Fleet Corporation, acting under legislative authority, requisitioned contracts for the construction of two vessels); *see also Loretto v. Teleprompter Manhattan CATV Corp.* ,458 U.S. 419, 440-41, 73 L. Ed. 2d 868, 102 S. Ct. 3164 (1982) (holding state government liable for a physical taking, even though the activity in question was carried out by a private cable company); *Casa de Cambio Comdiv S. A., de C.V. v. United States*, 291 F.3d 1356, 1363 (Fed. Cir .2002) (recognizing that the federal government may be held liable for takings that are consummated through its "alter ego or agent").

So too when state agencies act as agents of the United States, the United States may incur takings liability. *See Rose Acre Farms, Inc. v. United States*, 373 F.3d 1177, 1196 (Fed. Cir. 2004) (holding that attribution of "state-imposed restrictions to the federal government for purposes of the takings analysis…is proper…only if the state officials were acting as agents of the federal government or pursuant to federal authority"); *B & G Enters. v. United States*, 220 F.3d 1318, 1322 (Fed. Cir. 2000) (holding that the United

> States could be subject to suit in the Court of Federal Claims for an alleged regulatory taking effected by the state of California only if California could be considered "an agent of the federal government"); *Hendler v. United States*, 952 F.2d 1364, 1378 (Fed. Cir. 1991) (recognizing that common law agency is a test for determining when takings accomplished by others are attributable to the federal government). In sum, the fact that the federal government acts through an agent in accomplishing a taking of private property "does not absolve it from the responsibility, and the consequences, of its actions." *Toews v. United States*, 376 F.3d 1371, 1381-82 (Fed. Cir. 2004) (quoting *Preseault v. United States*, 100 F.3d 1525, 1551 (Fed. Cir. 1996) (en banc) (plurality opinion)). "The United States, having by its agents, proceeding under the authority of an act of Congress, taken the property of the claimant for public use, are under an obligation, imposed by the Constitution, to make compensation." *United States v. Great Falls Mfg. Co.*, 112 U.S. 645, 656, 28 L. Ed. 846, 5 S. Ct. 306, 20 Ct. Cl. 522 (1884).

More recently, in *King v. U.S.*, 159 Fed. Cl 450 (Fed. Ct. Claims 2022), the Court, relying upon *Cedar Point*, flatly held:

> Authorization to a third party **alone** can confer liability on the government even when the third party technically executes the taking. [159 Fed. Cl at 478 (citing *Cedar Point*, 141 S.Ct. 2063) (emphasis added).]

See also Id. at p. 487 (holding that under Supreme Court precedents, "an authorization by the government of a third party's action can give rise to a taking whether it applies to raisins or to money in the bank, just as it can when it applies to real property").

While *Lion Raisins* and *King* addressed takings claims against the U.S. Government, the dictate that the government is liable for takings committed by third parties under the direction or control of the government applies equally to state actors. For example, in *Cedar Point Nursery v. Hassid*, 141 S.Ct. 2063, 2210 L. Ed. 2d 369 (2021), the Supreme Court held that the State of California was liable for a physical taking

where the State authorized a third-party physical invasion of property.

In *Cedar Point*, a California regulation granted union organizers the right to enter private farmland. *Id.* at 2072. In holding that the state had effected a temporary physical taking of the grower's property, the Supreme Court confirmed that "[w]henever a regulation results in a physical appropriation of property, a *per se* taking has occurred." *Id.* The Supreme Court found a taking even though the taking was effected by private third parties (the union organizers) and not the state itself. The state's authorization of the actions of the third parties was sufficient to attribute their acts to the state. *See also Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 435, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982) (holding state government liable for a physical taking, even though the activity in question was carried out by a private cable company).

Moreover, these principles are fully-applicable to takings claims against municipal governments under § 1983. While a municipality may not be held liable under § 1983 "for an injury inflicted **solely** by its employees or agents," *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978) (emphasis added), the municipality will be liable for the acts of its agents if a plaintiff shows that a municipal policy or custom "was the 'moving force' behind the injury alleged." *Bd. of Cnty. Comm'rs of Bryan Cnty., Okla. v. Brown*, 520 U.S. 397, 404, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997).

Here, there is no dispute that the "80-20" Policy constitutes a "municipal policy or custom" of the City, and Plaintiff has adduced significant evidence that the HARAs were agents of the City for purposes of applying the 80-20 policy. At the very least, the evidence shows that the HARAs acted pursuant to the direction and authorization of the City. *See e.g.* discussion, *supra,* § III(A)(3); § V(D)(2). This is sufficient to subject the City to takings liability even if the City does not have possession of the Funds at issue.

In sum, the City is liable for takings committed by the HARAs, because they seized Plaintiff's funds at the direction of the City, pursuant to an official City policy. Accordingly, because a Court may grant full relief to Plaintiff under § 1983, Plaintiff's injury is likely redressable.

CONCLUSION

In sum, Article III's standing requirements have been met: (a) Wolf has suffered an injury in fact – the loss of payment of CERA Funding; (b) this injury in this case is directly traceable to the City's "80/20" Policy that required the HARAs to escrow 20% of awarded CERA Funds (regardless of funding source or Grantee); and (c) a judgment in favor of Wolf and the Class would redress the harm. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016). For the reasons discussed above, Wolf has established that he has standing to pursue claims against the City.

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By: */s/ Jamie Warrow*

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Dated: November 12, 2025

CERTIFICATE OF COMPLIANCE UNDER FRAP 32(g)

Pursuant to FRAP 32 (a)(7)(b), Plaintiff's counsel states that the foregoing Brief of Appellant Laurence Wolf contains no more than 13,000 words. Specifically, the Brief contains 12,002 countable words as defined under FRAP 32(f).

Counsel relied on the word count function of its word processing system to calculate word count as permitted by FRAP 32(g).

/s/ Jamie Warrow
Jamie Warrow

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025 I filed the foregoing document with the ECF filing system which provides service to all counsel of record.

/s/ Jamie Warrow
Jamie Warrow

4908-5761-1129, v. 1

25-1782

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAURENCE WOLF, d/b/a
LAURENCE WOLF PROPERTIES, individually,
and on behalf of a class of similarly situated
persons and entities,

Plaintiff-Appellant,

v.

CITY OF DETROIT,
a municipal corporation,

Defendant-Appellant.

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

ADDENDUM TO BRIEF OF APPELLANT LAURENCE WOLF

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Designation of Relevant Originating Court Documents

E. Dist. Docket No.	Description	PageID Range
1	Complaint	1-120
11	Answer to Complaint and Affirmative Defenses	145-170
15	First Amended Complaint	201-363
16	Defendant's Answer to First Amended Complaint	364-396
28	Defendant's Motion to Dismiss or For Judgment on the Pleadings	967-1084
31	Plaintiff's Response in Opposition to R. 28 Motion to Dismiss or For Judgment on the Pleadings	1096-1207
32	Defendant's Reply in Support of R. 28 Motion to Dismiss or For Judgment on the Pleadings	1208-1221
41	Opinion And Order Granting In Part And Denying In Part Defendant's Motion To Dismiss (R. No. 28).	1251-1285
47	Second Amended Complaint	1497-1667
50	Plaintiff's Renewed Motion For Partial Summary Judgment On The Issue Of Obstacle Preemption	1673-1987
51	Defendant's Answer to Second Amended Complaint	1988-2070
55	Defendant's Response in Opposition to R. 50 Plaintiff's Renewed Motion For Partial Summary Judgment On The Issue Of Obstacle Preemption	2085-2551
57	Plaintiff's Reply Brief in Support of R. 50 Renewed Motion For Partial Summary Judgment On The Issue Of Obstacle Preemption	2557-2676

60	Order For Supplemental Briefing On The Issue Of Standing And Subject-Matter Jurisdiction	2678-2683
64	Plaintiff's Motion for Leave to File Third Amended Complaint to Add Party Defendants	2881-3016
65	Plaintiff's Supplemental Brief on the Issue of Article III Standing	3017-3044
66	Defendant's Supplemental Brief on the Issue of Article III Standing	3045-3103
68	Plaintiff's Notice of Submission of Supplemental Exhibits	3106-3116
69	Opinion And Order Dismissing Case For Lack Of Standing	3117-3153
70	Judgment	3154
71	Plaintiff's Notice of Appeal	3155-3156
74	Transcript of Oral Argument	3170-3213

