No. 17-2381

In the United States Court of Appeals for the Eighth Circuit

CECILIA WEBB, ET AL.,
Plaintiffs-Appellees,

v.

THE CITY OF MAPLEWOOD,
Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of Missouri – St. Louis

BRIEF OF PLAINTIFFS-APPELLEES

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SUMMARY OF THE CASE AND ORAL ARGUMENT STATEMENT

This is a constitutional challenge to a municipal policy or custom imposed by the City of Maplewood, Missouri. The complaint alleges that the City has erected a "pay-to-play" system in which people arrested for minor municipal infractions are forced to pay the City a fee, set by the City without any inquiry into their ability to pay. If they cannot afford to pay the fee in cash, they are placed in the City's jail for a period of time predetermined by the City. The plaintiffs are six people who have lost money or spent time in jail as a result of the City's unconstitutional policy.

The City moved to dismiss the case, claiming that it is entitled to sovereign immunity. The district court denied that claim, relying on binding Supreme Court precedent holding that municipalities are not entitled to sovereign immunity. The City then took this interlocutory appeal from the denial of immunity.

The appeal is baseless. Municipalities, unlike states, do not have sovereign immunity. And the claims here are against only a municipality, and challenge only a municipal policy. The plaintiffs do not complain of any state-mandated activity. The City also attempts to smuggle in an issue that is not immediately appealable: that the complaint fails to state a claim on the merits. That argument is both outside the scope of this Court's jurisdiction and incorrect in any event.

For these reasons, the appellees do not think oral argument is necessary. But should argument be scheduled, they request the same amount of time as the City.

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INTRODUCTION

This interlocutory appeal raises a single question whose answer is dictated by an unbroken line of Supreme Court precedent dating back to at least 1890: Is the City of Maplewood, Missouri, entitled to sovereign immunity? The answer to that question is no: "municipalities, unlike States, do not enjoy a constitutionally protected immunity from suit." *Jinks v. Richland Cnty.*, 538 U.S. 456, 466 (2003); *see also Owen v. City of Independence*, 445 U.S. 622, 638 (1980) (holding that Missouri cities are no different than other cities); *Lincoln Cnty. v. Luning*, 133 U.S. 529 (1890).

This settled rule governs here. No sovereign is implicated in, or affected by, this lawsuit. It alleges that the City of Maplewood has devised a system in which it uses jail and threats of jail to raise revenue for the City, targeting people without regard to whether they can afford to pay. Specifically, the complaint alleges that the City has an unconstitutional policy of automatically issuing arrest warrants for people who fail to pay court debts or appear in court, and then holding them in jail (typically for two or three days) unless they can afford to pay the City a fee. At no point does the City conduct an assessment of the person's ability to pay. This results in a system in which people rich enough to buy their freedom go home, but those who are too poor to pay the full fee in cash are kept in jail, released, and then put at risk of having the same thing happen all over again—disrupting their lives and threatening their ability to maintain constant employment. The allegations

thus leave no doubt: This is a suit against a city, challenging conduct by a city, seeking relief from a city.

The City's brief is an 80-page effort to obscure that basic fact. It treats this case as if it were against a different entity—the Maplewood municipal court—challenging individual judicial decisions that are reviewable in state court. From that mistaken (and unsupported) premise, the City then argues that *that* entity should be considered an arm of the state, and thus entitled to sovereign immunity.

But the plaintiffs don't seek to hold the City liable for decisions made by judges in particular cases. They seek to hold the City liable for its own policies and practices, as followed by its police department, jail, clerk, and other employees, usually *without* judicial involvement. As alleged, the City issues warrants without judicial approval, and then recalls them without judicial approval—but only if the person can pay in full (or hire a lawyer). No state law demands these policies. And the City is not immune from having to defend them in court.

