No. ____________

In the Supreme Court of the United States

reVamped LLC, a Minnesota limited liability company; Heliocentrix LLC, a Minnesota limited liability company; Tammy Grubbs; Vanda Smrkovski,

Petitioners,

v.

City of Pipestone, a Minnesota municipality; Doug Fortune, in his individual capacity and official capacities.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. When a government's appeal process is illusory or non-existent to allow a party to challenge a government's total closure of a business resulting in the loss or taking of property, and the government further impedes the process, implicating a Takings Clause claim, whether the illusory appeal process is a *per se* violation of procedural due process under 42 U.S.C. § 1983 requiring no need to exhaust state remedies before the claim becomes ripe for federal adjudication under this Court's legal principle as explained in *Knick v. Twp. of Scott*, 588 U.S. 180, 185 (2019) and *Patsy v. Board of Regents of State of Fla.,* 457 U.S. 496 (1982).

2. There is a Circuit split regarding the existence of categorical "police power" exceptions in the context of the Takings Clause of the Fifth Amendment. The Seventh, Eighth, Ninth and Tenth Circuits hold that there are categorical police-power exceptions to the Takings Clause. The Fourth, Sixth and Federal Circuit have held that Supreme Court's jurisprudence recognizes that Government actions taken pursuant to the police power are not per se exempt from the Takings Clause. The question presented is:

   Whether the Takings Clause of the Fifth Amendment contains a categorical "police power" exception immunizing the government from providing just compensation.

PARTIES TO THE PROCEEDINGS

The Petitioners are reVamped LLC, a Minnesota limited liability company; Heliocentrix LLC, a Minnesota limited liability company; Tammy Grubbs; Vanda Smrkovski. The were the plaintiff-appellants below.

The plaintiff-respondents below were the City of Pipestone, Minnesota, a municipal governmental entity, and Doug Fortune, in his individual and official capacities as the City of Pipestone's building inspector.

CORPORATE DISCLOSURE STATEMENT

The Petitioners reVamped LLC, is a limited liability company. It does not have a parent public or private corporation owning any interest in it. Heliocentric LLC is a limited liability company. It does not have a parent public or private corporation owning any interest in it. The remaining Petitioners Tammy Grubbs; Vanda Smrkovski are individuals.

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In The Supreme Court of the United States

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reVamped LLC, a Minnesota limited liability company; Heliocentrix LLC, a Minnesota limited liability company; Tammy Grubbs; Vanda Smrkovski,
Petitioners,

v.

City of Pipestone, a Minnesota municipality; Doug Fortune, in his individual and official capacities.

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case dated on the same date as the issuance of the opinion, December 23, 2025, in *reVamped LLC v. City of Pipestone*, 163 F.4th 462 (8th Cir. 2025). 1a-9a.

OPINIONS BELOW

The United States Court of Appeals for the Eighth Circuit opinion is reported at *reVamped LLC v. City of Pipestone*, 163 F.4th 462 (8th Cir. 2025). 1a-9a. The district court's order is reported at *reVamped LLC v. City of Pipestone,* 760 F. Supp. 3d 855 (D. Minn. 2024), aff'd, 163 F.4th 462 (8th Cir. 2025). 10a-33a.

JURISDICTION

The judgment of the court of appeals was entered on December 23, 2025, and issued on the same date as the United States Court of Appeals for the Eighth Circuit. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS INVOLVED

> No State shall … deprive any person of life, liberty, or property, without due process of law.

U.S. Const. amend. XIV, § 1.

> [N]or shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

STATEMENT OF THE CASE

The exercise of governmental police powers cannot be unfettered and result in categorical immunity from compensation when fundamental rights or property interests are totally lost. There is no per se exception in the Takings Clause. However, a split among the Circuits suggests such per se immunity exists under the guise of governmental police powers if it involves the "public interest."

But the broad application of the interpretation of a "public interest" can apply to any government decision or action as a "police power," thus avoiding just compensation. The Fifth Amendment does not

contemplate a categorical police power exception. In a similar vein, a government using extreme measures to totally close a legal business and then directing the party to an illusory appeal process is a per se violation of the Due Process Clause, requiring no need to exhaust other possible administrative or judicial remedies to assert a 42 U.S.C. § 1983 claim. As to both claims, under the Fifth and Fourteenth Amendments, extreme governmental actions against private property should not leave the individual without a federal compensatory remedy. The questions presented reach every local, county, state, and federal government institution that interacts with individuals when exercising "police powers."

1. In rural Pipestone, Minnesota, the Calumet Inn operated as a functioning and commercially viable hotel business providing employment, generating tax income for the state, county, and city, social gathering opportunities and accommodations for guests and customers. Besides available rooms, the Inn included a restaurant, lounge, dining room, pub, and coffee shop. Originally constructed in 1888 (and added to the National Register of Historic Places in the 1970s). The Inn underwent a comprehensive renovation and restoration in the 1980s, bringing the building into compliance with modern building and fire safety codes at a cost of approximately $3 million.

Over the decades, the Inn did have its financial ups and downs under different owners. By mid-2018 through early 2020, under the new ownership of Petitioners Tammy Grubbs and reVamped LLC, the Inn had returned to active operation. They also worked to address conditions associated with prior absentee ownership based in Texas. Pet. S.J. Memo.

(Distr. Ct. Dckt No. 68). As with any historical structure, there would be necessary restoration repairs or retrofitting to comply with updated building codes.

For example, during the absentee ownership of the Texas operators, (under a contract for deed with Heliocentrix LLC), the Inn suffered damage that resulted in late 2017 a window falling from the building and in early 2018, a stone falling from the south wall façade due to delayed tuckpointing, which was a façade issue, not a structural one. Then in June 2018, after the Texas-based owners defaulted on a contract for deed, Tammy Grubbs of reVamped LLC, took over the Inn's operations and ownership.[1] Ms. Grubbs immediately completed neglected repairs needed in August 2018 with some financial assistance from Pipestone. *Id.*

2. In a routine fire inspection in November 2019, the Minnesota Deputy State Fire Marshal, George Shellum, alleged certain minor code violations that needed attention, giving Ms. Grubbs between 7 to 90 days to correct. However, Mr. Shellum failed to directly provide Ms. Grubbs with his November report. Without the report, Ms. Grubbs could not address the specific identified code deficiencies. Only through a third-party and almost four months later on March 6, 2020, would Grubbs see the November 2019 inspection report for the first time.

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[1] Ms. Grubbs, through her company reVamped, LLC entered into a contract for deed, purchasing the Calumet Inn from Vanda Smrkovski (via Heliocentrix, LLC).

Upon contacting Mr. Shellum to explain the late receipt of his report, Mr. Shellum nevertheless alerted Ms. Grubbs of another inspection that would take place three days later on March 9th. *Id.*

Meanwhile, Ms. Grubbs immediately addressed the issues outlined in the November 2019 fire inspection report. In those three days before the inspection Ms. Grubbs successfully completed or commenced corrections needed for all of the items listed; any remaining items were pending the arrival of necessary parts. *Id.* Notably, Doug Fortune, Pipestone's building inspector, contacted Mr. Shellum *five* days *before* the scheduled March 10, 2020, inspection stating he *planned* to condemn the Calumet Inn. *Id.*

3. The March 9th fire inspection included Mr. Shellum, the State Fire Marshall, a State Department of Health inspector, and Doug Fortune, the City of Pipestone's building inspector. Mr. Shellum took the lead in the inspection. The result of the March fire inspection identified work to correct the previous November code deficiencies, giving more time to correct those remaining deficiencies, and upon finding other minor deficiencies, to have those corrected within 7 to 90 days. The record contained no evidence of any condition requiring the immediate condemnation-closure of the Inn. This included finding the Inn's sprinkler system operational, which Doug Fortune, as the City of Pipestone's building inspector would later (falsely) claim was inoperable. *Id.*[2]

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[2] Shellum Depo. Transcr. 64:8–29.

As for the Inn, the very next day following the March 9, 2020, fire inspection, Mr. Fortune wrote a letter to Ms. Grubbs stating he had *condemned* the Inn, declaring the Inn as a "distinct fire hazard:" "[T]he calumet (sic) is a 'distinct fire hazard.' Per the current Minnesota Building Code and State Fire Code the hotel is CONDEMNED." 16a. A "distinct fire hazard" is an undefined term. Despite declaring the Inn, "condemned," Mr. Fortune did not commence a judicial condemnation procedure under Minnesota law. Minn. Ch. 117. Ostensibly, Mr. Fortune primarily claimed the Inn's sprinkler system as inoperable (contradicting the State Fire Marshall's finding that the sprinkler system was operational). But announcing the Inn as condemned, Ms. Grubbs expected a pre-deprivation hearing of some kind, as Minn. Ch. 117 demands, but that did not occur.

Although Mr. Shellum, as the state fire inspector, had the authority to close the Inn if he believed the Inn was a fire hazard, the fire code deficiencies did not amount to any necessity to close the Inn to protect the public. None of the deficiencies he listed constituted a "fire hazard" serious enough to close the Inn.

According to Mr. Shellum, as the State Fire Marshall, none of the alleged fire code violations in his November or March reports constituted "a catastrophic danger" or an "immediate danger" to the Inn's guests, employees, or the general public sufficient to condemn a building.[3] The State Health

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[3] As Mr. Shellum testified, he did not view the Inn to be "dangerous to the life, health, property or safety of the public or

Inspector, also present at the March 2020 inspection likewise identified no basis for shutting down the business. In fact, Mr. Fortune later admitted, that none of the fire code violations listed in either of Mr. Shellum's fire inspection reports, or in the City's own safety list, constituted a "distinct fire hazard."[4]

To be clear, the Minnesota Deputy State Fire Marshal and State Health Inspector inspected the property one day prior to Mr. Fortune's condemnation and identified no condition requiring closure, evacuation, or emergency action; a licensed structural engineer likewise confirmed that the building presented no structural danger. These undisputed facts underscored that no genuine emergency existed at the time of the condemnation.

The conditions the appellate court later cited—including the window failure and façade stone issues—had been identified and repaired approximately one and a half years before the City's March 10, 2020, condemnation of the Inn. Those conditions were unrelated to the condemnation, although Mr. Fortune, after being sued, would later claim those issues, for the first time, as justification for his decision.

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occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of a fire." Pet. S.J. Memo. (Distr. Ct. Dckt No. 68.

[4] "Distinct fire hazard" is undefined in either state statutes, state rules and regulations, or the Pipestone City Code. Notably, less drastic regulatory tools were available. Under the City's own code, officials had the authority to issue vacate or limited-closure orders to address safety concerns. Those measures would have allowed any alleged conditions to be remedied while preserving the economic viability of the property.

Meanwhile, Mr. Fortune had a history of using his authority to condemn or close other rental properties for his friends who owned the buildings. By using his governmental authority, he caused tenants to immediately vacate, allowing his friends as landlords and owners to avoid court eviction procedures and later use the properties for other developmental purposes. Pet. S.J. Memo. (Distr. Ct. Dckt No. 68. Furthermore, unbeknownst to the Petitioners, the Inn had been identified by the City as property targeted for redevelopment planning, planning materials prepared by the City.

Further, the March 10, 2020 letter, serving as a notice, as Mr. Fortune later admitted, violated City Code provisions governing notices, state law mandates such as failing to identify specific code violations, time to correct the alleged violations, serving the notice on the proper party, and notice of a right to appeal (which was later found to be non-existent).[5] *E.g.,* Minn. Stat. §§ 463.15-463.26; Minn. R. 1300.0180.

Because of Mr. Fortune's condemnation letter forcing the total closure of the Inn, Ms. Grubbs also lost her property interests in all other state, county, and local licenses, such as food, beverage, and lodging required to operate the Inn. *e.g.* Minn. Stat. § 157.16 (food and beverage); Minn. Stat. § 327.10, Minn. R. 4625.02000 (lodging). But for the condemnation notice, if any other action short of the total closure of her business, Ms. Grubbs could have been able to continue her operation while effecting repairs.

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[5] Fortune Depo. Transcr. 100:17-25, 154:15-155:16, 103:2-24, 107:15-18, 156:8-16.