ADDITIONAL EXHIBITS

Add. Ex.	Description
Add. Ex. 1	March 27, 2025 Deposition Transcript Excerpt, Chelsea Neblett, pp. 40-41.
Add. Ex. 2	*Green v Equifax Info Servs, LLC,* 2025 U.S. Dist. LEXIS 53946 (E.D. Mich. 2025)
Add. Ex. 3	*Haymarket Dupage, LLC v Village of Itasca*; 2024 U.S. Dist. LEXIS 33271 (ND Ill, Feb. 27, 2024)

4907-7719-9481, v. 1

EXHIBIT – 1

In The Matter Of:

Laurence Wolf Properties v.
City of Detroit

Chelsea Neblett
March 27, 2025

Judy Jettke
& Associates
COURT REPORTING AND VIDEO

Original File NEBLETT_250327.txt
Min-U-Script® with Word Index

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A. Okay. Yes, I do.
Q. Not critical, you say not critical for MSHDA approval. Did MSHDA have to approve the city's policies if they applied in the MSHDA program?
A. We did reach out to -- so we did reach out and have conversations with MSHDA because the programs were going to be using the same policies to ensure that they were aware, right. There was information that we used the same program forms, right, the settlement statement. With the 80/20 there were some amendments that were needed to make to the forms in terms of listing out the 80 percent, the 20 percent. There was also an addendum that was added to conditional dismissal, so there was coordination, correct?
Q. But did you ever get a document from MSHDA that says, we approve the city's policies as it relates to withholding funds?
A. There was information that was listed on MSHDA's website that allowed for municipalities or grantees to have additional program requirements as allowable by Treasury and as dictated by local ordinance as a part of the program.
Q. Okay. And we're going to get to that, but I'm saying with respect to the city's policies in particular, did you get a document from MSHDA that said we approve of these policies?

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A. I'm not sure if we ever received a document that stated that, but we did have conversations, correct.
Q. Did you -- okay. Now you say -- now first of all, is the document that you edited, you're referencing in the first paragraph, is that document the one that's attached, to your knowledge?
A. Yes, that is correct.
Q. Okay. Now you say: A couple of important items that I listed as track changes from our conversations with WM -- that's Wayne Metro, correct?
A. Correct.
Q. -- for settlement agreements that are used when the tenant receives the funds direction, there is self-certification from the tenant that states the funds will be used for rent. We need to work through this issue with MSHDA as if that were the case for the escrow. Then LL -- that's the landlords, correct?
A. LL is landlords, correct.
Q. -- and tenants could find a loophole. What are you referring to there?
A. I'm not sure what I was referencing there.
Q. Okay. And then point number three, you say spend obligations. It will be necessary to confirm that once a CD -- that's conditional dismissal, correct?
A. Correct.

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Q. -- or SA -- settlement agreement, correct?
A. Correct.
Q. -- Is entered into, regardless of the escrowed amount, that funds will be deemed as obligated for spend and recording purposes. Do you see that?
A. I do, yes.
Q. So in other words, if there was a million dollars, that a million dollars would be -- if there had been a million dollars that had been approved, that amount would be what was deemed as obligated for spend and reporting purposes?
A. Correct. That's the question that I was seeking clarity on.
Q. Right. And that's what actually happened, correct?
A. Correct.
Q. Okay. So regardless of how much of the amount was escrow, what was obligated for spend and recording purposes was the whole amount?
A. Yes. As obligated, correct.
Q. Okay. And obligated becomes what is approved to be distributed, correct?
A. Say that one more time.
Q. Well, let me make it concrete. Let's say you got $2,000.000, and you got applications that were approved for a million of that dollars. Of the 2,000,000, 1,000,000 would then be, at that point, be reported as obligated for

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spend and reporting purposes?
A. Correct. So obligated would be the amount of the potential total award, what was distributed and held in escrow?
Q. Right. But just to close this off, when you say obligated for spend and reporting purposes, that means that the whole amount would be internally designated as obligated and would be reported as obligated to whoever needed to have -- get reporting.
A. Correct.
Q. Okay. And this was what the HARAs were required to do under both MSHDA and -- not required, I won't use that term. Pursuant to the policy, the HARAs would comply with this that once a CD or an SA is entered into regardless of the escrowed amount, those funds will be deemed as obligated for spend and reporting purposes, correct?
A. Correct.
Q. Okay. And then there's a list of outstanding issues.
A. Uh-hum.
Q. It says outline -- number two is outline of escrow agent responsibilities, which was Ted Phillips' either responsibility or he raised the issue. It says: Not needed for MSHDA conversation, but needs to be worked on. Do you know what that refers to?
A. I can't say definitively. This was many years ago.

EXHIBIT – 2

Green v. Equifax Info. Servs., LLC

United States District Court for the Eastern District of Michigan, Southern Division

March 24, 2025, Decided; March 24, 2025, Filed

Case No. 23-cv-13055

Reporter
2025 U.S. Dist. LEXIS 53946 *; 2025 LX 125791; 2025 WL 898309

HEATHER GREEN, Plaintiff, v. EQUIFAX INFORMATION SERVICES, LLC ET AL., Defendants.

Counsel: **[*1]** For Heather Green, Plaintiff: Adam G. Taub, Adam Taub Assoc Consumer Law Group, Southfield, MI; Yaakov Saks, Stein Saks, PLLC, Hackensack, NJ.

For Arbor Bancorp, Inc., Doing business as, Bank of Ann Arbor, Defendant: Bruce T. Wallace, Hooper, Hathaway,, Ann Arbor, MI; Madeline Portzline, Hooper Hathaway, P.C., Ann Arbor, MI.

Judges: Hon. Sean F. Cox, United States District Judge.

Opinion by: Sean F. Cox

Opinion

OPINION & ORDER DENYING DEFENDANT ARBOR BANKCORP, INC.'S MOTION FOR JUDGMENT ON THE PLEADINGS OR SUMMARY JUDGMENT (ECF No. 41) AND DISMISSING PLAINTIFF'S CLAIMS AGAINST IT WITHOUT PREJUDICE

Plaintiff Heather Green brings a federal claim against Defendant Arbor Bancorp, Inc. ("Arbor"), and Arbor now moves for summary judgment. Arbor argues that Green lacks **Article III standing**, and the Court agrees. But if Green lacks standing, then the Court cannot issue judgment for Arbor. The Court accordingly shall deny Arbor's motion and dismiss Green's claims against it without prejudice.

BACKGROUND

Green seeks damages from Arbor under the Fair Credit Reporting Act ("FCRA"),[1] which permits individuals to challenge information in their consumer credit reports by filing a dispute with the consumer reporting agency ("CRA") that created the report. *See* 15 U.S.C. § 1681i(a)(1). The Act also requires **[*2]** CRAs to timely "provide notification of the dispute to any person who provided any item of information in dispute." § 1681i(a)(2)(A). Upon receiving such notice from a CRA, the person who provided the disputed information must "investigat[e]" and "modify," "delete," or "permanently block the reporting of" any information that is "inaccurate or incomplete or cannot be verified." § 1681s-2(b)(1). And such investigations must generally be completed within thirty days. *See* § 1681s-2(b)(2). The FCRA additionally confers a cause of action for damages against persons that violate these obligations, §§ 1681n, 1681o, and Green invokes that cause of action here against Arbor.

Green pled the following facts. She obtained a car note from Arbor in 2018 that was later discharged in May 2023 bankruptcy proceedings. But in July 2023, Arbor told two CRAs that Green was still liable on that note. Green filed disputes with those CRAs in August 2023, but the note was still on her credit reports as recently as October 2023. Entities such as Capital One accessed Green's credit reports that same month, and Capital One denied her application for a credit card. This left Green humiliated, embarrassed, and without access to credit from Capital One and other lenders. **[*3]**

Discovery subsequently revealed a letter dated October 19, 2023, from Capital One to Green. The letter states, "Thank you for applying for a credit card issued by Capital One®. Unfortunately, after reviewing your application, we cannot approve your request at this time." (ECF No. 41-7, PageID.399). The letter concludes, "The reason(s) for our decision are: Based on your application information, there are too many delinquent past or present Capital One credit obligation(s)." (*Id.*).

Discovery closed in August 2023, and Arbor now moves for summary judgment.

[1] Green also named Equifax Information Services, LLC and Experian Information Solutions, Inc. as defendants, but she has since dropped her claims against them.