Once the City's immunity claim is turned aside, there is nothing left of this interlocutory appeal. The City's contention that the plaintiffs fail to state a claim on the merits is not an immediately appealable issue. And even if it were, the plaintiffs have adequately alleged a municipal policy. This Court should affirm.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. § 1331 and § 1367(a). The court denied the City of Maplewood's motion to dismiss, rejecting its assertion of sovereign immunity and its argument that the complaint fails to state a claim. The City timely appealed. Because the denial of immunity falls within the small category of issues that are immediately appealable under the collateral-order doctrine, this Court has appellate jurisdiction to review the district court's denial of sovereign immunity. *See P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 147 (1993); *Goldberg v. Town of Rocky Hill*, 973 F.2d 70, 74 (2d Cir. 1992) (allowing interlocutory appeal and "hold[ing] that there is no immunity defense, either qualified or absolute, available to a municipality sought to be held liable under 42 U.S.C. § 1983"). But that jurisdiction does not extend to other issues unless they are "inextricably intertwined" with the immunity question. *Prescott v. Little Six, Inc.*, 387 F.3d 753, 756 (8th Cir. 2004). As we will explain, this Court does not have jurisdiction to assess the City's argument that the complaint fails to state a claim on the merits because that argument is not "'necessary to ensure meaningful review of' the sovereign immunity issue.'" *Id.*

STATEMENT OF THE ISSUE

Is the City of Maplewood entitled to sovereign immunity? Apposite case: *Jinks v. Richland County*, 538 U.S. 456 (2003).

STATEMENT OF THE CASE AND OF THE FACTS

I. The City of Maplewood's pay-to-play system[1]

The City of Maplewood is a municipal corporation within St. Louis County with nearly 8,000 residents, most of whom are white and middle class. JA 6–7. The municipality lies immediately to the west of the City of St. Louis, and is home to a number of large stores with minimum-wage jobs. JA 7–8. It is bisected, vertically and horizontally, by two major thoroughfares (Manchester Road and Big Bend Boulevard) and sits between two major interstate highways (known to locals as Highways 40 and 44). *Id.* As a result of its location and plethora of big-box stores and chain restaurants, many poorer St. Louis residents travel to (and through) the City to commute to work and shop for basic necessities. JA 7–8, 15–22.

This fact has not gone unnoticed by the city government. Although the City is able to rely on its tax base to fund many of its operations, it has targeted these poorer motorists (most of whom are black) as an additional source of revenue through the imposition of traffic tickets, municipal-court fines, and bond fees. JA 7.

The system works like this: It starts with municipal police aggressively issuing traffic tickets and citations for minor municipal violations, with black motorists being nearly three times as likely to be ensnared than their white counterparts. JA

[1] The facts are based on allegations in the complaint, which must be taken as true at this stage of the case.

8–9. These violations often trigger fines and other payment obligations to the City. If the City isn't paid by a certain date, it seeks to collect the debt by systematically issuing arrest warrants for nonpayment, "automatically generated by a computer program, based on information that the municipal court clerks enter manually into the computer system." JA 9. No judge or magistrate reviews these warrants, and no one makes any inquiry into whether the debtor actually has the money to pay the debt. *Id.* The City also has a practice of automatically issuing arrest warrants whenever someone fails to show up at a court date, irrespective of whether the City provided adequate notice of the obligation to appear in the first place. *Id.*

Once an arrest warrant is issued, the City's revenue-generating machine kicks into gear. The City has a policy or custom—enforced by every city employee and official who plays a role in this system—of refusing to recall a warrant unless the person subject to it pays the City a "warrant recall bond," usually set at between $300 and $500. JA 2–3. The City has decided that this fee must be paid in cash, and in full. The City refuses "to withdraw arrest warrants even for those who are plainly too poor to make payments." *Id.* And the City has a policy of denying access to court—even to contest the charges, or to request a lowered bond from a judge—until receiving payment. JA 3–4. People who can't afford to pay the full fee are not permitted "to access the courts to gain any information about their case or charges, or to certify the case to a higher court." JA 3.