4. After receiving Mr. Fortune's condemnation notice, Ms. Grubbs immediately sought a hearing from the Pipestone City Council to overturn the condemnation decision. 3a. On March 16th, 2020, the Council held a hearing to allow Mr. Fortune to testify regarding his decision, but refused Ms. Grubbs's request to contest and provide evidence to the contrary. Thirteen days after Mr. Fortune's March 10, 2020 condemnation letter, on March 23, 2020, the Council allowed Ms. Grubbs's counsel to speak to the Council but did not consider the meeting as either an appeal or a reconsideration of Mr. Fortune's actions who acted for the City in his condemnation declaration. Although the Council had the authority to do so, it took no action. 23a. (City Code § 151.11(A) (concerning appeals of building closure decisions). 17a.

Soon thereafter, the COVID-19 epidemic occurred. Despite the onset of the epidemic, three weeks after the March 23rd Council meeting the City declared it had no appeal process to address Mr. Fortune's condemnation decision. The declaration that the City had no appeal process to reverse the condemnation decision came through an April 13, 2020 letter from the City's attorney. 18a. Having declared it had no appeal process the City attorney directed Ms. Grubbs to file an appeal with the Minnesota Department of Labor and Industry's Appeals Board. 24a. Minn. R. 1300.0230. The State Appeals Board has the authority to hear a party's challenge to a building inspector's use of a state building code violation (not City Code challenges). 24a. That directive, however, did not provide a viable avenue for review. The Appeals Board has authority only to review a building official's application of the

state building code—not to overturn a local condemnation order issued under municipal authority. Minn. R. 1300.0180. Here, Mr. Fortune did not properly invoke or identify applicable state building code violations in his condemnation letter. As a result, there was no cognizable state-code determination for the Appeals Board to review, and no mechanism by which it could reverse the City's condemnation decision. The purported appeal process therefore provided no meaningful or practicable avenue for relief and functioned, at most, as a procedural dead end.

Ms. Grubbs spent a substantial amount of time and money to fill out the Labor and Industry appeal packet, but did not file with the Appeals Board because the same day that she served the appeal documents upon Mr. Fortune on April 30, 2020, to collect his signature (required before filing), Mr. Fortune immediately removed the "do not enter" placards on the building. Yet nothing had changed regarding the structure itself or the state of repairs when first condemned back in March. The removal of the placards effectively mooted the DLI appeal process before it could be filed, eliminating any meaningful opportunity for administrative review, even aside from the fact that the DLI process itself was impracticable.

Twenty-two days earlier, on April 8, 2020, Mr. Fortune wrote that if Ms. Grubbs completed four separate lists of items, none of which involved the sprinkler system but mainly entailed wall and ceiling replacement of sheetrock in the laundry and two storage rooms, and minor cosmetic issues for the State Health Inspector which included chipped tiles

and peeling wallpaper, he would remove the placards from the building. The letter and subsequent reversal action was essentially a de facto admission that the Inn was not a "distinct fire hazard because nothing had meaningfully changed from the date of the government's condemnation notice to the placard removal.

Mr. Fortune's claim that the building posed an imminent threat to health and safety is contradicted by the contemporaneous findings of state safety officials and by his own subsequent actions. The City lifted the condemnation on April 30, 2020—only after Petitioners initiated steps toward state review—and without any material change in the building's condition.

But the damage had been done. With the Inn's total closure the Petitioners immediately lost operational licenses, lost the ability to generate revenue from the property and to continue operating their licensed hospitality business. The condemnation disrupted ongoing operations, including employees, vendor relationships, reservations, guest occupancy, the ability to prepare on-site and to-go food orders, and prevented Petitioners from obtaining over $500,000 in time-sensitive pandemic relief to continue operations. Petitioners were unable to restore their original operational licenses following the shutdown, and subsequent efforts to resume operations by a third party were significantly delayed by eight months due to the condemnation fallout. The shutdown therefore eliminated the property's economically beneficial use.

Importantly, at the time of the closure, the Inn operated in a local economy that continued to generate demand during the early stages of the COVID-19 pandemic, including from essential workers. The shutdown therefore deprived Petitioners of the ability to continue operating in an active market, compounding the economic harm.

5. The plaintiff-petitioners commenced a 42 U.S.C. § 1983 action in federal court. 19a. The plaintiff-petitioners alleged that the City of Pipestone and Mr. Fortune violated their procedural due process rights under the Fourteenth Amendment by refusing to provide a hearing on Mr. Fortune's condemnation decision and the resulting total closure of the business, failing to provide any meaningful avenue for appeal, and impeding review processes. 42 U.S.C. § 1983. *Id.* In addition, the plaintiff-petitioners argued the City and Mr. Fortune committed an unconstitutional taking in violation of the Fifth Amendment by erroneously identifying the Calumet Inn hotel as distinct fire hazard, condemning it resulting in the total closure of the business and loss of all economic use of their property during that time. *Id.*

The district court granted summary judgment to the City and to Mr. Fortune. 10a-33a.

While the district court agreed the Council did not hold an appeal hearing, it asserted the plaintiff-petitioners did not invoke the appeal process, nor seek certiorari review (or a request for a writ of mandamus) concerning the March 23, 2020 City Council meeting, or the April 13, 2020 letter, in which the Pipestone City Attorney advised Ms.

Grubbs to seek review to the Minnesota Department of Labor and Industry Appeals Board. 26a. The district court did not fully address the inadequacies of Mr. Fortune's notice to Ms. Grubbs, the content of which was specifically mandated by statutory law.

Apparently, the court concluded that "general" notice to a law is sufficient despite the law requiring specific itemized requirements as the plaintiff-petitioners had argued. 29a, n.16. through Rule 1300.0230. Nevertheless, the district court concluded that because Mr. Fortune's actions were of the kind that did not require pre-deprivation processes, when a government must act quickly, post-deprivations processes can satisfy due process requirements. 28a. Citing *Gilbert v. Homar*, 520 U.S. 924 (1997). The district court would conclude that available post-deprivation processes were adequate to meet due process requirements. *Id.* Citing *Parrish v. Mallinger*, 133 F.3d 612, 615 (8th Cir. 1998) (observing that the focus in assessing a procedural due process claim is "not on the merits of a deprivation, but on whether the State circumscribed the deprivation with constitutionally adequate procedures").

The district court also rejected the plaintiff-petitioners Takings Clause claim. There was no dispute about Mr. Fortune's actions closing the Calumet Inn and preventing the Inn from conducting business. But the court determined that closing the Inn fell within the government's authority to take action to protect the public from harm, thereby immunizing the government from a takings claim. 32a. Citing *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 160 (2021); *Mugler v. Kansas*, 123 U.S. 623, 668 (1887).

6. On appeal to the U.S. Court of Appeals for the Eighth Circuit, the court affirmed the district court's decision. 1a-9a. The Inn Owners appeal, arguing: (1) The closure order violated their Fourteenth Amendment procedural due process rights; (2) qualified immunity should not shield Fortune in his individual capacity; and (3) the closure order was an uncompensated regulatory taking in violation of the Fifth Amendment. The appellate court opined that the plaintiff-petitioners could not meet the second and third elements of *Mathews v. Eldridge*, to support a due process violation. 424 U.S. 319, 335 (1976) ((2) the risk of an erroneous deprivation of interests and (3) the government interests regarding its functions involved and burdens of any additional or substitute procedural requirements would entail.) 4a.

But, the appellate court also recognized that "a procedural due process claim is not complete when the deprivation occurs. Rather, the claim is complete only when the State fails to provide due process." *Id.* Citing *Reed v. Goertz*, 598 U.S. 230, 236 (2023). The court reasoned Mr. Fortune had a specific reason under the law to close the Inn and that Ms. Grubbs had sufficient post-deprivation avenues to pursue. 5a. Citing *Hodel v. Virginia Surface Min. & Reclamation Ass'n, Inc.*, 452 U.S. 264, 301–03 (1981). The court would further conclude that the plaintiff-petitioners had at least three avenues to pursue an appeal of the condemnation-closure of the Inn. *Id.* Despite arguments of the City's delay and impediment to seek an immediate remedy, the court concluded that the plaintiff-petitioners "cannot complain of a violation of procedural due process when [they have] not availed [themselves] of existing procedures." *Id.* quoting

Anderson v. Douglas Cnty., 4 F.3d 574, 578 (8th Cir. 1993).

And as for the plaintiff-petitioners' Takings Clause claim, the appellate court upheld the district court's decision. Namely, the court concluded that if a state exercises its police power in the interest of public health and safety, it is generally not a taking. *Graphics, Inc. v. City of Burlington, Iowa*, 103 F.3d 690, 695 (8th Cir. 1996). Relying on the decision in *Cedar Point Nursery v. Hassid,* 594 U.S. 139, 160 (2021), as an example, the Court concluded the government owes no compensation to a landowner to abate a nuisance, "because he never had a right to engage in the nuisance in the first place." 8-9a.

7. The Petitioners submit that this Court should grant this petition to harmonize the existing conflicts within the Circuits regarding procedural due process claims related to the loss of property due to governmental decisions and the need to exhaust remedies before asserting a 42 U.S.C. § 1983 claim with Supreme Court precedent. *See, Knick v. Twp. of Scott*, 588 U.S. 180, 185 (2019) ("[T]he settled rule is that exhaustion of state remedies is not a prerequisite to an action under 42 U.S.C. § 1983."); *Patsy v. Board of Regents of State of Fla.,* 457 U.S. 496 (U.S. 1982) (exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983). The Eighth Circuit requires it. *Wax 'n Works v. City of St. Paul*, 213 F.3d 1016, 1019 (8th Cir. 2000). Compare, *Beaulieu v. City of Alabaster,* 454 F.3d 1219, 1226–27 (11th Cir. 2006) (First Amendment challenge to zoning ordinance requires no exhaustion of administrative remedies provided final decision

made); *T&W Holding Co., L.L.C. v. City of Kemah, Texas,* 160 F.4th 622, 627 (5th Cir. 2025) ("[I]t is well-established that there is no exhaustion requirement for § 1983 claims").

Likewise, there exists a split among the Circuits regarding the government's police power as categorical immunity from providing compensation under the Takings Clause regardless of the way the police power is exercised. There is no per se exception written in the Takings Clause. However, the Circuit split suggests per se exceptions exist under the guise of governmental police powers if it involves the "public interest." *Slaybaugh v. Rutherford County*, 114 F.4th 593 (6th Cir. 2024), *cert. denied*, —— U.S. ––——, 145 S. Ct. 1959 (2025) (there exists no categorical police power exception to the Takings Clause); *Baker v. City of McKinney*, 84 F.4th 378, 383–84 (5th Cir. 2023), *cert. denied*, —— U.S. ——, 145 S. Ct. 11 (2024) (No compensation when police damage private property as a "necessary exception" to the police power); *Yawn v. Dorchester County*, 1 F.4th 191, 195 (4th Cir. 2021) "That Government actions taken pursuant to the police power are not per se exempt from the Takings Clause."). *But see, Acadia Tech., Inc. v. United States*, 458 F.3d 1327, 1332 (Fed. Cir. 2006) (Rejecting the idea of an absolute categorical police power exception to the Takings Clause, but "'items properly seized by the government under its police power are not seized for 'public use' within the meaning of the Fifth Amendment," and thus such seizures are not compensable takings.'" *Compare, Johnson v. Manitowoc County*, 635 F.3d 331, 336 (7th Cir. 2011) (actions resulting in property destruction "were taken under the state's police power ... [t]he Takings Clause

claim [was] a non-starter."); *Lech v. Jackson*, 791 F. App'x 711, 717 (10th Cir. 2019) ("[W]hen the state acts pursuant to its police power, rather than the power of eminent domain, its actions do not constitute a taking for purposes of the Takings Clause."). *See also Zitter v. Petruccelli*, 744 F. App'x 90, 96 (3d Cir. 2018) (adopting a broad police power exception to the Takings Clause).

REASONS FOR GRANTING THE PETITION

This case presents a recurring structural problem at the intersection of procedural due process, emergency authority, and takings doctrine.

When these doctrines operate together, they permit government officials to bypass pre-deprivation process by invoking "emergency," defeat due process claims by pointing to illusory or impracticable remedies, and avoid compensation by invoking the police power. The result is a constitutional gap in which property rights may be eliminated without meaningful process or compensation.