STANDARD OF REVIEW

Arbor argues that it is entitled to summary judgment because Green lacks **Article III standing**. "[B]ut **Article III standing** is jurisdictional, and a federal court lacking subject-matter jurisdiction is powerless to render a judgment on the merits." *Thompson v. Love's Travel Stops & Country Stores, Inc.*, 748 Fed. App'x 6, 11 (6th Cir. 2018). The Court accordingly cannot grant summary judgment for Arbor unless Green has standing. *See, e.g., Ward v. Nat'l Patient Acct. Servs. Solutions, Inc.*, 9 F.4th 357, 363 (6th Cir. 2021) (reversing grant of summary judgment for lack of standing and remanding "with instructions that [the action] be dismissed for lack of jurisdiction").

The upshot is that courts review standing challenges "in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, **[*4]** with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). And at the summary judgment stage, "the plaintiff can no longer rest on . . . 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts,' which for purposes of the summary judgment motion will be taken to be true."[2] *Id.* (quoting Fed. R. Civ. P. 56(e), 28 U.S.C. app. (1988) (amended 2007)).

ANALYSIS

Arbor argues that Green lacks **Article III standing**. Courts cannot adjudicate actions that do not qualify as "Cases" or "Controversies" under Article III of the U.S. Constitution, and "the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan*, 504 U.S. at 560. Standing requires, among other things, an "injury in fact" that is "fairly . . . trace[able] to the challenged action of the defendant." *Id.* (alterations in original) (first quoting *Allen v. Wright*, 468 U.S. 737, 756, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984), and then quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976)).

Where, as here, Congress has conferred a statutory cause of action, "[o]nly those plaintiffs who have been concretely harmed *by a defendant's statutory violation* may sue that private defendant over that violation in federal court." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 427, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021) (original emphasis altered).

Arbor argues that the only item of evidence in the record showing that Green suffered an injury **[*5]** in fact is the October 2023 Capital One letter denying her credit card application, and that this letter does not show that Green's injury is fairly attributable to Arbor's alleged FCRA violation. Indeed, the October 2023 letter shows only that Capital One denied Green's credit card application because she already owed too much money to Capital One; the letter does not show that Capital One even accessed Green's credit reports, much less denied her credit-card application due to Arbor's FCRA violation. Because Green lacks **Article III standing** unless her injuries are fairly attributable to Arbor's FCRA violation, she must come forward with evidence showing as much.

But Green does not come forward with any evidence of her standing. Instead, Green responds that she pled facts which, if true, would show that she has standing. Green may be right, but it does matter. "[W]hen a plaintiff is put to his proof by a Rule 56 motion for summary judgment, allegations alone are not enough." *Sault Ste. Marie Tribe of Chippewa Indians v. United States*, 288 F.3d 910, 916 n.6 (6th Cir. 2002) (citation omitted). Because Green does not set forth specific facts by affidavit or other evidence showing that her alleged injuries are fairly traceable to Arbor's FCRA violation, she lacks **Article III standing**.[3]

CONCLUSION & ORDER

Green fails **[*6]** to come forward with evidence showing that she has **Article III standing** in response to Arbor's summary-judgment motion. Accordingly, **IT IS ORDERED** that Arbor's motion is **DENIED** pursuant to Local Rule 7.1(f)(2) and Green's claims against Arbor are **DISMISSED without prejudice**.

IT IS SO ORDERED.

---

[2] The only source of doubt regarding the proper **standard of review** is the fact that Arbor argues in the alternative that it is entitled to judgment on the pleadings. But Arbor does not raise its jurisdictional challenge under Federal Rule of Civil Procedure 12(c); Arbor only challenges Green's **Article III standing** under the rubric of summary judgment. Stated differently, Arbor does not challenge whether Green *pleads* standing; Arbor argues only that she cannot *prove* standing. Federal Rule of Civil Procedure 56 therefore provides the proper framework for resolving Arbor's standing challenge.

[3] Green disagrees and points to *Bach v. First Union National Bank*, 149 F. App'x 354 (6th Cir. 2005). There, an FCRA defendant argued that the plaintiff had not proven damages at trial and moved for judgment as a matter of law under Federal Rule of Civil Procedure 50(b). The district court denied the defendant's motion and the Sixth Circuit affirmed. But Bach does not help Green because that case did not involve a Rule 56 standing challenge; the district court only considered whether the plaintiff had proven damages at trial.

/s/ Sean F. Cox

Sean F. Cox

United States District Judge

Dated: March 24, 2025

JUDGMENT

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff's claims against: Experian Information Solutions, Inc. are **DISMISSED with prejudice** for the reasons stated in this Court's August 21, 2024, order; (2) Equifax Information Services, LLC are **DISMISSED with prejudice** for the reasons stated in this Court's September 30, 2024, order; and (3) Arbor Bancorp, Inc. are **DISMISSED without prejudice** for the reasons stated in this Court's March 24, 2025 order.

IT IS SO ORDERED.

/s/ Sean F. Cox

Sean F. Cox

United States District Judge

End of Document

EXHIBIT – 3

Haymarket Dupage, LLC v. Vill. of Itasca

United States District Court for the Northern District of Illinois, Eastern Division

February 27, 2024, Decided; February 27, 2024, Filed

Case No. 22-cv-160

Reporter
2024 U.S. Dist. LEXIS 33271 *; 2024 WL 809110

HAYMARKET DUPAGE, LLC, Plaintiff, v. VILLAGE OF ITASCA, et al., Defendants.

Subsequent History: Motion denied by *Haymarket Dupage, LLC v. Vill. of Itasca, 2025 U.S. Dist. LEXIS 60493 (N.D. Ill., Mar. 31, 2025)*

Core Terms

school district, village, traceability, zoning, healthcare facility, planned development, motion to dismiss, causation, special use, disability, ordinance, causal, clean, proposed facility, residential, patient, defendant's conduct, injury in fact, hotel

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For Village of Itasca, Itasca Plan Commission, Jeffrey Pruyn, Itasca Mayor in his official capacity, Defendants: Charles E. Hervas, LEAD ATTORNEY, Hervas, Condon & Bersani, P.C., Itasca, IL; Yordana Jaime Wysocki, Hervas Condon & Bersani PC, Itasca, IL.

Judges: Hon. Steven C. Seeger, United States District Judge.

Opinion by: Steven C. Seeger

Opinion

MEMORANDUM OPINION AND ORDER

Haymarket Center is the largest non-profit substance abuse treatment provider in Chicago. But it wanted to expand. It purchased an old hotel in DuPage County and tried to get zoning approval from the Village of Itasca to open a treatment center. After two years of countless meetings, negotiations, haggling, and hearings, the Village of Itasca denied Haymarket's application.

Haymarket responded by filing suit against the Village of Itasca and five other public bodies and officials. The other defendants include the Itasca Plan Commission, Itasca Mayor Jeffrey Pruyn, the Itasca Fire Protection District No. 1, the Itasca Public School District 10, and School Superintendent Craig Benes. The **[*2]** complaint alleges violations of the Fair Housing Act, the Americans with Disabilities Act, the Rehabilitation Act, and state law.

Three of the six Defendants moved to dismiss. The Fire District, the School District, and Superintendent Benes argued that Haymarket does not have Article III standing, and that the complaint fails to state a claim.

For the following reasons, this Court grants the motions to dismiss for lack of subject matter jurisdiction. At bottom, Haymarket is suing the School District and the Fire District about decisions made by someone else (*i.e.*, the Village Board), so the alleged injury is not fairly traceable to the conduct of the School District and the Fire District. The lack of traceability means that Haymarket lacks standing to sue.

Background

Before diving into the facts, the Court offers three overarching observations. The Court offers a reminder, a forewarning, and a head's up.

First, at the motion to dismiss stage, the Court must accept as true the complaint's well-pleaded allegations. *See* *Lett v. City of Chicago, 946 F.3d 398, 399 (7th Cir. 2020)*. The Court "offer[s] no opinion on the ultimate merits because further development of the record may cast the facts in a light different from the complaint." *Savory v. Cannon, 947 F.3d 409, 412 (7th Cir. 2020)*.

Second, the complaint is **[*3]** hefty, weighing in at 87 pages. *See* *Fed. R. Civ. P. 8(a)* (requiring a complaint to be "short"). It gives a detailed, up-close-and-personal summary of the dispute between Haymarket and the Itasca public officials. It's a long-drawn-out saga, and the complaint is unsparing in its summary of the nitty-gritty details. The complaint gives a blow-byblow summary of the back-and-forth with the Village about its proposal, over a span of years.