If someone is arrested for nonpayment or failure to appear in court, or if they voluntarily show up to the courthouse to ask about a warrant or contest the charges, they are told that they will be jailed unless they can come up with a cash payment to cover the full amount of the "bond." JA 14. If they don't have enough cash on them to pay the full bond, and lack wealthy friends or family to make a payment for them, city policy dictates that they spend two or three days in the City's jail.[2] JA 4. At no point are they given "an opportunity to seek a judicial determination on their ability to pay the warrant recall bond itself." *Id.* Nor are they given access to a lawyer. JA 5.

When debtors are eventually released, the warrants against them will remain in effect in perpetuity—trapping them in a cycle of arrest, detention, and release. JA 3. This predatory cycle makes it difficult for them to hold a job, damaging their employment prospects and plunging them further into poverty. And it often results in collateral consequences, like a suspended driver's license, that only compound their problems and deepen their indebtedness. JA 32. In this system, even the most minor municipal offense can mushroom into a series of citations, debt, and detention—all because someone is too poor to make a payment.

[2] Maplewood shares a jail with several other municipalities, which is referred to in the complaint as the "Richmond Heights jail." JA 19–21, 25–27, 30, 37, 39. (Richmond Heights is the adjacent municipality to the north of Maplewood.) Both "Richmond Heights and Maplewood officials [work] at the jail." JA 20.

II. The plaintiffs

The plaintiffs are six people who have been injured by the City's pay-to-play system. They have been forced to spend time in jail, or to make a payment they could not afford, as a direct result of the City's revenue-generating policies.

Cecilia Webb. Cecilia Webb is a 26-year-old mother. JA 15. Until this year, she worked a night shift at a Wal-Mart in Maplewood. *Id.* When she arrived at work one night, a City of Maplewood police officer approached her in the parking lot. *Id.* He told her to get back in her car, and eventually issued her citations for failing to register her vehicle, failing to provide proof of insurance, and failing to wear a seatbelt. JA 16.

Two months later, Ms. Webb was stopped again—at the same time of night, in the same place, by the same officer. JA 18. This time, he arrested her. *Id.* He refused to let her go to work, took her phone so she couldn't call her supervisor, and transported her to jail. JA 19. He did not tell her what she had done wrong. *Id.*

At the jail, the City of Maplewood officials working there refused to inform her of the basis for her arrest, and told her that she couldn't leave. JA 20. After five hours, they let her call her husband. *Id.* The only message she was able to convey to him was the only message she had received from the officials: bring $550 to jail to pay the City of Maplewood for her release. *Id.* No one at the jail made any

determination of her ability to pay this fee. JA 22. Shortly thereafter, her husband and church pastor arrived at the jail and paid the $550. JA 21.

Darron Yates. Darron Yates suffers from disabilities and lives with his elderly mother. JA 22. His only source of income is from sporadic odd jobs. *Id.* Late one evening, Mr. Yates was driving his neighbor's car when it ran out of gas. *Id.* He walked to a nearby gas station, bought a gallon of gas, and returned to the car. JA 23. He was immediately pulled over by two City of Maplewood police officers. *Id.* They told him that the car he had borrowed was improperly licensed. *Id.* They issued three tickets against him: driving while suspended, failure to provide proof of insurance, and failure to obtain proper vehicle registration. JA 24.

Because of a printing defect, the ticket did not clearly state the date and time of his court appearance. *Id.* When Mr. Yates called the court on the day he thought was his court date, the Maplewood clerk told him that he was "too late," and that a warrant had been issued for his arrest for failing to appear. *Id.* The clerk refused to reschedule his court date or to recall the warrant, and told him that he had two options: bring $500 to court, or turn himself in and sit in jail. *Id.*

Robert Eutz. Robert Eutz works part time at a fast-food restaurant. JA 28. A few years back, he was stopped by a Maplewood police officer for reasons that have never been explained to him. *Id.* He received a ticket for driving with a

suspended license, and a warrant was later issued for his arrest when he missed his court date. *Id.*