The courts of appeals are divided on both questions presented. On the Takings Clause, some courts treat exercises of the police power as categorically exempt from the obligation to provide compensation, even when government action eliminates all economically beneficial use of property, while others reject any categorical exception. A similar division exists with respect to procedural due process, where some courts permit § 1983 claims to be defeated based on the theoretical availability of post-deprivation remedies—even when those

remedies are illusory or impracticable—while others do not.

The conflict is not merely semantic or fact-bound; it determines whether constitutional protections have real force in practice or may be nullified by labeling government action as an "emergency" or an exercise of the police power.

This case squarely presents those conflicts in a particularly stark posture. A local official invoked "emergency" authority to impose the most severe measure available—total condemnation and closure—even though state safety officials had determined the day before that no condition required closure or emergency action, a licensed structural engineer likewise found no danger, and less drastic measures were available that would have preserved the property's economic viability. The City nevertheless proceeded with total closure, and the decision below permits that result to stand.

Left uncorrected, the rule below permits the destruction of property rights without process, without compensation, and without meaningful judicial review. This case is a clean vehicle to resolve a division among the courts of appeals regarding the interaction of emergency powers, procedural due process, and takings doctrine.

I. When government officials exercise "police power" authority, resulting in the loss of property interests, due process does not require an exhaustion of state remedies when they are illusory or non-existent.

This case presents just one example of governmental misuse of police powers without providing the targeted individuals or entities with any meaningful remedy. The City imposed the most severe measure available—total closure of a business as a "condemnation" action, without commencing a condemnation judicial process, exercising its so-called "police power", despite the absence of any imminent danger. The City chose total closure, despite the availability of less drastic alternatives ("vacate" or "limited closure") that would have preserved the property's economic viability. State safety officials identified no condition requiring closure or emergency action, yet the City bypassed narrower tools and selected the most destructive option.

For a going-concern business, when a city condemns a building resulting in the total closure of the business activities, it triggers a cascade of immediate consequences: loss of licenses, insurance disruption, employee termination, vendor contract collapse, canceled reservations, and reputational harm. Those effects render the closure effectively final, even if the government later reverses course. In practice, the misuse of "police powers" functions as a commercial death sentence.

The Takings Clause protects property owners from bearing public burdens that should be borne by

the public as a whole. This Court has long recognized that when government action eliminates all economically beneficial use of property, a compensable taking has occurred. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992). But the courts of appeals are divided over whether actions taken pursuant to the government's police power are categorically exempt from the Takings Clause, even when the government intentionally and foreseeably eliminates all economically beneficial use of property. This division among the courts of appeals has significant practical consequences because local officials across the country regularly exercise emergency or nuisance-abatement authority that can eliminate the economic use of property.

Some courts treat exercises of the police power—such as nuisance abatement or safety enforcement—as automatically immune from the obligation to provide compensation. Under that approach, government action taken in the name of public safety is treated as categorically outside the scope of the Takings Clause, even when it destroys the economic use of property. Other courts reject such a categorical rule and recognize that the Takings Clause may still apply when government action eliminates the productive use of property. Under that approach, the police power does not operate as a blanket exemption from the Constitution's compensation requirement. The government's actions may create liability under extreme circumstances as exist here.

The decision below reflects the former approach. By treating the City's emergency condemnation order as categorically insulated from

the Takings Clause because it was an exercise of the police power, the court of appeals permitted the government, in an extreme way, to eliminate the economic use of Petitioners' property without providing just compensation.

There is also the result of the expansion of the scope of the emergency exception to procedural due process. This creates a structural gap in constitutional protection when a governmental official invokes the word "emergency." No pre-deprivation hearing occurs; post-deprivation remedies prove illusory or impracticable; courts then conclude that the existence of those theoretical remedies defeats a federal due process claim; no damages; no accountability.

When constitutional doctrine operates in this manner, emergency authority becomes effectively insulated from meaningful judicial review. Property owners may lose the economic use of their property overnight yet find themselves unable to obtain either compensation or meaningful process.

Hence, there is also a need to harmonize the law between this Court and a split among the Circuits regarding the loss or taking of property rights or interests due to government actions in the context of a due process claim, and the exhaustion of state remedies. It was thought this Court had settled the principle that the Civil Rights Act of 1871, guaranteed "'a federal forum for claims of unconstitutional treatment at the hands of state officials,'" and that "'exhaustion of state remedies 'is *not* a prerequisite to an action under [42 U.S.C.] § 1983.'" *Knick v. Township of Scott, Pennsylvania,* 588

U.S. 180, 185 (2019) (original emphasis) quoting *Heck v. Humphrey*, 512 U.S. 477, 480 (1994) (quoting *Patsy v. Board of Regents of Fla.*, 457 U.S. 496, 501 (1982)).

The principle is consistent with the notion that the U.S. Constitution, when there is the loss or taking of all property interests due to government action, no subsequent action by the government can relieve the duty to provide compensation. *Knick,* 588 U.S. at 192. When a government provides no opportunity to be heard, involving the loss or taking of property, it is a per se violation of due process requiring no exhaustion of state remedies to make and sustain a 42 U.S.C. § 1983 claim.

However, the U.S. Court of Appeals for the Eighth Circuit would take issue with this Court's declared principle. 5a-6a, 19a. *See also, Wax 'n Works v. City of St. Paul*, 213 F.3d 1016, 1019 (8th Cir. 2000).

The circumstances of this case, where a city either denies an opportunity to be heard directly to the issue of whether the underlying decision of a building inspector condemning a building and then informs the property owner *34 days later* the city has no appeal process, should be considered as a per se violation of the Due Process Clause. At that point, it is irrelevant whether other possible avenues are or were available to the aggrieved party. But the Eighth Circuit found this not to be relevant to its analysis despite the government's lack of process involved the total closure of a business and the loss of property interests. 5a.

To begin, the Petitioners' due process claims under the Fourteenth Amendment are embedded with governmental actions that resulted in the total closure of a business under a notice proclaiming the property as "condemned." The resulting loss of property interests as the government asserted its police powers allegedly to protect the health or safety of the public occurred at the moment of the asserted condemnation and total closure of the Petitioners' business. Hence, this Court's declaration in *Knick* that "'exhaustion of state remedies 'is *not* a prerequisite to an action under [42 U.S.C.] § 1983" is the principle underlying the conflicts among the Circuits. 588 U.S. at 190.

The Eighth Circuit concluded that the Petitioners had at least three avenues to pursue an appeal of the condemnation—closure of the Inn. 5a. Despite arguments of the City's illusory appeal the appellate court concluded that the Petitioners "'cannot complain of a violation of procedural due process when [they have] not availed [themselves] of existing procedures.'" *Id.* quoting *Anderson v. Douglas Cnty*., 4 F.3d 574, 578 (8th Cir. 1993).

But the City of Pipestone took 34 days *after* the total closure of the Calumet Inn to announce that no appeal process existed. The city impeded any process because it denied the immediate review to challenge the building inspector's rationale. And then when the Petitioners exercised a possible appeal review with the state's Labor and Industries Board of Appeals (with questionable authority at best to reverse the condemnation—total closure determination itself), the City effectively nullified the appeal process on the very day Petitioners obtained Mr. Fortune's signature

to commence the process, by lifting the closure. By then, any meaningful opportunity for review—such as by certiorari or mandamus—was impracticable, if not non-existent.

Similarly, in *Wax 'n Works v. City of St. Paul,* the Eighth Circuit explicitly stated that "[u]nder federal law, a litigant asserting a deprivation of procedural due process must exhaust state remedies before such an allegation states a claim under § 1983." 213 F.3d 1016, 1019 (8th Cir. 2000). There, the City of St. Paul exercised its eminent domain powers to force the relocation of a car dealership. Wax 'n Works submitted an application, for "relocation assistance, services, payments and benefits" under Minn. Stat. § 117.52.1 (governing eminent domain actions).

Wax 'n Works received no response from the city and construed that failure to respond as the city's "determination." Two months after its initial application, and the City's failure to respond, Wax 'n Works requested an appeal. *Id.* During the succeeding two months, Wax 'n Works repeatedly requested an appeal and subsequently submitted a second amended application for relocation assistance, services, payments and benefits under Minn. Ch. 117. Finally, about five months after its initial application and approximately three months after its first request for an appeal, Wax 'n Works sued the city under 42 U.S.C. § 1983 asserting a procedural due process claim (among other claims). *Id.* The appellate court rejected the claim asserting Wax'n Works failed to exhaust its administrative remedies. *Id.* Further, the court opined that because Wax 'n Works did not avail itself to state judicial remedies having failed to

appeal an eventual decision rendered by a hearing officer. *Id.* at 1020. The holding reflects the government's refusal to recognize its own actions of depriving the business of compensation entitled as a result of the use of police powers tied to the recognized loss or taking of property.

On the other hand, the Eleventh Circuit opines that the exhaustion of administrative remedies is not required under § 1983 in an action challenging a zoning sign ordinance under the First Amendment, provided a final decision of some sort has been made. *Beaulieu v. City of Alabaster,* 454 F.3d 1219, 1226–27 (11th Cir. 2006). Although the central issue related to whether a final decision had been rendered, the underlying claim arose from allegations of the ordinance's abridgment of First Amendment protected rights. This implies a broader application of this Court's *Knick* principle relating to government actions resulting in the loss of constitutionally recognized property interests.

Likewise, in a § 1983 action in which the owner of a building, a bar operator, and a food truck operator challenged the City's towing of his food truck and issuance of zero-occupancy notice for various hazards in his building—where the bar was located and outside of which the food truck was parked—–asserting takings, due process, and equal protection claims. *T&W Holding Co., L.L.C. v. City of Kemah, Texas,* 160 F.4th 622, 627 (5th Cir. 2025). A district court dismissed the plaintiffs' takings claim as unripe because the city council had not issued a "final decision" on the zero-occupancy notice. And because the plaintiffs' due process and equal protection claims would require "similar factual

development," the district court held that those claims were unripe as well. The Fifth Circuit disagreed. *Id.*

The Fifth Circuit declared that, as this Court explained, § 1983 "'guarantees 'a federal forum for claims of unconstitutional treatment at the hands of state officials,' and requiring a plaintiff to comply with state administrative processes to render a decision 'final' would be 'inconsistent with' that guarantee. *Id.* (quoting *Knick*, 588 U.S. at 185); citing *Knick*, 588 U.S. at 185 ("[E]xhaustion of state remedies is *not* a prerequisite to an action under 42 U.S.C. § 1983."); *Patsy,* 457 U.S. at 500–01 ("[T]his Court has stated categorically that exhaustion is not a prerequisite to an action under § 1983 ....").

When property interests are implicated because of the government's decision to totally close a business resulting in the loss of property interests, the claim of due process violations under § 1983, implicates this Court's principles under *Knick.* Regardless of the available state remedies, the exhaustion of those remedies should not be a prerequisite to a § 1983 action, for a due process claim tied to the loss or taking of property interests.

The Fifth Amendment establishes the right to compensation for the taking of property. An illusory governmental appeal process to reverse the loss of a property right is a per se violation of due process. *See Bass v. U.S.,* 11 Cl. Ct. 295, 300 (1986). With the City of Pipestone's building inspector's decision to condemn the Calumet Inn, any governmental appeal of the "police power" emergency decision was illusory. Yet, the Eighth Circuit suggested that a writ of

certiorari was available to the Petitioners as well as a writ of mandamus. 5a. But the City of Pipestone impeded the appeal process. The City took just short of 34 days to announce it had no appeal process. Then it suggested the Petitioners appeal to the State Board of Appeals with questionable jurisdiction at best and questionable authority to directly *reverse* the City building inspector's condemnation decision of the Inn. 18a. The City's impediment and delay interfering with protectable property interests was untenable regardless of claims of protecting the health or safety of the public.

In exercising police powers for the health and safety of the public resulting in the total closure of businesses, cities cannot create circumstances that result in a procedural dead end or an illusory remedy, impeding the process through unreasonable delays as the harm continues to the property owner. Even certiorari or mandamus actions become impracticable and incapable of providing timely or meaningful relief as remedies because of the city's impediment.

The result was not merely an inadequate remedy, but the absence of any real or practicable mechanism to challenge the deprivation; the supposed avenues of review existed in theory but functioned in practice as little more than phantom remedies.