Third, as you read along, keep an eye out for references to the School District and the Fire District. They filed the motions to dismiss in question, so their role in the dispute has special importance. There are lots of other characters in the story, too, but they didn't file motions to dismiss. You may notice that other players - meaning Defendants who did not move to dismiss - played an outsized role in the story. That's partly the point of the motion to dismiss.

This Court will summarize the allegations in the 16 pages that follow, so buckle up for a long read. There are a lot of trees. Here's the forest:

Haymarket wanted to open a treatment facility for substance abuse in Itasca. Haymarket tried and tried to get approval, over a span of two years. Hearing after hearing, **[*4]** discussion after discussion, and protest after protest followed. But in the end, Itasca voted it down. And then Haymarket sued.

Haymarket

The COVID-19 pandemic spread a new illness from coast to coast. During the same time, a different lurking disease destroyed the lives of tens of thousands: drug addiction. In the twelve months leading up to April 2021, more than 100,000 people died from a drug overdose.[1]

Putting that number in perspective, the seating capacity of Soldier Field is 61,500, and the seating capacity of Wrigley Field is 41,649. So, the number of people who die each year from a drug overdose is roughly the amount of people that it would take to fill those two stadiums to the brim.

Haymarket is Chicago's "largest and most comprehensive non-profit provider of treatment for substance use disorders and mental health disabilities." *See* Cplt., at ¶ 3 (Dckt. No. 1). Unlike many other treatment facilities, Haymarket accepts people who need help regardless of their ability to foot the bill. *Id.*

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[1] *See Drug Overdose Deaths in the U.S. Top 100,000 Annually*, CDC (Nov. 17, 2021), https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm (last accessed Feb. 23, 2024).

An Eye for Expansion

In 2019, Haymarket recognized that people in DuPage County and the other so-called collar counties needed help, too. **[*5]** *Id.* at ¶ 76. Haymarket started searching for its next location. *Id.*

Haymarket set its sights on a for-sale Holiday Inn hotel in Itasca, a town in DuPage County. *Id.* at ¶ 77. The property is visible from Interstate 290. *Id.*

Haymarket thought that the hotel was just right. Haymarket wouldn't need to construct a new building, and it wouldn't need to change the outside structure. *Id.* at ¶ 78. The building boasted sufficient parking, too. *Id.* In other words, Haymarket wouldn't need to do very much other than change the sign on the door.

Haymarket had a vision for the property. It would offer inpatient treatment, outpatient treatment, detoxification services, recovery home treatment health care, GED classes, and employment placement. *Id.* at ¶ 79. It would help people get back on their feet. And it would lend a hand 24 hours a day, 7 days a week, 365 days a year. *Id.* at ¶ 80.

Initial Efforts

Haymarket tried to get the ball rolling in April 2019. *Id.* at ¶ 83. It met with Itasca's Director of Community Development. *Id.* The meeting focused on the project's classification. *Id.*

Before getting to the meeting, the Court offers a note about Itasca's zoning. The Holiday Inn hotel is nestled in Itasca's **[*6]** "B-2 District." *Id.* at ¶ 77. Itasca permits healthcare facilities to operate in the B-2 District as an authorized special use. *Id.* at ¶¶ 77, 84.

Itasca's zoning ordinance defines the term "healthcare facility." *Id.* at ¶ 85. A healthcare facility is any "institution, place, building, or agency" devoted to operating "facilities for the diagnosis and treatment" of more than two unrelated people "admitted for overnight stay or longer" so the patient can "obtain medical care, including . . . care of illness, disease, injury, infirmity, or deformity." *Id.*

Haymarket thought that its proposed facility fit within the ordinance. *Id.* at ¶ 84. At the meeting with Itasca's Director of Community Development, Haymarket explained that it should be allowed to apply for special use B-2 District healthcare facility authorization. *Id.* at ¶¶ 83-84.

Itasca's Community Development Director wasn't sure about the proposal. *Id.* at ¶ 84. She explained that the Village "did not know how to classify" Haymarket's proposed facility. *Id.*

Later, the Community Development Director reached out to Haymarket. *Id.* at ¶ 86. She told Haymarket that its facility was a "mixed use of residential and medical." *Id.* She told Haymarket **[*7]** that it should apply for approval as a "planned development," not as a healthcare facility. *Id.*

The Village apparently thought that Haymarket's proposal had a "residential" use, because Haymarket planned to offer patients a recovery home service. *Id.* at ¶ 88. The recovery home program would allow patients to continue treatment for ninety days after completing a short-term, inpatient treatment. *Id.*

In other words, the Village apparently leaned on the definition of "dwelling unit" in its ordinance. *Id.* at ¶¶ 88-89. A dwelling is one "or more rooms, which are arranged, designed, or used as living quarters for one" family only. *Id.* at ¶ 89. "[E]ach dwelling unit" must include individual "bathrooms and complete kitchen facilities." *Id.*

The Village's position perplexed Haymarket. Haymarket didn't think that its project would have a "dwelling" in sight. *Id.* at ¶ 90. Each room would be a shared hotel-style room, without a kitchen. *Id.* In sum, Haymarket thought that the Village's position - classifying the project as "residential" - contradicted the ordinance's "plain language." *Id.*

More than semantics were at stake. Haymarket cared about whether it needed to apply as a healthcare facility or as **[*8]** a planned development, because the zoning ordinance raises the bar for planned developments. *Id.* at ¶¶ 91-94. Planned development applications are more "onerous." *Id.* at ¶ 91.

In any event, all special use applications need to satisfy three criteria. *Id.* at ¶ 92. A project must show that (1) it is necessary for the public convenience at the location; (2) the public health, safety, and welfare will be protected; and (3) it will not substantially injure the value of other neighborhood properties. *Id.*

In July 2019, Haymarket moved forward by submitting two applications. *Id.* at ¶ 95. One application was for special use as a healthcare facility. *Id.* The other application was for use as a planned development. *Id.*

Two weeks later, Itasca's attorney sent a rejection email for Haymarket's healthcare facility application. *Id.* at ¶ 96. The attorney told Haymarket that the right type of application was a planned development application, not a healthcare facility application. *Id.*

In the next breath, the attorney also bounced the planned development application as "deficient." The lawyer explained that the application did not include an economic impact statement or a landscape plan. *Id.*

Haymarket appealed **[*9]** those decisions within the Village, but lost. *Id.* at ¶¶ 97-99. So Haymarket plowed forward with its efforts to get zoning approval as a planned development - the only open road. *Id.* at ¶ 100.

The Mayor

Haymarket's efforts caught the Mayor's attention, in a bad way. Itasca Mayor Jeffrey Pruyn opposed the project from "the very beginning." *Id.* at ¶ 108. Mayor Pruyn's "public opposition encouraged Itasca, its governmental entities, and Itasca residents to oppose the project." *Id.*

He "regularly posted open letters to the community on Itasca's website to express his opposition to the proposed healthcare facility." *Id.* at ¶ 110. In one public letter addressed to Haymarket, he complained that Haymarket's "plans have been cloaked in secrecy." *Id.* at ¶ 118.

Mayor Pruyn and Haymarket talked face to face. In an August 2019 meeting, Haymarket addressed one of Mayor Pruyn's concerns - that the proposed facility would compromise Itasca's Emergency Medicine Services. *Id.* at ¶ 120.

Haymarket thought that it had a solution. *Id.* Haymarket offered to give the Village an ambulance. At that point, the Village had only one ambulance, so adding a second ambulance would double the fleet. *Id.*

Another meeting attendee **[*10]** (the Village Administrator) rejected the offer. The second ambulance wouldn't run itself. It "would require additional staffing and an additional building to store it." *Id.* And that requires money.

Chatter about the project spread beyond the Village's borders. Mayor Pruyn met with two Illinois State Representatives (Representative Deborah Conroy and Representative Diane Pappas), along with Illinois State Senator Tom Cullerton. *Id.* at ¶ 123. Representative Conroy said that she "could secure half a million dollars in grant funds to offset the potential lost tax revenue" that would hit the Village's books, since Haymarket enjoyed non-profit status. *Id.*

The next day, Mayor Pruyn dropped a letter in the mail. He asked Representative Conroy to "hold off on requesting any state funding" until the Village could "better determine the total financial impact to Itasca taxpayers." *Id.* at ¶ 124.

Haymarket confronted headwinds from other Itasca community members, too. According to Haymarket, Itasca's Fire Protection District No. 1 opposed the project. *Id.* at ¶ 125.