A couple of years later, after he learned of the arrest warrant, Mr. Eutz called the Maplewood clerk and asked for a new court date. JA 29. The clerk told him that the bond to recall his warrant was $800. *Id.* Mr. Eutz told the clerk that he could not afford to pay this much, but the clerk refused to recall the warrant, which remains active. *Id.*

Anthony Lemicy. Anthony Lemicy is homeless and underemployed. *Id.* Between 2013 and 2014, he was pulled over at least twice while driving through Maplewood. *Id.* Each time he was charged with municipal offenses stemming from his poverty (*e.g.*, inability to afford proper vehicle registration and car insurance). JA 29–30. Around the same time, he was arrested on a "failure to appear" warrant issued by Maplewood. JA 30. Because he couldn't afford the $500 bond to recall the warrant, he was held in jail by Maplewood officials for three days and then released. *Id.* He was later arrested under the same warrant, and again made to sit in jail for three days because he could not afford to pay the $500. *Id.*

When Mr. Lemicy learned of a new warrant against him for failing to appear in court, he called the clerk to request a new court date. *Id.* He was given the same choice as before: pay the fee in full, or turn himself in and sit in jail for two days. *Id.* The clerk refused to reduce the amount of the fee, or to assess his ability to pay,

and told him to "come to court on Friday." *Id.* Mr. Lemicy then contacted the Maplewood assistant city manager, who told him that he would be arrested if he showed up to court on Friday without $400. JA 31–32. As a result of this ordeal, his driver's license has been suspended, making it even more difficult for him to find a job and earn the money that is needed to break free from this cycle. JA 32.

Krystal Banks. Krystal Banks is the mother of a small child. *Id.* She works part time as an assistant for a doctor's office. JA 32–33. In 2013, she was driving to work when she was pulled over by a City of Maplewood police officer, purportedly for failing to use her turn signal. JA 33. The officer issued seven citations against her, including for failing to provide registration and failing to wear a seatbelt. *Id.*

A year later, the City of Maplewood police pulled her over and arrested her on a warrant for nonpayment of debts stemming from her previous citations. *Id.* She was jailed and her bond was ultimately set at $646. JA 34. In jail, a Maplewood officer inspected her purse, took all the money that she had inside it ($300 from a paycheck cashed the day before) and told her to "make a phone call and see if anybody else can come up with the other half, or you'll have to sit in jail for the next two or three days." *Id.* Her mother eventually came to the jail and paid the remaining $346. *Id.* This payment secured her release, but it did not extinguish the warrant, as she learned when a prospective employer ran her background check, discovered the warrant, and declined to hire her. JA 34–35.

Ms. Banks then called the clerk, who informed her that she would have to pay $500 to get the warrant recalled, and that she had missed a court date. JA 35. She told the clerk that she could not afford this amount, and that she had never received notice of the court date. *Id.* But the clerk told her that "Maplewood policy required that [she] either pay the full $500 or come down to the Maplewood court and turn herself in." *Id.* As a result, the warrant remains active. JA 36.

Frank Williams. Frank Williams is disabled and unemployed, and subsists on Social Security benefits. *Id.* Maplewood police arrested him on a warrant in 2014 and demanded $300 for his release. JA 37. He said that he did not have $300, so they took him to jail. *Id.* Two years later, Maplewood police against arrested him, this time based on a 2012 ticket for driving with a suspending license. JA 39. He paid a $500 bond to avoid spending time in jail, and was then given a summons setting a court date for the next month. *Id.* The day after his scheduled court date, Maplewood police arrested him on a warrant for failing to appear. *Id.* He spent two days in jail before he was able to pay Maplewood's additional $300 bond. *Id.*

III. This case

In November 2016, the plaintiffs filed this case on behalf of themselves and all others similarly situated. JA 2. They allege that the City "devised and implements daily an unlawful pay-to-play system," in which liberty and access to court depend on someone's ability to make a payment to the City, or hire a lawyer,

in violation of the Due Process Clause and the Equal Protection Clause of the U.S. Constitution (as well as the First, Fourth, and Sixth Amendments). JA 2–3, 49–53. They further allege that the City is responsible for this system, making it an unlawful municipal "policy or custom" for which the City may be held liable under 42 U.S.C. § 1983. *Monell v. Dep't of Social Servs. of N.Y.*, 436 U.S. 658, 694 (1978). The plaintiffs seek damages against the City, plus equitable relief. JA 56–57.