Due process does not require property owners to navigate a procedural maze—effectively a post-deprivation scavenger hunt for theoretical remedies—in order to vindicate rights that should have been protected before the deprivation occurred.

A government's exercise of its "police power" resulting in the total closure of the Petitioners' business and further loss (taking) of property interests, implicates relief for compensation. Due process should not mean or require the exhaustion of state remedies. In this regard, the logic and policy as expressed in this Court's decision in *Knick* should apply to the underlying due process claim under § 1983. When a government renders a final decision (i.e., "condemnation"), directly affecting and resulting in the loss of, or taking of, property interests of an individual or entity, exhaustion of state remedies is not a prerequisite. This principle would harmonize the apparent split among the Circuits in applying the principle expressed in *Knick*.

II. The Fifth Amendment does not contain a categorical "police power" exception immunizing the government from providing just compensation.

When the government destroys private property pursuant to the police power a question remains as to whether the exercise of that power could result in a compensable taking under the Fifth Amendment under extreme circumstances. A government's order to totally close a business under the exercise of its "police power," resulting in the destruction of the business during that time, however long or short, should not immunize the government from providing just compensation under extreme circumstances. Totally closing an otherwise legal business, at least for the Petitioners' Inn, deprived them of ongoing hotel operations, the ability to serve food on-site or for takeout, income, vendor

relationships, reservations, guest occupancy, and loss of employees. Hence, here, "total closure" means "destruction."

Some lower courts have interpreted this Court's precedents to permit an almost unbridled use of inherent "police powers," allowing the government to damage or destroy private property without regard to the law.* *See Miller v. Schoene*, 276 U.S. 272, 279–80 (1928) ("[W]here the public interest is involved preferment of that interest over the property interest of the individual, to the extent even of its destruction, is one of the distinguishing characteristics of every exercise of the police power which affects property."). Any governmental official may invoke any "police power" designation resulting in the destruction of private property and claim it as a categorical necessity exception to avoid compensation for the resulting destruction.

The Eighth Circuit now maintains a broad, categorical exception for police power actions. 5a-9a. And the Circuits are split as to this principle's application.

The Fourth Circuit, on the other hand, has held that it is "axiomatic in the Supreme Court's jurisprudence" "[t]hat Government actions taken pursuant to the police power are not per se exempt from the Takings Clause." *Yawn v. Dorchester County*, 1 F.4th 191 (4th Cir. 2021). The *Yawn* plaintiffs sought compensation for the killing of their bees following the county's use of an aerial pesticide spray to target mosquitos as part of efforts to combat the spread of the Zika virus. *Id.,* at 192–93. Although accepting that police powers are not per se exempt

from the Takings Clause, the court rejected the plaintiffs claim because the destruction of the bees could not be described as either intentional or foreseeable, hence, it did not constitute a taking. *Id.*, at 195.

In *Slaybaugh v. Rutherford Cnty., Tennessee*, 114 F.4th 593, 597 (6th Cir. 2024), *cert. denied*, 145 S. Ct. 1959 (2025), the Sixth Circuit declined to apply a categorical "police power" exception for two reasons. First, the court concluded that it was questionable whether allowing for a categorical exception comports with the text and history of the Takings Clause or with precedent interpreting it. *Id.*, citing *Baker v. City of McKinney*, 84 F.4th 378, 384 (5th Cir. 2023) (explaining that *Lech v. Jackson*, 791 F. App'x 711 (10th Cir. 2019) does not rely on history, tradition, or historical precedent). Second, the court concluded that a categorical exception would run afoul of this Court's precedent recognizing that the government's exercise of its police powers can, in some circumstances, amount to a taking. *Id.*, citing *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 1922) ("[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."); *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021) (explaining that "[t]he essential question is not ... whether the government action at issue comes garbed as a regulation ... [but] whether the government has physically taken property for itself or someone else—by whatever means").

Similarly, the Federal Circuit in *Acadia Tech., Inc. v. United States*, 458 F.3d 1327 (Fed. Cir. 2006), rejected the idea of an absolute categorical police power exception to the Takings Clause. The Court

held that "it is insufficient to avoid the burdens imposed by the Takings Clause simply to invoke the 'police powers' of the state, regardless of the respective benefits to the public and burdens on the property owner." *Id.,* at 1332.[6]

On the other hand, the Seventh Circuit has opined that "the Takings Clause does not apply when property is retained or damaged as the result of the government's exercise of its authority pursuant to some power other than the power of eminent domain." *Johnson v. Manitowoc County*, 635 F.3d 331, 336 (7th Cir. 2011). There, Johnson sought compensation from law enforcement for the destruction of property while executing a search warrant regarding a tenant's criminal activity. By adopting a broad police power exception, like the Eighth Circuit, it held that because the actions resulting in property destruction "were taken under the state's police power ... [t]he Takings Clause claim [was] a non-starter." *Id.* This gives the government authority far beyond that contemplated under the Fifth Amendment and renders the Takings Clause virtually meaningless but for eminent domain proceedings.

The Tenth Circuit, *Lech v. Jackson*, 791 F. App'x 711, 717 (10th Cir. 2019) also held that "[W]hen the state acts pursuant to its police power, rather than the power of eminent domain, its actions do not constitute a taking for purposes of the Takings Clause." The court determined that when the state

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[6] But the Federal Circuit did state that "items properly seized by the government under its police power are not seized for 'public use' within the meaning of the Fifth Amendment," and thus such seizures are not compensable takings. 458 F.3d at 1339

acts to preserve the "safety of the public," the state 'is not, and, consistent[ ] with the existence and safety of organized society, cannot be, burdened with the condition that the state must compensate [affected property owners] for pecuniary losses they may sustain" in the process.'" *Id.* (citation omitted). Thus, "[a]s unfair as it may seem," the Takings Clause simply "does not entitle all aggrieved owners to recompense." *Id. See also, Baker v. City of McKinney*, 84 F.4th 378, 383–84 (5th Cir. 2023), *cert. denied*, 145 S. Ct. 11 (2024) (No compensation when police damage private property as a "necessary exception" to the police power).

The Ninth Circuit would reach a similar conclusion as the Tenth Circuit in *Pena v. City of Los Angeles,* 158 F.4th 1033, 1044 (9th Cir. 2025). It too concluded the existence of a categorical necessity police power when a government deprives a person of private property in the public interest, outside of eminent domain proceedings. *Id.* 1044 (examining the history of the Takings Clause). This decision, like the Eighth Circuit, results in a takings doctrine without any guardrails to compensate wrongful governmental actions in the taking of private property, such as warrantless searches,[7] or false exercise of any governmental action by attaching the phrase "police power" to the action. *See also Zitter v. Petruccelli*, 744 F. App'x 90, 96 (3d Cir. 2018) (adopting a broad police power exception to the Takings Clause).

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[7] "Immigration officers assert sweeping power to enter homes without a judge's warrant, memo says," https://apnews.com/article/ice-arrests-warrants-minneapolis-trump-00d0ab0338e82341fd91b160758aeb2d (last visited Mar. 20, 2026)

The circuit conflict reveals the inconsistencies regarding the application of the Takings Clause to individuals harmed by the government and using "police power" as an avenue to avoid compensation.

A police power exception to the Takings Clause exposes individuals to governmental abuses without any monetary compensation under the Fifth Amendment. The immunity granted to the government under these circumstances allows an imbalance between the government and the people. It grants unprecedented power to the government over the people without consequences not contemplated under the Fifth Amendment. The Court should grant the petition to resolve these questions related to takings doctrine.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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United States Court of Appeals
For the Eighth Circuit

No. 25-1076

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reVamped LLC, a Minnesota limited liability company; Heliocentrix LLC, a Minnesota limited liability company; Tammy Grubbs; Vanda Smrkovski

Plaintiffs - Appellants

v.

City of Pipestone, a Minnesota municipality; Doug Fortune, in his individual and official capacities

Defendants - Appellees

Appeal from United States District Court for the District of Minnesota

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Submitted: October 22, 2025
Filed: December 23, 2025

Before COLLOTON, Chief Judge, LOKEN and BENTON, Circuit Judges.

BENTON, Circuit Judge.

Douglas E. Fortune, building administrator for the City of Pipestone, closed the Calumet Inn from March 10 to April 30, 2020. Tammy Grubbs; reVamped, LLC; Vanda Smrkovski; and Heliocentrix, LLC (collectively, the "Inn Owners") sued the City and Fortune alleging that the closure order violated their Fourteenth Amendment procedural due process rights and was an uncompensated regulatory taking in violation of the Fifth Amendment. The district court[1] granted summary judgment to the City and Fortune. The Inn Owners appeal. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

I.

The Inn has a history of disrepair causing safety risks. On December 18, 2017, a window fell off. On January 2, 2018, a 15-pound stone fell from it. Fortune barricaded the sidewalk below. By January 9, the Inn was on Fortune's "blighted list." He threatened to close the Inn on May 24 because necessary repairs to its walls and windows had not been made. He again threatened to close it on August 21 because repairs had still not been made. The Inn finally made the repairs with help of a financial grant from the City, avoiding emergency closure.

On November 13, 2019, deputy fire marshal George E. Shellum did an inspection of the Inn, finding nine fire code violations. He notified the Inn's staff of those violations, with a deadline for compliance, in an inspection order. On January 2, 2020, a fire broke out in a guest's room. Sprinklers did

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[1] The Honorable Jeffrey M. Bryan, United States District Judge for the District of Minnesota.

not activate. Two children were there but were not hurt. The Inn did not comply with the inspection order by the deadline of February 13.

On March 6, health inspector Jason Kloss notified Grubbs, the Inn's equitable owner, that Shellum would do a follow-up fire inspection on March 9. Kloss mentioned the fire and the overdue items from the inspection order. Though Grubbs protested she did not know about the inspection order, Kloss warned her that failure to comply with it by March 9 would result in emergency closure of the Inn.

On March 9, Shellum, Kloss, and Fortune inspected the Inn. Five of the nine violations in the inspection order had not been fixed. Shellum documented eight new violations. The next day, Fortune issued the closure order that "CONDEMNED" the Inn pending resolution of the fire code violations and other safety issues. Fortune later explained that during the second inspection, he observed safety hazards that "endangered life" and left only two options: "Remove the hazard or remove the occupants from the hazard." He said: "That's exactly what I did. I removed the occupants."

On March 20, the Inn Owners demanded that the City Council reverse the closure order or hold a hearing. They reiterated those demands on March 23. On April 8, Fortune wrote Grubbs that, because of her efforts to comply with the inspection orders, he would lift the closure order *if* she fixed four of the "most imminent and compelling" safety hazards. On April 13, the City advised the Inn Owners that the City Council could not hold a timely appeal hearing because of the COVID-19 pandemic. The City also

advised them to file an appeal with the State Building Code Appeals Board. The Inn Owners prepared an appeal on April 28 but never submitted it. On April 30, Fortune rescinded the closure order because Grubbs had satisfied the requirements in his April 8 letter.

Though Fortune had rescinded the closure order, Kloss required the Inn to remain closed until Grubbs fixed all outstanding fire code violations. She did so by November 5. The Inn operated until May of 2022 when it closed permanently.

The district court granted summary judgment to the City and Fortune. The Inn Owners appeal, arguing: (1) The closure order violated their Fourteenth Amendment procedural due process rights; (2) qualified immunity should not shield Fortune in his individual capacity; and (3) the closure order was an uncompensated regulatory taking in violation of the Fifth Amendment. "This court reviews de novo a grant of summary judgment." ***Torgerson v. City of Rochester***, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc). Summary judgment is appropriate "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." ***Id.*** at 1042 (citation and internal quotation marks omitted).

II.

The Inn Owners argue that the City and Fortune, in his official capacity, violated their Fourteenth Amendment procedural due process rights. *See* **42 U.S.C. § 1983** (permitting recovery against local government employees who violate constitutional rights when acting in their official capacity); ***Monell v. Department of Soc. Servs.***, 436

U.S. 658, 694 (1978) (holding that a local government may be liable if a policy or custom causes a constitutional violation).