The Fire District

Up to this point in the story, you haven't met the Fire District or the School District, meaning the Defendants who moved **[*11]** to dismiss. That's about to change.

Haymarket met with the Fire District's Chief (James Burke) and the Fire Prevention Bureau Director (Mike Lisek). *Id.* The men told Haymarket that they were worried about the Fire District's sole ambulance. *Id.* According to them, Haymarket's facility would generate too many calls for the ambulance to adequately answer. *Id.* After all, one ambulance can be in only one place at a time.

Fire Prevention Director Lisek also seemed to give Haymarket a warning. He told Haymarket that its project would face "detailed" fire code "scrutiny." *Id.* at ¶ 126. Haymarket read between the lines and perceived a "threatening and punitive" warning, because the Fire District had not enforced the code at the Holiday Inn. *Id.*

Haymarket and the Fire District met only once. *Id.* at ¶ 127. After the meeting, the Fire District rebuffed Haymarket's several invitations to talk again. *Id.*

But the Fire District didn't forget about Haymarket's project. It continued "its vocal opposition to" Haymarket's zoning applications. *Id.*

Public Opposition & More Hearings

Haymarket faced proverbial fire from another front, too.

Itasca residents vocally opposed the project. *Id.* at ¶ 128. According to **[*12]** Haymarket, those residents opposed the project because they "harbored" a bias against people with substance use disorders. *Id.* at ¶ 133.

The complaint highlights statements that Itasca residents made on social media. For example, one resident declared that "nothing" would justify Haymarket's "crack house being brought to Itasca." *Id.* at ¶ 133(a). The same resident warned that the facility would turn Itasca's "little area" into a "ghetto." *Id.*

Some residents spread a keep-Chicago's-problems-in-Chicago message. One wondered, "[t]here's enough crimes in the metropolitan area, do we need to add it to our small town?" *Id.* at ¶ 133(c). Others worried about "vagrants and panhandlers" and "Chicago's drug addicts" pouring into town. *Id.* at ¶ 133(d), (g).

Those residents also took their message offline. In September 2019 - the day of the first zoning hearing - 1,500 people marched through the Village. *Id.* at ¶ 134. The parade of people carried "NO HAYMARKET" signs. *Id.*

The hearing didn't end up happening on the day that it was scheduled. *Id.* at ¶ 135. The meeting's location (a school) couldn't stuff the number of people who showed up inside. *Id.*

About a month later, with a bigger space secured, the **[*13]** Itasca Plan Commission held the first hearing. *Id.* at ¶ 136. One thousand people filled the room. *Id.* Most weren't Haymarket's friends. *Id.*

Itasca's Plan Commission is an administrative body composed of seven Itasca residents, appointed by Mayor Pruyn with the advice and consent of the Village Board. *Id.* at ¶ 24. The Plan Commission hears applications for zoning relief and offers the Village Board recommendations about whether the Board should approve or deny the applications. *Id.*

After the first meeting, the Plan Commission hosted a few more meetings between October 2019 and December 2019. *Id.* at ¶ 139. It took a breather when Haymarket filed a state court lawsuit. *Id.*

The state court dismissed Haymarket's case in March 2020. *Id.* at ¶ 102. The state court explained that the issues were not ripe, because the zoning hearings were ongoing. *Id.*

Of course, March came in like a lion - but it didn't go out like a lamb. The COVID-19 pandemic struck with full force, and a lot of things went onto the back burner. The Plan Commission's hearings were no exception. *Id.* at ¶ 103.

The Amended Zoning Applications

Haymarket returned in August 2020 with amended zoning applications. *Id.* at ¶ 140. The amended **[*14]** applications prompted the appearance of the next character in the story, the School District. Recall that the School District filed one of the motions to dismiss, and the Fire District filed the other.

Haymarket filed three amended applications. *Id.* Haymarket filed one for special use as a planned development, another for special use as a healthcare facility, and a third for Class 1 Site Plan review (whatever that is - the complaint does not say). *Id.*

The new applications informed the Village that Haymarket had purchased the hotel property. *Id.* at ¶ 142. The applications also explained that Haymarket had modified its programming vision. *Id.*

The amended applications attempted to resolve an earlier dispute about Haymarket's hopes for a Mother and Child Program. *Id.* at ¶ 81. Originally, Haymarket wanted a program to let women undergoing treatment at Haymarket bring two children under five with them. *Id.* In its words, Haymarket wanted to destroy the principal barrier that women with children face when they need treatment: the need for childcare. *Id.*

Haymarket had included that program in its original proposal, and it landed poorly. The program came under fire from Itasca School District Superintendent **[*15]** Craig Benes. *Id.* at ¶ 163. Superintendent Benes claimed that the program would "pose an undue economic burden on the School District because [the program's children] would be children with disabilities who required special education services." *Id.*

The School District, through Superintendent Benes, also warned that homeless Haymarket patients would claim residency in Itasca, so their kids could get free education from Itasca schools. *Id.* at ¶ 164.

The School District "refused to meet with Haymarket" to discuss its concerns, except for one phone call. *Id.* at ¶ 166. (The complaint does not reveal what happened during the call.)

But the School District did make its concerns widely known. For example, Superintendent Benes sent a letter to parents "repeat[ing] the wrongful assertion" that Haymarket's presence "could compromise the ability of the Fire District and the Police Department to respond to emergencies at the three schools within the District." *Id.* at ¶ 168.

In Haymarket's view, the School District's reaction to that original proposal was all wrong. The School District "misinterpreted school residency law, and implied the children of patients" would "necessarily have disabilities, require **[*16]** special education services," and "be homeless." *Id.* at ¶ 170. As Haymarket tells it, the School District megaphoned "negative stereotypes" in "violation of anti-discrimination laws." *Id.*

Haymarket attempted to resolve that long-simmering dispute in the amended applications. Facing School District pressure, Haymarket erased the Mother and Child Program from its amended applications to appease the community. *Id.* at ¶ 142.

More Public Hearings

In October 2020, the Plan Commission resumed the public hearings for Haymarket's planned development application (but not its healthcare facility application). *Id.* at ¶ 144. The hearings stretched over the span of one year, from October 2020 to November 2021. *Id.*

Haymarket made its pitch at the hearings with the help of expert witnesses. *Id.* at ¶ 145. *Many* experts. In many, many fields: substance use treatment, land use planning, urban economics, local property taxation, property values, and traffic impact. *Id.*

Haymarket also revisited the Fire District's worries about its single ambulance. *Id.* at ¶ 148. After the Village rebuffed Haymarket's offer to put a shiny new one in the driveway, Haymarket rolled out new ideas. *Id.*

For example, Haymarket signed **[*17]** a contract with Elite Ambulance - the second largest ambulance provider in Illinois - to respond to many of Haymarket's basic life support calls. *Id.* at ¶ 148(a). Haymarket also offered to execute a contract with a secondary private ambulance company. *Id.* at ¶ 148(d).

Going further, Haymarket assured the community that it would have medical staff on-site every minute of every day. *Id.* at ¶ 148(b). So, Haymarket said that it could "address certain medical needs in-house," lightening the load on Itasca's EMS. *Id.*

Haymarket didn't ask Itasca to simply accept Haymarket's assurances, either. Haymarket hired a retired fire chief with 29 years of experience. *Id.* at ¶ 149. The Chief opined that Haymarket "would not unduly impact the provision of EMS services in Itasca." *Id.*

For its part, the Fire District offered an expert witness of its own. The Fire District's own witness didn't seem concerned about the Fire District's sole ambulance. *Id.* at ¶ 150. According to the Fire District's expert, the Fire District, "as currently staffed and equipped, could handle the anticipated increase in EMS calls from" Haymarket. *Id.*

So a lot of effort, from a lot of people, from a lot of different angles, went **[*18]** into developing, debating, discussing, and dissecting Haymarket's project. But according to Haymarket, the Village didn't demand the same effort from other zoning applicants. *Id.* at ¶ 156.

Haymarket alleges that another project - the Bridge Development - breezed through the Village's inspection. *Id.* According to Haymarket, the Bridge Development is fifteen times larger than Haymarket's project, but the Village never questioned its impact on the Village's EMS services. *Id.* at ¶ 157.