"Procedural due process claims require a two-step analysis. Initially, a plaintiff must demonstrate that the state deprived him of some 'life, liberty, or property' interest. If successful, the plaintiff must then establish that the state deprived him of that interest without sufficient 'process.'" ***Krentz v. Robertson***, 228 F.3d 897, 902 (8th Cir. 2000), *quoting* **U.S. Const. Amend. XIV, §1**. In determining sufficient process, this court considers (1) the private interest affected; (2) the risk of erroneous deprivation of such interest, including the probative value of substitute or additional safeguards; and (3) the government's interests, including the function involved and the burdens that any additional or substitute procedural requirements would entail. *See* ***Mathews v. Eldridge***, 424 U.S. 319, 335 (1976). The inquiry "focuses not on the merits of a deprivation, but on whether the State circumscribed the deprivation with constitutionally adequate procedures." ***Parrish v. Mallinger***, 133 F.3d 612, 615 (8th Cir. 1998). *See* ***Reed v. Goertz***, 598 U.S. 230, 236 (2023) ("[A] procedural due process claim is not complete when the deprivation occurs. Rather, the claim is complete only when the State fails to provide due process.") (cleaned up) (citation omitted).

Assuming without deciding that the Inn Owners had a protected property interest, the Inn Owners still fail to show an unconstitutional deprivation of their procedural due process rights under the second and third *Mathews* factors.

A.

The risk of erroneous deprivation of the Inn Owners' (assumed) property interest was low because the regulations authorizing summary administrative action (1) were specific, and (2) provided for adequate post-deprivation due process. ***Hodel v. Virginia Surface Min. & Reclamation Ass'n, Inc.***, 452 U.S. 264, 301–03 (1981). In *Hodel*, the Court held that a law allowing the government to issue immediate cessation orders to mines that posed an "imminent danger to the health and safety of the public" was "specific enough to control governmental action and reduce the risk of erroneous deprivation." ***Id.*** at 301. Because mine owners were afforded prompt and adequate post-deprivation hearings and the opportunity for judicial review, the law did not violate the Due Process Clause. ***Id.*** at 303.

Here, Fortune exercised his discretion to temporarily close the Inn under the Minnesota State Building Code, which requires the building administrator to vacate a building if it is "structurally unsafe, not provided with adequate egress, a fire hazard, or otherwise dangerous to human life." **Minn. R. 1300.0180** (2025). This language is "specific enough to control governmental action and reduce the risk of erroneous deprivation." *See* ***Hodel***, 452 U.S. at 301. *See also* ***San Geronimo Caribe Project, Inc. v. Acevedo-Vila***, 687 F.3d 465, 486 (1st Cir. 2012) (holding that a state statute authorizing summary administrative action where "there is imminent danger to the public health, safety and welfare or [in situations] which require immediate action by the agency" was specific enough to pass constitutional muster); ***Recchia v. City of Los Angeles Dep't of***

Animal Servs., 889 F.3d 553, 561 (9th Cir. 2018) (same for a state statute authorizing immediate seizure of animals where an officer has "reasonable grounds to believe that very prompt action is required to protect the health and safety of the animal or the health and safety of others").

As district court correctly noted, the Inn Owners had at least three avenues to appeal the closure order: the City Council, the State Building Code Appeals Board, and certiorari review. *See* **Pipestone, Minn., CODE § 151.11** (2025) (detailing the process by which an aggrieved party may file an application for appeal with City Council and seek certiorari review); **Minn. R. 1300.0230** (2025) (providing for a direct appeal to the State Building Code Appeals Board); **Minn. Stat. § 606.06** (2022) (authorizing writs of certiorari to review administrative orders).

The Inn Owners argue that they tried to resolve the issue through the City Council but encountered delay and confusion. Assuming without deciding that they submitted a "properly completed" application for review to the City Council and it failed to hold a hearing within 10 working days, the Inn Owners failed to appeal directly to the State Building Code Appeals Board. *See* **Minn. R. 1300.0230** (2025) ("Appeals hearings must occur within ten working days from the date the municipality receives a properly completed application for appeal. If an appeals hearing is not held within this time, the applicant may appeal directly to the State Building Code Appeals Board."). They likewise failed to seek a writ of certiorari. *See* **Pipestone, Minn., CODE § 151.11(E)** (2025) ("Any person . . . shall have the right

to apply to the appropriate court for a writ of certiorari to correct errors of law."); **Minn. Stat. § 606.06** (2022). The Inn Owners "cannot complain of a violation of procedural due process when [they have] not availed [themselves] of existing procedures." *See* ***Anderson v. Douglas Cnty.***, 4 F.3d 574, 578 (8th Cir. 1993).

B.

The Inn Owners argue they were entitled to more due process before Fortune issued the closure order. But the City and Fortune had a substantial interest in protecting public health and safety. Providing additional pre-deprivation process would have imposed an untenable burden on them.

"[W]here a State must act quickly, or where it would be impractical to provide pre[-]deprivation process, post[-]deprivation process satisfies the requirements of the Due Process Clause." ***Gilbert v. Homar***, 520 U.S. 924, 930 (1997). "Protection of the health and safety of the public is a paramount governmental interest which justifies summary administrative action." ***Hodel***, 452 U.S. at 300. *See* ***Booker v. City of St. Paul***, 762 F.3d 730, 736 (8th Cir. 2014) (holding that a city was justified in taking a vehicle from a driver suspected of driving under the influence because of the city's substantial interest in public safety).

In *Elsmere Park Club, L.P. v. Town of Elsmere*, 542 F.3d 412 (3d Cir. 2008), the city code inspector condemned apartment buildings immediately after inspection revealed mold contamination that he believed posed a serious health threat to residents. ***Id.*** at 415. The owner argued that mold contamination

was not sufficient to contravene pre-deprivation due process, and the code inspector did not investigate thoroughly enough to justify the emergency action. ***Id.*** at 418. The Third Circuit disagreed because the code inspector relied on competent evidence to support a reasonable belief that mold contamination was an emergency. ***Id.*** at 419–20, *adopting the analysis of* ***Catanzaro v. Weiden***, 188 F.3d 56, 63 (2d Cir. 1999).

Here, Fortune relied on competent evidence and reasonable belief to temporarily close the Inn based on a threat to public health and safety. Fortune knew the Inn's history of structural safety risks. And by March 10, 2020, he reasonably believed that its fire suppression system had failed in response to a fire. He knew the Inn had not complied with the inspection order for nearly four months. He participated in a follow-up fire inspection that found five overdue compliance items and eight new violations. That inspection showed structural and fire dangers that caused him to exercise his authority to close the Inn rather than "take that chance on the life, safety and health of the occupants of that building."

The Inn Owners complain that the safety issues in the closure order were not emergencies sufficient to circumvent pre-deprivation process, and if Fortune had conducted a more thorough investigation, he would have known that. But "*Hodel* directs [this court] to accord the decision to [issue the closure order] some deference, and not to engage in a hindsight analysis of whether the [Inn] actually created an immediate danger to the public." *See* ***Catanzaro***, 188 F.3d at 62. *See also* ***Elsmere Park***, 542 F.3d at 420 ("Where government officials are faced with a situation in which a failure to act quickly could have serious

health consequences, perfection or near perfection is not the standard."); ***Hodel***, 452 U.S. at 302 ("The possibility of administrative error inheres in any regulatory program; statutory programs authorizing emergency administrative action prior to a hearing are no exception.").

Fortune's justification supports summary administrative action. *See* ***Hodel***, 452 U.S. at 300. *See also* ***Ewing v. Mytinger & Casselberry***, 339 U.S. 594, 599–600 (1950) (noting that summary destruction of property without prior notice or hearing for the protection of public health is among "the oldest examples" of permissible government action). Because "swift action [was] necessary to protect the public health and safety," Inn Owners were not entitled to more pre-deprivation process. *See* ***Hodel***, 452 U.S. at 301. Neither the City nor Fortune, in his official capacity, are liable because "[a]bsent a constitutional violation . . . there can be no § 1983 or *Monell* liability." ***Aden as Tr. for Estate of Aden v. City of Bloomington, Minn.***, 128 F.4th 952, 960 (8th Cir. 2025) (citation and internal quotation marks omitted).

III.

An official is entitled to qualified immunity unless (1) the official violated a statutory or constitutional right and (2) the right was clearly established at the time of the challenged conduct. ***Ambrose v. Young***, 474 F.3d 1070, 1077 (8th Cir. 2007). This court may exercise its discretion to address the second prong first. ***Pearson v. Callahan***, 555 U.S. 223, 236 (2009). Even if the Inn Owners could show that Fortune's conduct violated their procedural due process rights, he is entitled to qualified immunity

because the Inn Owners point to no authority that clearly proscribes Fortune's conduct. The district court correctly ruled that Fortune, in his individual capacity, was entitled to qualified immunity.

IV.

Fortune's temporary closure of the Inn did not amount to a regulatory taking proscribed by the Fifth Amendment. A lawful exercise of a state's police power to regulate in the interest of public health and safety is generally not a taking. ***Outdoor Graphics, Inc. v. City of Burlington, Iowa***, 103 F.3d 690, 695 (8th Cir. 1996). "For example, the government owes a landowner no compensation for requiring him to abate a nuisance on his property, because he never had a right to engage in the nuisance in the first place." ***Cedar Point Nursery v. Hassid***, 594 U.S. 139, 160 (2021).

Here, Fortune, acting under the Minnesota State Building Code, closed the Inn to preserve public health and safety. The Inn Owners may have been entitled to operate their retail business in the ordinary course, but they were not entitled to be free from temporary enforcement targeting well-documented safety deficiencies.

* * * * * * *

The judgment is affirmed.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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reVamped LLC, Heliocentrix LLC, *Minnesota limited liability companies;* Tammy Grubbs; and Vanda Smrkovski;

Plaintiffs,

v.

City of Pipestone, *a Minnesota municipality*; and Doug Fortune, *in his individual and official capacities;*

Defendants.

File No. 22-CV-02881 (JMB/TNL)

ORDER

Gregory M. Erickson and Benjamin Paul Lanari, Mohrman, Kaardal & Erickson, P.A., Minneapolis, MN, for Plaintiffs reVamped LLC, Heliocentrix LLC, Tammy Grubbs, and Vanda Smrkovski.

Paul D. Reuvers, Jason J. Kuboushek, and Andrew A. Wolf, Iverson Reuvers, LLC, Bloomington, MN, for Defendants City of Pipestone and Doug Fortune.

This matter is before the Court on Plaintiffs reVamped LLC's, Heliocentrix LLC's Tammy Grubbs's and Vanda Smrkovski's (together, Plaintiffs) and Defendants City of Pipestone's (City) and Doug

Fortune's (together, Defendants) cross-motions for summary judgment. (Doc. Nos. 46, 65.) In this action, Plaintiffs allege that Defendants violated their procedural due process rights and committed an unconstitutional regulatory taking in violation of the Fifth Amendment by identifying Plaintiffs' hotel as a hazardous building and ordering it to be closed from March 10, 2020, through April 30, 2020. For the reasons explained below, the Court denies Plaintiffs' motion and grants Defendants' motion.

STATEMENT OF UNDISPUTED FACTS

A. Regulation of Unsafe and Hazardous Buildings in Pipestone, Minnesota

The City Code of Pipestone, Minnesota (City Code)[1] includes provisions for the closure and vacation of unsafe buildings, consequences for failure to remedy code violations, and for emergency closure of hazardous buildings. Pipestone City Code [hereinafter, "City Code"] § 151.08(A) ("When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code."); *id.* § 151.09(A) ("When, in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure which endangers life . . . , then the code official may order and require the occupants to vacate the premises forthwith."). Together, these provisions mirror state-law requirements related to the regulation, closure,

[1] The City Code provides that "[t]he City Council shall appoint an individual to serve as code official." City Code § 151.03(A). The parties agree Fortune is a "code official."

vacation, and abatement of unsafe buildings. *See* Minn. Stat. §§ 463.15–.26 (relating to regulation of hazardous buildings and acquisition of property through exercise of eminent domain); Minn. Admin. R. 1300.0180 (providing authority for ordering a building to be vacated "in case of an emergency" if "continued use is dangerous to life, health, or safety of the occupants").[2]

A property owner may appeal an order of the code official to the City Council and may thereafter seek judicial review. City Code § 151.11(A), (E). In addition, under state rules, if a municipality has no means of appeal, or if no municipal appeals committee hears a "properly completed application for appeal" within ten days, the property owner may appeal to the State Building Code Appeals Board and thereafter seek judicial review. Minn. Admin. R. 1300.0230, subpt. 1.[3]

B. Relevant History of the Calumet Inn

The Calumet Inn (Calumet) opened in Pipestone, Minnesota, in 1888 and was added to the National Register of Historic Places in the 1970s. (Doc.

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[2] The City Code and the state rules do not use the same words to refer to an emergency closure of a building. *Compare* City Code § 151.08(A) ("condemn"), *with* Minn. Admin. R. 1300.0180 ("vacate").

[3] The State Appeals Board advises the public that, "[i]f you disagree with a municipality's decision about application of the State Building Code . . . , you can appeal that decision," and advises that it "hears appeals of building code orders, decisions or determinations where the affected code jurisdiction does not have an appeals board." *State Appeals Board*, Minn. Dep't of Labor & Indus., https://www.dli.mn.gov/about-department/boards-and-councils/state-appeals-board (last visited Dec. 4, 2024) [https://perma.cc/ZX62-NHB8].

No. 50-1 at 3.) In 2012, Heliocentrix purchased the Calumet. (Doc. No. 50-5 at 2; Doc. No. 50-12 at 1; Doc. No. 50-24 at 23:2–5, 23:11–18, 29:2–7.) Vanda Smrkovski is the sole owner of Heliocentrix. (Doc. No. 50-24 at 21:16–19.) Smrkovski operated the Calumet for about three years[4] (Doc. No. 50-12; Doc. No. 50-24 at 29:2–4), until Texas-based Pipestone Lodging, LLC took over. (Doc. No. 50-14.) Heliocentrix and Pipestone Lodging eventually entered into a three-year contract for deed. (Doc. No. 50-24 at 10:1–7, 29:23–30:10; Doc. No. 50-14; Doc. No. 50-15.) However, the Calumet sank into physical disrepair under Pipestone Lodging's management. City of Pipestone Building Inspector Doug Fortune's periodic inspections resulted in code violation notices that went unremedied, which brought the Calumet to the brink of closure more than once. (*See, e.g.*, Doc. No. 50-16; Doc. No. 50-17; Doc. No. 50-18; Doc. No. 50-19; Doc. No. 50-21; Doc. No. 50-22; Doc. No. 50-24 at 85:9–11.) By January 2018, Fortune informed the City's Heritage Preservation Commission that the Calumet was "on his blighted list." (*Id.*)

In mid-2018, Pipestone Lodging defaulted under the contract with Heliocentrix, which thereafter resumed operations and hired a contractor to address outstanding code violations and avert shutdown. (Doc. No. 50-24 at 30:11–33:15; Doc. No. 50-21 at 2–3.) Around this time, Tammy Grubbs—the hotel's then-general manager and a friend of Smrkovski—expressed her desire to purchase the Calumet from Heliocentrix. In August 2018, Heliocentrix entered into a contract for deed with reVamped, an entity

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[4] Smrkovski operated the hotel through another entity, Agora, LLC, which is not a party to this lawsuit. (Doc. No. 50-24 at 21:20–22:1.)

created and solely owned by Grubbs. (Doc. No. 50-24 at 37:25–38:11; Doc. No. 50-28; Doc. No. 50-29.) The five-year contract for deed contemplated the sale of the Calumet from Heliocentrix to reVamped. (Doc. No. 50-24 at 41:7–15; Doc. No. 50-28 at 1, 2; Doc. No. 50-29 at 1.) While under contract, Grubbs operated the Calumet but Heliocentrix remained its legal owner. (Doc. Nos. 50-28, 50-29.)

C. The 2019 Fire Order

On November 13, 2019, Deputy State Fire Marshal George Shellum conducted a fire inspection at the Calumet. (Doc. No. 50-31.) Upon Shellum's arrival at the Calumet, he met Chris de Gruchy, Grubbs's adult son who worked at the Calumet as the kitchen manager. (Doc. No. 50-32 at 31:10–14; Doc. No. 50-35 at 8:18–25, 10:3–4; Doc. No. 50-38 at 10:8–12.) Following the inspection, Shellum issued an Inspection and Compliance Order (2019 Fire Order) to the Calumet. (Doc. No. 50-31; Doc. No. 50-42 at 2.) It listed nine fire code violations, provided guidance for how to remedy each violation, noted the time by which repairs were to be completed, and requested "valid documentation of compliance." (*Id.* at 2.) The following day, Shellum put the building "on Fire Watch" due to a malfunction in the Calumet's fire alarm system. (Doc. No. 50-33.) De Gruchy testified that throughout November or December 2019, he and Grubbs "split" up action items,[5] aiming to complete them "[i]mmediately" or "[a]s soon as possible." (Doc. No. 50-

[5] For her part, Grubbs testified that she did not see the 2019 Fire Order until March 2020. (Doc. No. 50-38 at 72:5–73:5.) However, de Gruchy testified that he refused to sign an affidavit prepared by Plaintiffs' counsel in this litigation that represented that de Gruchy and Grubbs never reviewed the 2019 Fire Order until March 2020 because it was not true. (Doc. No. 50-35 at 37:15–18.)

35 at 21:14–25.) De Gruchy also testified that, as he cleared an item, he reached out to Shellum and notified Grubbs. (*See* Doc. No. 50-35 at 29:3–7; Doc. No. 50-33; Doc. No. 50-34.)

Then, in early January 2020, when de Gruchy was on the fourth floor of the Calumet, he smelled smoke and heard the fire alarm. (Doc. Nos. 50-36, 50-37.) After observing smoke coming from beneath a door to a room on the fourth floor, de Gruchy unlocked the door and used a fire extinguisher to put out the fire. (Doc. No. 50-37; Doc. No. 50-35 at 33:2–7.) The sprinklers in the room had not turned on, and there were two children present in the room at the time of the fire. (Doc. No. 50-35 at 33:16–18.)

On February 20, 2020, Shellum sent de Gruchy an email noting that notice of compliance with the 2019 Fire Order was overdue. (Doc. No. 50-42 at 3.) De Gruchy responded and informed Shellum that he "no longer work[s] for the Calumet"[6] and that he "passed all info along to Tammy Grubbs." (*Id.* at 1–2.) Shellum then forwarded the email chain, attaching a copy of the 2019 Fire Order, to a defunct email address that he believed belonged to Grubbs. (*See id.* at 1.)

D. Emergency Closure of the Calumet

Fortune testified that, on March 5, 2020, Shellum contacted him regarding the failure of Calumet's sprinklers to deploy during the January fire and inquired whether Fortune had ever closed down a building in Pipestone. (Doc. No. 50-48 at 136:7–

[6] De Gruchy left employment with the Calumet around January 2020; he and Grubbs have not spoken since his departure. (Doc. No. 50-47.)

137:16.) That same day, Shellum also contacted Southwest Health and Human Services Environmental Health Manager John Kloss (i.e., the health inspector) about the Calumet's unremedied fire-code violations and to inform him that the hotel's sprinklers did not deploy during the January 2 fire. (*See* Doc. No. 50-43; Doc. No. 50-46 at 1.)

On March 6, 2020, Kloss contacted Grubbs by letter regarding overdue items on the 2019 Fire Order. (Doc. No. 50-43.) He advised Grubbs that unremedied violations may require the health inspector to close the hotel, and he also noted, in bolded text, as follows:

> George Shellum, Deputy State Fire Marshal Inspector, will be conducting an inspection on Monday, March 9 to assess the fire safety measures in this establishment. Be advised that failure to comply with the orders issued on the fire marshal inspection report by the specified date will result in emergency closure of your hotel.

(*Id.*) He also enclosed a copy of the 2019 Fire Order. (*Id.*) Despite Grubbs's claim that she had never before seen the 2019 Fire Order, Shellum informed Grubbs that the upcoming March 9 inspection would proceed as planned. (Doc. No. 50-44 at 2–3.)

On March 9, 2020, Shellum, Fortune, and Kloss conducted their inspection. (Doc. No. 50-38 at 76:11–14; Doc. No. 45 at 47:15–17.) Shellum identified five items from the 2019 Fire Order that had not been remedied. (Doc. No. 50-45; Doc. No. 50-46.) He also identified eight new violations that required

correction within specified time periods of seven to thirty days. (Doc. No. 50-45; Doc. No. 50-46.) The next day, Fortune issued a notice (Building Closure Order), which read as follows:

> After the [March 9] inspection was completed it was determined that the [C]alumet Hotel is a "distinct fire hazard." Per the current Minnesota Building Code and State Fire Code the hotel is **CONDEMNED**. With that determination all occupants must vacate the premises by 5:00 PM March 10, 2020.
>
> Minnesota Administrative Rule 1300.0180 states: "A building or structure regulated by the code is unsafe, for the purposes of this part, if it is structurally unsafe, not provided with adequate egress, **a fire hazard,** or otherwise dangerous to human life." It further states: "The building official **SHALL** order any building or portion of a building to be vacated if continued use is dangerous to life, health, or safety of the occupants[.]

(Doc. No. 50-47 at 2 (emphasis in original); Doc. No. 50-47.) The Building Closure Order then set forth a checklist of code violations that had to be abated before the Calumet could reopen. (Doc. No. 50-47 at 2–3.) Fortune testified that, during the March 9 inspection, he observed hazardous conditions on the property, which caused him to conclude that "what I saw doing the inspection with George Shellum

endangered life." (Doc. No. 50-47 at 159:6–10.) Fortune testified that he did not want to "tak[e] that chance on the life, safety and health of the occupants of that building," he viewed his options as either "have the hazard removed or the occupants removed from the hazard," and he chose the latter. (Doc. No. 50-48 at 88:12–15; 89:9–11; *see also id.* at 47:15–18, 93:22–94:2; 143:22–144:1, 159:6–10.) He viewed the hazards as "not just the fire stuff, but some of the structural stuff that I saw that I thought the building needed to be closed." (Doc. No. 50-48 at 54:9–11.)

E. Disagreement with the Building Closure Order

On March 20, 2020, Plaintiffs' counsel sent a nineteen-page document to the Pipestone City attorney,[7] and asked that it be circulated to the entire Pipestone City Council. (*See* Doc. No. 69 ¶ 500.) Three days later, Plaintiffs' counsel attended a City Council meeting. (Pipestone City Council Meeting, March 23, 2020, at 1.)[8] Meeting minutes show that "the purpose for the special meeting was to discuss the Calumet Inn and the COVID-19 Pandemic." (*Id.*) The minutes also reflect that Plaintiffs' counsel "disputed the process by which the Calumet was closed by the City," that he threatened litigation in federal court, and "requested

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[7] The contents of this document are unknown because the parties did not submit it in support of their summary judgment motions, and, to the Court's knowledge, it does not appear elsewhere in the record.

[8] The meeting minutes from the March 23, 2020 City Council meeting can be accessed at https://www.progressivepipestone.com/AgendaCenter/ViewFile/Agenda/_03232020-342. [https://perma.cc/TE8N-8BPA]. The Court may take judicial notice of public records. *Levy v. Ohl*, 477 F.3d 988, 991 (8th Cir. 2007); *Stutzka v. McCarville*, 420 F.3d 757, 761 n.2 (8th Cir. 2005).

that a meeting of the Board of Appeals be scheduled." (*Id.*; *see also* Doc. No. 69 ¶ 499.) The minutes neither reflect any motions or resolutions relating to the Calumet nor any vote concerning the Building Closure Order. (*See* Pipestone City Council Meeting, March 23, 2020, at 1.)

Then, by letter dated April 13, 2020 (more than one month after Fortune issued the Building Closure Order),[9] Pipestone's City Attorney advised Plaintiffs to perfect an appeal with the Minnesota Department of Labor and Industry if they desired to dispute or appeal the Building Closure Order, as follows:

> [The Pipestone] City Code does not provide for—via its Board of Appeals and Adjustments—an appeal of a violation of than one of zoning or land-use regulation. Additionally, the COVID-19 pandemic-flu emergency declarations have hindered any convening, within 10 days, or an appeal hearing as would allow due process, full opportunity to be heard, and composition of a record in a manner as can be cogently, fully reviewed whether by a court or another body.
>
> . . .
>
> Accordingly, on behalf of the City of Pipestone, I suggest that your client as

[9] In a sworn declaration, Smrkovski references—but does not attach—additional communications between Plaintiffs' counsel and City officials in the days after the March 23, 2020 City Council meeting. (*See* Doc. No. 69 ¶¶ 499–516.)