Post-COVID Public Comment Period

The fever pitch against the project continued during the Plan Commission's post-COVID public comment period. *Id.* at ¶ 178. The public comment period "revealed residents in Itasca were fearful of the population" Haymarket would serve. *Id.* The public "assumed" Haymarket's "presence would adversely impact the community," and "harbored discriminatory animus about those with substance use disorder." *Id.*

For example, one resident said that Itasca would "never be the safe, small town" of its present glory. *Id.* at ¶ 179(a). Instead, Haymarket's project would be "bringing death to Itasca," and the "crime rate" would "skyrocket." *Id.*

Concern about property values bubbled, too. A resident **[*19]** stated that "property prices" might "plummet" because "[f]uture home buyers would prefer nearby towns." *Id.* at ¶ 179(d).

Another resident expressed worry that Itasca neighbors were turning their back on this country's bedrock principles. *Id.* at ¶ 179(b). The resident conveyed that concerning town-chatter "implied that Haymarket should be denied due process." *Id.*

On the theme of process: Haymarket alleges that the zoning application hoops it had to jump through were far from the normal course. *Id.* at ¶ 183. Haymarket alleges that the deviations reflected the Village's efforts to "stack the deck" against Haymarket. *Id.*

For example, Haymarket alleges that the Village's attorney acted as the "impartial" legal counsel to the Plan Commission, but his impartiality "veil" was a fake cover. He recommended a witness who testified in opposition of the project. *Id.*

Itasca also "refused to require members of the public to sign-up in advance to identify those witnesses from Haymarket" who they planned to question. *Id.* That refusal forced Haymarket to swallow "the financial burden of preparing its witnesses to appear and testify during this phase, regardless of whether the public intended to question **[*20]** them." *Id.*

The Plan Commission's Vote

After winding its way through the Plan Commission's procedures, Haymarket reached a critical juncture on September 22, 2021. After two years, and after 35 hearings, the Plan Commission voted on whether to recommend the proposal to the Village Board. *Id.* at ¶ 185.

Outside the Village Hall - the meeting location - Itasca residents held up the "No Haymarket" signs in a "silent protest." *Id.* at ¶ 186.

Haymarket fared no better inside the hall. The Plan Commission unanimously rejected Haymarket's zoning applications. *Id.* at ¶ 185.

The Plan Commission "determined there was a need for a treatment center in DuPage County, but claimed there was not enough evidence of the need for treatment in Itasca itself." *Id.* at ¶ 187. "Commissioners also criticized the size of the proposed facility." *Id.*

According to Haymarket, the Plan Commission also "based its decision to deny the zoning applications on Haymarket's supposed burden on EMS services." *Id.* at ¶ 188.

The Commission thought that its sole ambulance would get overworked and become the little-engine-that-couldn't. *Id.* For example, Commission Chairman Brendan Daly stated: "the only number I feel comfortable with **[*21]** in this entire hearing is the number one. Itasca has one ambulance[.]" *Id.*

Commissioner Daly also mentioned the schools. He said that he did not think that Haymarket satisfied its burden to show that the project would not impact Itasca's school district. *Id.* at ¶ 191. "The other commissioners agreed with this assertion, even though it was unsupported by the facts or school residency law, and no children would live" at Haymarket. *Id.*

Another Plan Commissioner (Commissioner Drummond) focused on the facility's "residential" nature. *Id.* at ¶ 192. "Even though Itasca forced Haymarket to apply for a special use as a Planned Development due to the purported 'residential' nature of the proposed facility, Plan Commissioner Drummond stated she did not think the proposed facility could truly be characterized as residential." *Id.* "Plan Commissioners Carello and Daly agreed with this statement, but also again claimed the facility would unduly burden EMS." *Id.*

Before the Plan Commission voted, Itasca's attorney "directed the Plan Commission to discuss reasonable accommodations." *Id.* at ¶ 193. She explained that the Fair Housing Act and the Americans with Disabilities Act "create an affirmative duty **[*22]** on the part of the Village to reasonably accommodate those disabled individuals in zoning matters." *Id.*

In response, Plan Commissioner Ray (supported by Commissioner Drummond) said that her concerns went "back to health and safety," and that she didn't "believe with the lack of EMS services" that residents would "be able to thrive in that environment." *Id.* at ¶ 195. Commissioner Daly reiterated the "cost of purchasing and staffing a second ambulance." *Id.* at ¶ 197.

In a different vein, Plan Commissioner Carello opined that the property's "size" was a "big issue," and noted that if the property was "smaller," the project "would have been done a long time ago." *Id.* at ¶ 196.

In any event, Haymarket didn't give up after it lost before the Plan Commission. *Id.* at ¶ 199.

One month later, it sent a letter to the Village "reaffirming the conditions" that it would agree to "if the Village approved the zoning application." *Id.* Those conditions included always maintaining a contract with a private ambulance company, executing a contract with a second private ambulance company, and meeting with the Fire District as needed to review call volumes and ensure efficient emergency services. *Id.*

Two weeks **[*23]** later, the Village responded. It would not agree to the conditions. *Id.* at ¶ 200. The Village explained that the conditions were not "enforceable," citing an Appellate Court of Illinois decision. *Id.*

Haymarket responded the same day. *Id.* at ¶ 201. Its letter outlined why the Village's interpretation of the case was wrong. *Id.*

The Village ghosted Haymarket. *Id.* at ¶ 202.

The Village Board's Vote

At the end of October 2021, Haymarket made its final pitch to the Village Board. *Id.* at ¶ 203. The "Objectors" (a group of Itasca residents and businesses) and Haymarket both gave statements. *Id.* at ¶¶ 9, 203.

Haymarket hit the end of the road in November 2021. *Id.* at ¶ 204. In a meeting that lasted 17 minutes, the Village Board denied Haymarket's proposal. *Id.*

Before the vote, Mayor Pruyn made a public statement opposing the project. *Id.* at ¶ 205. The ambulance issue came up. Mayor Pruyn stated that even though Haymarket suggested it could provide a second ambulance, the new rig would "require staff, maintenance, and other costs Itasca just doesn't have." *Id.*

After Mayor Pruyn spoke, one Board Trustee took the floor. *Id.* at ¶ 207. Trustee Ellen Leahy explained her position: "Itasca is being asked **[*24]** to support a 200-bed facility that could potentially cost Itasca and its residents $1 million annually." *Id.* Despite Representative Conroy's offer to drum up $500,000 in state money, Trustee Leahy reported that Itasca had never "received a financial commitment from the State of Illinois to help support Haymarket." *Id.*

The members of the Village Board cast their votes, and it wasn't close. *Id.* at ¶ 208. The Board voted unanimously (6-0) against the proposal, and denied the zoning relief. *Id.*

The Federal Lawsuit

Haymarket believes that it checked every box and jumped through every hoop. But in the end, the Village pulled the rug out from under it, and did so for improper reasons. *Id.* at ¶ 210. According to Haymarket, the Village's denial "was without legal basis or justification." *Id.*

Haymarket responded by filing this lawsuit. The complaint names six Defendants: the Village of Itasca, the Itasca Plan Commission, Mayor Jeffrey Pruyn (in his official capacity), the Itasca Fire Protection District No. 1, the Itasca

Public School District 10, and Superintendent Craig Bernes (in his official capacity). *Id.* at ¶¶ 23-28. Haymarket brought claims under three federal statutes, plus state law.

Counts **[*25]** I through V allege various *Fair Housing Act* violations against each Defendant. *Id.* at ¶¶ 220-40.

Count VI alleges that all Defendants violated Title II of the Americans with Disabilities Act. *Id.* at ¶¶ 241-47.

Count VII alleges that the "Itasca Defendants" violated *Section 504 of the Rehabilitation Act*. *Id.* at ¶¶ 248-53. (The complaint defines "Itasca Defendants" as the Village and the Plan Commission. *Id.* at ¶ 1).

Finally, Count VIII alleges that the Itasca Defendants violated "Illinois State Law." *Id.* at ¶¶ 254-66.

The "Illinois State Law" header is broad, to say the least. But the complaint does get a little more granular. It says that Illinois law requires that Itasca comply with its Zoning Ordinance. *Id.* at ¶ 256. It also notes that the Illinois Municipal Code provides that a board's decision about an application for a special use is subject to de novo judicial review. *Id.* at ¶ 258. In other words, the count seems to ask this Court to hold that the Village made the wrong decision.

Three of the six Defendants filed motions to dismiss. The Fire District filed one of the motions. *See* Fire District Mtn. to Dismiss (Dckt. No. 30). The two School District Defendants (the School District and Superintendent Benes) filed the other. *See* School **[*26]** Defs.' Mtn. to Dismiss (Dckt. No. 27). For the sake of simplicity, the Court will refer to the two School District Defendants as simply the "School District."