> soon as possible file and perfect an appeal with the Minnesota Department of Labor & Industry. The necessary forms for this are enclosed, as are the four requisites as detailed in the City's correspondence of April 8, 2020, and Affidavit of Mailing of all of these.

(Doc. No. 81-1 at 13–14.) Plaintiffs' counsel prepared an appeal packet to the state Board of Appeals on April 28, 2020, but never submitted it. (*See* Doc. No. 81-1 at 2–12.)

On April 30, 2020, Fortune determined that the Calumet had remedied the code violations such that condemnation placards on the building could be removed. (Doc. No. 50-54; *see also* Doc. No. 50-52; Doc. No. 50-53.) Grubbs arranged for Kloss's reinspection on November 5, 2020, at which point he reissued the relevant licenses to operate. (Doc. No. 50-59.) However, on May 6, 2022, the Calumet posted on Facebook that it would be closing indefinitely. (Doc. No. 50-67.) It remains closed today.

F. This Action

On November 10, 2022, Plaintiffs[10] filed this action. In Count I of their two-count Amended Complaint, Plaintiffs assert a claim under 42 U.S.C. § 1983, in which they allege that Fortune and the City violated their procedural due process rights under the

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[10] Smrkovski and Grubbs are named plaintiffs in this action. However, in the briefing on the pending motions, Plaintiffs concede that Smrkovski and Grubbs, as individuals, have no legal interest in this dispute and, thus, no Article III standing. (Doc. No. 80 at 41–42; *see also* Doc. No. 48 at 15–16.)

Fourteenth Amendment by depriving them of adequate process before and after issuing the Building Closure Order. In Count II, they allege that Defendants engaged in an uncompensated regulatory taking in violation of the Fifth Amendment by ordering the Calumet to close from March 10 through April 30, 2020.

DISCUSSION

The parties now bring cross-motions for summary judgment. (Doc. Nos. 46, 65.) Summary judgment is warranted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The substantive law determines which facts are "material" and which are irrelevant: material facts are those whose resolution affects the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). To survive the motion, a non-moving party must demonstrate the existence of specific facts in the record which create a genuine issue for trial. *Krenik v. Cnty. of Le Sueur*, 47 F.3d 953, 957 (8th Cir. 1995). As is normally the case in a summary judgment motion, all justifiable inferences are to be drawn in the non-moving party's favor, *Anderson*, 477 U.S. at 255, meaning that the Court views the record in the light most favorable to Defendants when considering Plaintiffs' motion, and in the light most favorable to Plaintiffs when considering Defendants' motion. *See, e.g.*, *Fjelstad v. State Farm Ins. Co.*, 845 F. Supp. 2d 981, 984 (D. Minn. 2012).

I. COUNT I: PROCEDURAL DUE PROCESS

Although the Complaint and Plaintiffs' legal memoranda are not very precise, the Court

determines that Plaintiffs advance the following three theories of liability against Defendants in Count I: (1) the City deprived Plaintiffs of procedural due process because it did not consider an appeal of the Building Closure Order;[11] (2) the City and Fortune, in his

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[11] A municipality such as the City "can be found liable under § 1983 only where the municipality itself causes the constitutional violation at issue," as opposed to the actions of a tortfeasor the municipality employs. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989); *see also Webb v. City of Maplewood*, 889 F.3d 483, 487 (8th Cir. 2018) ("[T]here must be an unconstitutional act by a municipal employee before a municipality can be held liable."). More precisely, a municipality may be liable under section 1983 under any of the following four circumstances: (1) an official municipal policy violates the constitution; (2) an authorized municipal representative directs another employee to take unconstitutional action; (3) an unwritten custom, that violates the constitution, is so widespread that it has the force of law; and (4) the municipality fails to train or supervise municipal employees. *See Atkinson v. City of Mountain View*, 709 F.3d 1201, 1214 (8th Cir. 2013) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978) for the proposition that a municipality may be liable under section 1983 if the constitutional violation resulted from "an official municipal policy" or "an unofficial custom," and citing *Canton* for the proposition that a municipality may be liable if the constitutional violation resulted from "a deliberately indifferent failure to train or supervise") (quotations omitted); *see also Pembaur v. City of Cincinnati*, 475 U.S. 469, 480–81 (1986) (explaining that a municipality may be liable under section 1983 if an authorized decisionmaker directed a particular unconstitutional course of action that resulted in the complained-of injury).

In this case, Plaintiffs do not raise a *Pembaur* variety of municipal liability. In addition, to the extent that any factual statements from the Amended Complaint could be construed as asserting an "unwritten custom" or "failure to supervise" variety of municipal liability, no party developed any arguments to suggest that such claims remain at issue. Accordingly, the Court construes Plaintiffs' arguments as advancing only one theory of municipal liability regarding an appeal or review of the Building Closure Order: that the City had official policies precluding

official capacity, deprived Plaintiffs of procedural due process by not providing Plaintiffs with an opportunity to remedy the safety concerns identified in the Building Closure Order prior the closure of the Calumet; and (3) Fortune, in his individual capacity, deprived Plaintiffs of procedural due process through the actions that he took leading up to and including issuing the Building Closure Order. The Court analyzes each of these three theories in turn and ultimately concludes that none of Plaintiffs' theories survive Defendants' motion because, as defendants argue, they are contrary to law, contrary to the factual record presented to the Court, or both.

A. Sufficiency of Procedures for Appeal of the Building Closure Order

Plaintiffs argue that the City deprived them of their constitutional due process rights to post-closure due process (i.e., the right to appeal the substantive merits of the Building Closure Order). However, as discussed below, this argument overlooks the avenues of review available to Plaintiffs, which are constitutionally sufficient as a matter of law.

Procedural due process constrains government decisions "which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). Under *Mathews*, courts balance the following three factors to determine the required procedural protections: (1) the private interest affected by the official action; (2) "the risk of an erroneous deprivation of such interest through the procedures used" and the

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appeal or review of the Building Closure Order.

probable value of additional procedure safeguards; and (3) the government's interest, "including the fiscal or administrative burdens" of additional procedures. *Mathews*, 424 U.S. at 321.

1. The Private Interest Affected

Defendants initially took a conciliatory position concerning the first prong of the *Mathews* balancing test, noting that "[c]losing the Calumet . . . implicates procedural due process." (Doc. No. 48 at 17.) Subsequently, however, Defendants argued that the Building Closure Order did not impact any of Plaintiffs' constitutionally protected property interests. (Doc. No. 74 at 10–13.) For purposes of its analysis here, the Court assumes without deciding that Plaintiffs have identified a protected property interest.

2. The Risk of Erroneous Deprivation

Plaintiffs assert that city policy prevented them from appealing the Building Closure Order. The Court, however, disagrees for several reasons.

First, pursuant to the City Code, all parties whose property interests have been affected by a building closure decision have a right to appeal that decision to the Pipestone City Council:

> Any person directly affected by a decision of the code official, or a notice or order issued under this code shall have the right to appeal to the City Council provided that a written application for appeal is filed within 20 days after the day the decision, notice, or order was served. An application for appeal

> shall be based on a claim that the true intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

City Code § 151.11(A) (concerning appeals of building closure decisions due to failure to remedy code violations under section 151.08 and due to emergency decisions in the event of imminent danger under section 151.09).

The appeal hearing contemplated by City Code § 151.11(A) includes several procedural protections. For instance, after receiving "[a]n application for appeal," the Pipestone City Council must follow the statutory open meeting notice requirements and schedule a time to hear the appeal: "The City Council shall meet to hear the appeal upon proper notice as determined by M.S. Chapter 13D et seq." *Id.* § 151.11(B).[12] In addition, among other procedural provisions, the City Code sets forth evidentiary requirements and establishes which individuals "shall be given an opportunity to be heard" at the appeal hearing. *Id.* § 151.11(C). Importantly, any modification or reversal of the building closure decision can only occur "by a vote of a majority of the total number of Council members," and that decision "shall be recorded," with copies "furnished to the appellant and the code official," who is required "to

[12] Among other requirements, the open meeting statute provides that for any special meetings, "the public body shall post written notice of the date, time, place, and purpose of the meeting . . . ." Minn. Stat. § 13D.04, subd. 2.

take immediate action in accordance with the decision of the City Council." *Id.* § 151.11(D).

Second, Minnesota state law provides for appeals to the State Building Code Appeals Board. Administrative Rules specifically mandate that if a municipal appellate board has not held an appeal hearing "within ten working days from the date the municipality receives a properly completed application for appeal . . . the applicant may appeal directly to the State Building Code Appeals Board." Minn. Admin. R. 1300.0230, subpt. 1.

Third, both the City Code and state law provide for judicial review of building closure decisions by writ of certiorari.[13] City Code § 151.11(E) ("Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law."); *Khan v. City of Minneapolis*, No. A12-1424, 2013 WL 2371807, at *1 (Minn. App. June 3, 2013) (observing that property owners may challenge a municipality's decision to condemn and demolish property by writ of certiorari and concluding that the city improperly considered evidence at the municipal appeal hearing in violation of the city code); *A & M Prop. Servs., LLC v. City of Minneapolis*, No. A12-0007, 2012 WL 5990237, at *1 (Minn. App. Dec. 3, 2012) (upholding a

[13] In addition, parties commencing an inverse condemnation proceeding or challenging a municipality's interpretation of law—including claims that a municipality failed to comply with its code or state law—may seek compliance through a writ of mandamus. *E.g.*, Minn. Stat. § 586.01; *see also N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004). There is no indication in this record that Plaintiffs sought a writ of mandamus compelling the Pipestone City Council to review the Building Closure Order.

municipality's condemnation order on certiorari review and affirming the district court's determination that the municipality did not deprive the property owner of procedural due process under the U.S. Constitution).

Plaintiffs could have sought review of Fortune's basis for and decision to issue the Building Closure Order by submitting "an application for appeal" to the Pipestone City Council, by submitting "a properly completed application for appeal" to the State Building Code Appeals Board, or by seeking certiorari review (or judicial review through a writ of mandamus) of any appeal proceedings that did occur.

As noted above, Plaintiffs' arguments to this Court are not very precise, but to the extent that Plaintiffs separately argue that, as a factual matter, the City prevented them from appealing the Building Closure Order, the Court disagrees. None of the parties submitted the nineteen-page document that Plaintiffs provided to the Pipestone City attorney, so the Court cannot definitively determine whether this document constitutes "an application for appeal" pursuant to City Code § 151.11(A). But the record is clear and undisputed that the Pipestone City Council never convened an appeal hearing pursuant to City Code § 151.11(A). Though the City Council met on March 23, 2020, thirteen days after the issuance of the Building Closure Order, and although the agenda included a discussion of the fact that Plaintiffs "disputed the process by which the Calumet was closed by the City," the meeting minutes do not reflect that an appeal proceeding took place at this meeting. (Pipestone City Council Meeting, March 23, 2020, at 1.) No vote concerning whether to uphold, modify, or

reverse the Building Closure Order is recorded. (*Id.*) Moreover, Plaintiffs describe this meeting as "not an appeal." (Doc. No. 68 at 35.) Thus, the record does not support any inference that Plaintiffs invoked the appeal process set forth in City 16 Code § 151.11(A). Likewise, although Plaintiffs' counsel prepared an appeal packet to the state Board of Appeals, Plaintiffs never submitted it and, therefore, never invoked the administrative appeal process set forth in Minnesota Administrative Rule 1300.0230. (*See* Doc. No. 81-1 at 2–12.) Finally, there was no request for certiorari review (or a request for a writ of mandamus) concerning the March 23, 2020 meeting, or the April 13, 2020 letter, in which the Pipestone City Attorney advised Plaintiffs' Council to seek review through Rule 1300.0230.