Defendants moved to dismiss on several grounds. They argued that Haymarket lacks standing, and that the complaint fails to state a claim for which relief can be granted.

The other three Defendants (the Village of Itasca, the Itasca Plan Commission, and Mayor Pruyn) did not move to dismiss.

Legal Standard

A motion to dismiss under *Rule 12(b)(1)* challenges whether this Court has subject matter jurisdiction over a claim or case. *See Fed. R. Civ. P. 12(b)(1)*; *Prairie Rivers Network v. Dynegy Midwest Generation, LLC, 2 F.4th 1002, 1007 (7th Cir. 2021)*. "A standing challenge under *Rule 12(b)(1)* typically can take the form of a facial or a factual attack on the plaintiff's allegations." *Id.* (cleaned up). "A facial attack tests whether the allegations, taken as true, support an inference that the elements of standing exist, and a factual attack tests the existence of jurisdictional facts underlying the allegations." *Id.* (cleaned up).

To evaluate a facial attack, this Court looks to the complaint to see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction. *Id.* The Court accepts "all well-pleaded factual allegations as true and draw[s] all reasonable inferences **[*27]** in favor of the plaintiff." *Id.*

Analysis

The Constitution vests federal courts with judicial power in "Cases" and "Controversies." *See U.S. Const. art. III, § 2*. That bedrock requirement has several layers of meaning. At bottom, a federal court can decide a case only if there is a real dispute brought by a person with standing to sue.

"In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *See Warth v. Seldin, 422 U.S. 490, 498, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)*. Standing is "not merely a troublesome hurdle to be overcome if possible so as to reach the 'merits' of a lawsuit which a party desires to have adjudicated; it is a part of the basic charter promulgated by the Framers of the

Constitution at Philadelphia in 1787." *See* Valley Forge Christian College v. Am. United for Separation of Church & State, Inc., 454 U.S. 464, 476, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982).

The Constitution imposes guardrails on judicial power, and the standing doctrine "helps safeguard the Judiciary's proper - and properly limited - role in our constitutional system." *See* United States v. Texas, 599 U.S. 670, 675-76, 143 S. Ct. 1964, 216 L. Ed. 2d 624 (2023). "The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *See* Clapper v. Amnesty Int'l USA, 568 U.S. 398, 408, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013); *see also* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992); Allen v. Wright, 468 U.S. 737, 752, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984). Standing helps to prevent the judiciary from overstepping, and helps to **[*28]** prevent the other branches from getting stepped on.

A plaintiff has standing only if he can "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *See* DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342, 126 S. Ct. 1854, 164 L. Ed. 2d 589 (2006). That is, a plaintiff must have: (1) suffered an injury in fact; (2) that is fairly traceable to the defendant's challenged conduct; and (3) that is likely to be redressed by a favorable judicial decision. *See* Spokeo, Inc. v. Robins, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016).

The Court will address each of the requirements, until it hits a dead end.

I. Injury in Fact

The Court starts with the injury-in-fact requirement. Standing requires a plaintiff to have a "personal stake in the outcome of the controversy." Warth, 422 U.S. at 498. An injury in fact must be "concrete and particularized" and "actual or imminent," not "conjectural or hypothetical." *See* Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014) (cleaned up).

Those guideposts have a driving purpose. They prevent "kibitzers, bureaucrats, publicity seekers, and 'cause' mongers from wrestling control of litigation from the people directly affected." *See* Illinois Dep't of Transp. v. Hinson, 122 F.3d 370, 373 (7th Cir. 1997). The injury-in-fact requirement makes sure that the plaintiff has skin in the game. And it ensures that the judiciary stays in its lane.

Haymarket has plausibly alleged an injury in fact. **[*29]** Haymarket owned the property. *See* Cplt., at ¶ 142 (Dckt. No. 1). Haymarket had a legally protected interest in using its property. And the Village denied Haymarket's special use permit. *Id.* at ¶¶ 210-17.

Haymarket alleges that it suffered an injury when the Village denied its applications for the project. That's enough to demonstrate an injury in fact. *See also* Church of Our Lord & Savior Jesus Christ v. City of Markham, 913 F.3d 670, 681 (7th Cir. 2019) ("In short, the church has sustained a concrete injury resulting from the city's interpretation of which zoning uses are permitted in the R-3 districts, and that injury is sufficient to give the church standing for Article III purposes."); Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, 508 U.S. 656, 668, 113 S. Ct. 2297, 124 L. Ed. 2d 586 (1993) ("An allegation that a 'specific project' was 'precluded' by the existence or administration of the zoning ordinance would certainly have been sufficient to establish standing[.]") (cleaned up).

II. Traceability

The next requirement is traceability. The basic question is whether the alleged injury (*i.e.*, the denial of the application) is fairly traceable to the actions of the School District and the Fire District.

Traceability requires a causal nexus between the injury and the defendant's conduct. A plaintiff's injury must be "fairly traceable to the defendant's allegedly unlawful conduct and likely to **[*30]** be redressed by the requested relief." *See* DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342, 126 S. Ct. 1854, 164 L. Ed. 2d 589 (2006). In other words, "there must be a causal connection between the injury and the conduct complained of." *See* Dep't of Educ. v. Brown, 600 U.S. 551, 561, 143 S. Ct. 2343, 216 L. Ed. 2d 1116 (2023) (citation omitted); *see also* Collins v. Yellen, 594 U.S. 220, 141 S. Ct. 1761, 1779, 210 L. Ed. 2d 432 (2021) ("[F]or purposes of traceability, the relevant inquiry is whether the plaintiffs' injury can be traced to allegedly unlawful conduct of the defendant[.]") (cleaned up).

Traceability does not require that the defendant's action be the "very last step in the chain of causation." *See* Bennett v. Spear, 520 U.S. 154, 169, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997). If causation is like a Rube Goldberg machine, traceability isn't limited to the last leg in the process.

The traceability requirement is not the same thing as proximate causation. "Proximate causation is not a requirement of Article III standing, which requires only that the plaintiff's injury be fairly traceable to the defendant's conduct." *See* Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 134 n.6, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014). Proximate causation requires a direct causal link between the injury and the conduct. "[T]here must be some direct relation between the injury asserted and the injurious conduct alleged." *See* Paroline v. United States, 572 U.S. 434, 444, 134 S. Ct. 1710, 188 L. Ed. 2d 714 (2014) (citation omitted).

By comparison, traceability is a watered down version of causation. Unlike proximate causation, traceability includes both direct and indirect injuries. "The injury may be indirect, **[*31]** as long as the complaint indicates that the injury is fairly traceable to the defendant's acts or omissions. However, when the injury is indirect, it is likely to be more difficult to establish the required causal nexus." *See* 15 James Wm. Moore *et al.*, Moore's Federal Practice § 101.41[2] (3d ed. 2023).

That said, standing is not about the merits, and traceability is not about the merits, either. *See* Arizona State Legislature v. Arizona Independent Redistricting Comm'n, 576 U.S. 787, 800, 135 S. Ct. 2652, 192 L. Ed. 2d 704 (2015); Whitmore v. Arkansas, 495 U.S. 149, 155, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990). "[S]tanding does not depend on the merits of a claim." Davis v. United States, 564 U.S. 229, 249 n.10, 131 S. Ct. 2419, 180 L. Ed. 2d 285 (2011); *see also* Warth, 422 U.S. at 500 (stating that standing "often turns on the nature and source of the claim asserted," but it "in no way depends on the merits" of the claim).

Traceability becomes more complicated when other actors come into the picture. Sometimes the "causal relation between injury and challenged action depends upon the decision of an independent third party." *See* California v. Texas, 141 S. Ct. 2104, 2117, 210 L. Ed. 2d 230 (2021) (cleaned up). And in that case, "standing is not precluded, but it is ordinarily substantially more difficult to establish." *Id.*

A "plaintiff does not lack standing merely because the defendant is one of several persons who caused the harm. That circumstance may make it more difficult, but not impossible, to establish causation." *See* Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton, 422 F.3d 490, 500 (7th Cir. 2005).

A court must be able to trace the injury "to the challenged action of the defendant, **[*32]** and not the result of the independent action of some third party not before the court." *See* Ariz. Christian Sch. Tuition Org. v. Winn, 563 U.S. 125, 134, 131 S. Ct. 1436, 179 L. Ed. 2d 523 (2011) (cleaned up); *see also* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

The causal connection might exist when the defendant produces the injury by "determinative or coercive effect upon the action of someone else." *See* Bennett, 520 U.S. at 169; *see also* 15 James Wm. Moore *et al.*, Moore's Federal Practice § 101.41[2] (3d ed. 2023) ("An **indirect** but actionable injury may occur when the defendant's **actions** lead to someone else burdening the plaintiff.").