Further, Plaintiffs make no argument that the appeal processes contemplated by City Code § 151.11(A) or Minnesota Administrative Rule 1300.0230 are constitutionally inadequate.[14] Plaintiffs also make no argument that certiorari review would be inadequate. Absent any argument and absent any legal authority that procedural due process demands something above and beyond the appellate procedure as contemplated in City Code § 151.11(A), as provided for in Rule 1300.0230, including subsequent certiorari review (none of which Plaintiffs pursued), the Court

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[14] Though not binding on this Court, the Court acknowledges that Minnesota Court of Appeals concluded that Rule 1300.0230 satisfied the requirements of procedural due process under both the Minnesota and U.S. Constitutions. *See Hous. First Minn. v. City of Corcoran*, No. A23-1049, 2024 WL 1244047, at *6 (Minn. App. Mar. 25, 2024), *review denied* (June 26, 2024), *cert. denied sub nom. Hous. First Minn. v. Corcoran, MN*, No. 24-268, 2024 WL 4486403 (U.S. Oct. 15, 2024).

concludes that as a matter of law, Plaintiffs were very unlikely to experience an erroneous deprivation of their property interest. Thus, Defendants did not preclude Plaintiffs from exercising any rights of appeal.

3. The Burden of Additional Process

Plaintiffs only argument concerning the third *Mathews* factor is that the burden of allowing an appeal of the Building Closure Order was minimal. Given the Court's conclusion that multiple avenues of appeal were, in fact, available to Plaintiffs to dispute the merits of the Building Closure Order, this argument is misplaced.

In sum, even assuming that Plaintiffs' property interest is a protected interest under the first *Mathews* factor, on balance, and based on the record presented, the Court concludes there was no procedural due process violation in this case.

B. Lack of Constitutional Requirement for Pre-Closure Procedures

Plaintiffs also take issue with the lack of any opportunity to contest the determination that the Calumet was an immediate danger as well as the lack of any opportunity for repair or abatement of any identified hazards. This argument is also unsupported by legal authority.

Here, it is undisputed that the City Code and state rules provide for an expedited procedure by which to close a hazardous building that does not allow any pre-closure opportunity to be heard. *See*

City Code § 151.09; Minn. Admin. R. 1300.0180. Plaintiffs do not make a facial attack on the constitutionality of these ordinances and rules.[15] In fact, Plaintiffs concede that, under *Gilbert v. Homar*, 520 U.S. 924 (1997), the Constitution allows deprivations of a property interest without any opportunity to be heard: "on many occasions . . . where a State must act quickly, or where it would be impractical to provide predeprivation process, postdeprivation process satisfies the requirements of the Due Process Clause." *Id.* at 930 ("[W]e have rejected the proposition that due process *always* requires the State to provide a hearing prior to the initial deprivation of property." (quotation omitted) (emphasis in original)).

Plaintiffs nevertheless argue that "Fortune knew that there was no need for prompt action, that the action was neither necessary nor justified, and moreover, not necessary to secure an important governmental or general public interest." (Doc. No. 68

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[15] In their briefing and at oral argument, Plaintiffs' counsel asserted that the pre-condemnation procedures described in Minnesota Statutes chapter 117, which apply when a government entity condemns property under its eminent domain powers, should have applied in this case. An eminent-domain condemnation under chapter 117 requires, for example, that the condemning government entity engage in pre-condemnation negotiation and thereafter follow certain judicial procedures involving a petition, hearing, and appeal. *See* Minn. Stat. ch. 117. However, the City did not condemn the Calumet under its eminent domain powers. Although the Building Closure Order used the word "condemned" instead of "vacated," the Order duly cited the emergency authority under which the closure was made: Rule 1300.0180 of the Minnesota Administrative Rules. The use of the word "condemned" does not materially affect or otherwise convert the emergency closure that occurred here into a "condemnation" contemplated by chapter 117.

at 20.) However, whether Fortune and the City were correct to conclude that the Calumet presented an immediate danger is irrelevant to the question presented here: whether Plaintiffs deprived of procedural due process to which they were entitled under the U.S. Constitution. *Parrish v. Mallinger*, 133 F.3d 612, 615 (8th Cir. 1998) (observing that the focus in assessing a procedural due process claim is "not on the merits of a deprivation, but on whether the State circumscribed the deprivation with constitutionally adequate procedures"). The Court is limited to the arguments presented. Accordingly, absent any argument that *Gilbert* does not extend to the emergency closure provisions set forth in City Code § 151.09 and Minnesota Administrative Rule 1300.0180, Plaintiffs have not demonstrated that the Constitution required Fortune or the City to implement additional pre-closure procedures.[16] This is

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[16] To the extent the portions of the Amended Complaint or Plaintiffs' written submission assert a separate section 1983 claim based on the fact that the Building Closure Order did not include a notice of Plaintiffs' avenues of appeal, the Court concludes that such an argument is foreclosed by binding case law. *See, e.g.*, *City of W. Covina v. Perkins*, 525 U.S. 234, 241 (1999) (concluding that constitutional due process does not require "individualized notice of state-law remedies which, like those at issue here, are established by published, generally available state statutes and case law"); *Grayden v. Rhodes*, 345 F.3d 1225, 1241–42 (11th Cir. 2003) (concluding that notice was constitutionally sufficient where tenants could have referenced city code to determine right to hearing); *Mathews v. Ohio Pub. Empls. Retirement Sys.*, 91 F. Supp. 3d 989, 1005 (S.D. Ohio 2015) (concluding that individualized notice regarding appeal rights was not necessary when such rights were in publicly available state law); *Crum v. Missouri Director of Revenue*, 455 F. Supp. 2d 978, 990 (W.D. Mo. 2006) (concluding that because plaintiffs appeal rights were "established by published, generally available state statutes and case law . . . the Due Process clause

especially true where, as here, Plaintiffs had several post-closure procedures available to ensure that their interests were not erroneously deprived.

C. Fortune's Immunity from Suit

The Court also construes Plaintiffs' written submission to assert an independent due process violation against Fortune in his individual capacity. The Court remains unconvinced by Plaintiffs' arguments because, as noted above, Plaintiffs do not identify a clearly established right that Fortune's actions violated.

As a municipal official, the doctrine of qualified immunity, if applicable, would shield Fortune from liability in his individual capacity. Courts analyze the applicability of qualified immunity in two steps: first, courts determine "whether the official's conduct violated a constitutional right; and second, courts determine "whether the right was clearly established at the time of the deprivation such that a reasonable official would understand his conduct was unlawful in the situation he confronted." *Ambrose v. Young*, 474 F.3d 1070, 1077 (8th Cir. 2007). Plaintiffs can establish the second prong by identifying "some existing precedent [that] place[s] the question beyond debate," or by showing that the conduct is "so obviously unconstitutional that no precedent is needed." *Dillard v. O'Kelley*, 961 F.3d 1048, 1053 (8th Cir. 2020) (quotation omitted). Courts need not analyze both prongs, *Wimbley v. Cashion*, 588 F.3d 959, 961 (8th Cir. 2009), and ultimately, whether the doctrine applies is a question of law. *Hunter v. Bryant*,

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of the United States Constitution did not mandate notice to the Plaintiffs of their administrative appeal rights").

502 U.S. 224, 227–28 (1991).

Here, Plaintiffs do not identify legal authorities to "place the question beyond debate." Plaintiffs rely on a single case, but that case does not involve the constitutionality of any analogous pre-closure action or process involving a code official. Instead, the case cited by Plaintiffs merely reiterates an uncontroversial and general statement of law: "the fundamental requisite of due process of law is the opportunity to be heard." (Doc. No. 80 at 34 (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)).) As discussed in the preceding section, *Gilbert* allows for emergency action, and Plaintiffs do not identify a clearly established exception to *Gilbert* that applies in this case. Because there is no clearly established right to pre-closure process when a city official issues a closure order under emergency closure authority, such as City Code § 151.09 and Rule 1300.0180, Fortune is entitled to qualified immunity from suit in his individual capacity.

II. COUNT II: REGULATORY TAKING

Plaintiffs argue that the temporary closure of the Calumet amounted to a regulatory taking under the Fifth Amendment. (Doc. No. 48 at 35–39.) Because prohibiting use of a property to protect public safety is not a taking, the Court also grants Defendants' motion as to this claim, as well.

"[G]overnment regulation of private property may, in some instances, be so onerous that its effect is tantamount to a direct appropriation or ouster." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005). Assuming that Plaintiffs have identified a

protected property interest in their ownership of the real property of the Calumet, s*ee Dukuly v. City of New Hope*, No. 23-CV-3351 (ECT/ECW) 2024 WL 3251733, at *5–6 (D. Minn. June 21, 2024) (concluding that, for purposes of a takings analysis, Minnesota law recognizes a real property interest but does not recognize a party's right to profit streams from a license to operate a business), the Court observes that whether a regulatory takings has occurred typically requires consideration of a three-factor test. *See, e.g.*, *Northland Baptist Church of St. Paul, Minn. v. Walz*, 530 F. Supp. 3d 790, 816 (D. Minn. Mar. 30, 2021) (citing *Penn Cent. Transp. Co. v. City of N.Y.*, 438 U.S. 104, 124 (1978)).

However, it well-established that reasonable building codes and ordinances that permit closure of buildings for public safety reasons do not give rise to constitutional takings. *Outdoor Graphics, Inc. v. City of Burlington, Iowa*, 103 F.3d 690, 695 (8th Cir. 1996) ("It has long been recognized that reasonable zoning ordinances are generally a lawful exercise of a state's police power to regulate in the interest of public health, comfort, safety, convenience and maintenance of property values." (citation omitted)); *see also Cedar Point Nursery v. Hassid*, 594 U.S. 139, 160 (2021) ("[T]he government owes a landowner no compensation for requiring him to abate a nuisance on his property, because he never had a right to engage in the nuisance in the first place."); *Mugler v. Kansas*, 123 U.S. 623, 668 (1887) ("[P]rohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or appropriation of property."); *Dukuly*, 2024 WL 3251733, at *9; *Zeman v. City of*

Minneapolis, 552 N.W.2d 548, 554 (Minn. 1996) ("A harm-prevention regulation, if not a ruse for a state purpose other than protecting the public from noxious harm or illegal activity, is a powerful rationale militating against finding a taking.")

Here, the parties do not dispute the fact that Plaintiffs were unable to conduct business at the Calumet during the period of March 10, 2020, through April 30, 2020, which undoubtedly caused an adverse economic impact—especially for the six days before Governor Walz issued Emergency Executive Order 20-04, which ordered the closure of bars, restaurants, and other places of public accommodation in Minnesota. *See* Gov. Tim Walz, Emergency Exec. Order 20-04 (Mar. 16, 2020). It is likewise undisputed that the temporary condemnation was not meant to benefit Fortune, and Plaintiffs do not contend that the code violations cited in the Building Closure Order were pretextual or in excess of the City's lawful regulatory authority. Further, Plaintiffs do not cite to any legal authority in which a court determined that the exercise of such regulatory authority for public-health and safety reasons or a less-than-two-month closure of a business amounted to a compensable taking under the Fifth Amendment. (*See* Doc. No. 68 at 30–34.) The decision to issue the Building Closure Order cannot constitute a taking given the well-established case law permitting the prohibition of property uses that present a danger to the public. Therefore, the Court grants Defendants' motion for summary judgment on Count II.

ORDER

Based on the foregoing, and on all of the files,

records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Plaintiffs' motion for summary judgment (Doc. No. 65) is DENIED.

2. Defendants' motion for summary judgment (Doc. No. 46) is GRANTED and all counts in Plaintiffs' Amended Complaint are DISMISSED.

3. The pending motions to exclude expert testimony (Doc. Nos. 51, 58) are DENIED as moot.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: December 18, 2024

/s/ *Jeffrey M. Bryan*
Judge Jeffrey M. Bryan
United States District Court

UNITED STATES DISTRICT COURT
District of Minnesota

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reVamped LLC, Heliocentrix LLC, Tammy Grubbs, Vanda Smrkovski,

Plaintiffs,

v.

Pipestone, City of, Doug Fortune,

Defendants.

Case Number: 22-cv-2881 JMB/TNL

JUDGMENT IN A CIVIL CASE

☐ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court**. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Plaintiffs' motion for summary judgment (Doc. No. 65) is DENIED.
2. Defendants' motion for summary judgment (Doc. No. 46) is GRANTED and all counts in Plaintiffs' Amended Complaint are DISMISSED.

3. The pending motions to exclude expert testimony (Doc. Nos. 51, 58) are DENIED as moot.

Date: 12/19/2024

KATE M. FOGARTY, CLERK