On the other hand, **traceability** might not exist if a defendant's conduct is not "a necessary element" of the plaintiff's injury. *See* 15 James Wm. Moore *et al.*, Moore's Federal Practice § 101.41[1] (3d ed. 2023) "Some courts

have held that the fact that the defendant's actions were not the only cause of the plaintiff's harm does not preclude a finding of causation sufficient to support standing. But while that is correct in the abstract, a court should be careful not to rely on this dictate to ignore the traceability and redressability prerequisites of Article III. Where defendant's conduct is not a necessary element for plaintiff's injury, i.e., the exact same injury would have occurred even absent defendant's conduct, it is questionable whether either of these core constitutional requirements has **[*33]** been satisfied." *Id.*

In sum, traceability is about the causal connection between the alleged injury and the conduct of the defendant. The inquiry boils down to whether the "line of causation between the illegal conduct and injury [is] too attenuated." *See* *Allen v. Wright, 468 U.S. 737, 754, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984)*, *abrogated on other grounds by* *Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014)*. With those principles in mind, the Court turns to the claims against the School District and the Fire District. The punchline is that the denial of the applications is not fairly traceable to the conduct of the School District and the Fire District.

Recall, the School District opposed the original application submitted by Haymarket. The Superintendent spoke out against the original plan because it might overstretch the resources of the school system. *See* Cplt., at ¶¶ 163-70 (Dckt. No. 1). In particular, the School District opposed the Mother and Child Program. *Id.* But the School District continued to oppose the program even after Haymarket withdrew that part of the plan and submitted a new application. *Id.* at ¶ 166.

The Fire District opposed the proposal, too. *Id.* at ¶¶ 126-27. Some of the concerns involved the possibility of overusing the ambulance and overstretching resources.

At best, the School District **[*34]** and the Fire District were voices in a chorus of opposition to the proposal. But the complaint stops short of alleging that the decision by Itasca was fairly traceable to their opposition.

The School District and the Fire District were not the decisionmakers. The power to vote up or down resided with the Village Board, not the School District or the Fire District. The School District and the Fire District spoke up, and the Board voted it down.

Getting their approval was not a necessary step in the process. The complaint does not allege, for example, that the Village needed to obtain the approval of the School District or the Fire District to grant the permit. The opposition of the School District and the Fire District did not predetermine and foreordain the denial of the applications by the Board.

The complaint does not allege that the School District and the Fire District controlled the Board, or otherwise had a "determinative or coercive effect upon the action of someone else." *See* *Bennett, 520 U.S. at 169*. There is no allegation that they were pulling the strings, and that the Board members were mere puppets who did their bidding. If anything, the complaint repeatedly acknowledges that the Village and the **[*35]** Plan Commission - not the School District or the Fire District - made the decision. *See* Cplt., at ¶¶ 1, 212, 213 (Dckt. No. 1).

Courts find a lack of traceability when a plaintiff sues a defendant about a decision made by someone else. In *Allen v. Wright*, parents of black public-school children sued the Internal Revenue Service. *See* *Allen v. Wright, 468 U.S. 737, 739, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984)*. They alleged that the IRS did not adopt sufficient standards to fulfill its obligations to deny tax-exempt status to racially discriminatory private schools. *Id. at 739*. The parents alleged that the IRS harmed the children's ability to receive a desegregated public-school education. *Id. at 739-40*.

The Supreme Court held that the injury was not "fairly traceable" to the IRS's challenged conduct. *Id. at 757*. The "line of causation" was "attenuated at best." *Id.* The Supreme Court explained that it was "entirely speculative" whether - if the IRS corrected its behavior by withdrawing tax exemptions from racially discriminatory private schools - the schools would change its policies, and, in turn, salve the plaintiffs' injuries. *Id. at 758*.

The Supreme Court reached the same conclusion in *Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976)*. There, "indigents and organizations composed of indigents" sued the Secretary of the Treasury and the Commissioner **[*36]** of Internal Revenue. *Id. at 28*. They alleged that the IRS violated the Internal Revenue Code when it issued a ruling giving favorable tax treatment to a nonprofit hospital that only offered emergency-room services to indigents, as opposed to offering full hospital services. *Id.* at 28, 33.

So, the plaintiffs' injury theory was a weakened ability to receive hospital services. *Id. at 33*. And the plaintiffs' traceability theory was that the IRS, when it adopted its rule, "encouraged" hospitals to deny services to indigents. *Id.* at 42.

The Supreme Court held that the plaintiffs did not have standing. The Supreme Court explained the link between the IRS's "encouragement" and the hospitals' "denial of services" was "entirely speculative." *Id.* The Supreme Court could only guess whether the hospitals denied service because of the IRS's "encouragement" or from "decisions made by the hospitals without regard to the tax implications." *Id. at 42-43* (emphasis added).

As the Seventh Circuit later explained in a separate case, the Supreme Court found no traceability in *Simon* because the plaintiffs had not sued the decisionmaker. "[W]hile the IRS rule may have incentivized hospitals to deny the plaintiffs care, it was the hospitals - not **[*37]** the IRS - that *made the decision* not to treat the patients." *See Segovia v. United States, 880 F.3d 384 (7th Cir. 2018)* (describing *Simon, 426 U.S. at 41-42*) (emphasis added).

The Seventh Circuit built upon that foundation in *Segovia*. There, former residents of Illinois moved to Guam, Puerto Rico, and the Virgin Islands. *See Segovia, 880 F.3d at 386*. Federal law *allowed*, but did not *require*, states to provide absentee ballots in those territories.

The former residents filed suit against a group of federal defendants, alleging a denial of due process and equal protection. The Seventh Circuit dismissed their claims for lack of traceability. The federal defendants didn't make the decision to withhold ballots - the state of Illinois did. "The federal government doesn't run the elections in Illinois, so . . . whether the plaintiffs can obtain absentee ballots is *entirely up to* Illinois. Given that type of *unfettered discretion* with respect to the plaintiffs, the federal government cannot be the cause of their injuries." *Id. at 390* (emphasis added).

The Seventh Circuit cemented the point in *DH2, Inc. v. SEC, 422 F.3d 591 (7th Cir. 2005)*. There, a company that traded in mutual funds challenged an SEC rule that gave the funds discretion in how they calculate their daily prices. *Id. at 592*. The plaintiff wasn't governed by the rule - instead, the plaintiff challenged **[*38]** an SEC rule that gave discretion to non-parties (*i.e.*, mutual funds) when it came to pricing.

The Seventh Circuit found a lack of traceability because the alleged injury depended on the discretion of a non-party. *Id. at 597* ("With or without the challenged statements in the SEC releases, mutual funds have the discretion to use fair value pricing in lieu of market quotations when circumstances warrant the conclusion that market quotations are no longer current. Thus, to a significant degree, the injury DH2 complains of hinges on the decisions of independent actors whose discretion - though subject to securities laws and regulation by the SEC - is nonetheless quite broad.").

The same conclusion applies here. Haymarket isn't complaining about a decision made by the School District, or the Fire District. They weren't the decisionmakers. The Board, not the schools or the fire department, rejected the proposal. The Board had "unfettered discretion," and the decision was "entirely up to" them. *See Segovia, 880 F.3d at 390*.

At best, the complaint alleges that the School District and the Fire District worked "in concert" with the other defendants. *See, e.g.*, Cplt., at ¶ 11 (Dckt. No. 1) ("Defendants worked in concert with each **[*39]** other . . . to orchestrate the opposition to Haymarket[.]"); *id.* at ¶¶ 25, 229(a). Maybe Haymarket believes that there was a cabal

or a conspiracy of some kind. Even so, standing cannot rest on conclusory allegations. *See* *Hope, Inc. v. DuPage County, 738 F.2d 797, 807-08 (1984)*.

At the end of the day, the School District and the Fire District had a voice, but they didn't have a vote. So there is no traceability.

Conclusion

For the foregoing reasons, the motions to dismiss the School District and the Fire District are hereby granted. The Itasca Fire Protection District No. 1, the Itasca Public School District 10, and School Superintendent Craig Benes are hereby dismissed for lack of standing.

Date: February 27, 2024

/s/ Steven C. Seeger

Steven C. Seeger

United States District Judge

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