Two months after the complaint was filed, the City moved to dismiss. JA 64–67. It argued, among other things, that "[s]overeign immunity under the Eleventh Amendment bars Plaintiffs' constitutional claims in their entirety, as these claims are directed against [the City] i[n] its capacity as the Maplewood Municipal Court, a state entity under Missouri law." JA 65. The motion also obliquely raised a slew of personal-immunity doctrines, including judicial and prosecutorial immunity.

The district court rejected the City's arguments and denied it immunity. JA 68. The court first held that the City is not entitled to sovereign immunity "[b]ecause the Eleventh Amendment does not afford protection to political subdivisions such as municipalities." JA 81. The Court noted that the City's unlawful policies, as alleged, are "executed through the conduct of its clerk, city manager, police department, and city attorney—all of whom act under the authority of the city council." JA 80–81. The court explained that "the complaint

clearly alleges that this conduct was and is driven by the policies and practices implemented by the City for the purpose of increasing City revenue." JA 80.

The court also held that "the doctrines of absolute judicial, prosecutorial, and quasi-judicial immunity" do not apply, because the plaintiffs' constitutional claims do not seek to impose liability on "individual actors." JA 81. "Unlike government officials, municipalities do not enjoy absolute or qualified immunity from constitutional claims brought under 42 U.S.C. § 1983." *Id.* Because the plaintiffs do not complain of the "independent actions of individual actors," but instead "claim that these actors merely enforced the City's already established and commonly practiced unconstitutional policies and customs," the court concluded that personal "immunity doctrines that may protect individual actors do not protect the City from liability on plaintiffs' claims." JA 82.

The City filed a notice of interlocutory appeal from the "denial of sovereign immunity," as well as judicial, quasi-judicial, and prosecutorial immunity. JA 87.

SUMMARY OF ARGUMENT

I.A. It has long been settled that "municipalities, unlike States, do not enjoy a constitutionally protected immunity from suit," *Jinks v. Richland Cnty.*, 538 U.S. 456, 466 (2003), even though they "exercise a 'slice of state power,'" *N. Ins. Co. of N.Y. v. Chatham Cnty.*, 547 U.S. 189, 193–94 (2006).

B. The City of Maplewood doesn't challenge this rule or cite any case in which a city successfully claimed sovereign immunity. Yet it insists that this case should be dismissed on immunity grounds because it is functionally against the State of Missouri. That is incorrect. This case seeks relief solely from the City. And the State suffers no indignity by making the City answer allegations that it has erected a wealth-based system of detention and court access that deprives people of fundamental constitutional rights simply because they are poor.

Nor is the Maplewood municipal court the real party in interest. Although the City attempts to recast this case as being directed against the municipal judge, *see* City Br. 78, that is a sheer rewriting of the complaint. As the district court noted, "the complaint clearly alleges" systemic unconstitutional conduct "driven by the policies and practices implemented by the City for the purpose of increasing City revenue." JA 80. The complaint never challenges particular judicial decisions, or the individual acts of individual actors. It alleges a scheme executed by city employees and officials throughout the chain of command—including the assistant city manager, police officers, jail staff, and the municipal clerk.

No state law requires any element of this scheme. Not the automatic issuance of warrants for nonpayment or failure to appear. Not the decision to impose a fee for withdrawing these warrants. And not the policy of using jail and threats of jail to pressure people into paying, and detaining them if they cannot come up with the

cash. Each of these policies, as alleged, is the result of a deliberate choice by the City. The City is not immune from having to defend itself against these allegations of illegal "municipal revenue generation," which "concern the creation of policy for the City or for the municipal courts on behalf of the City." *McCullough v. City of Montgomery*, No. 2:15-cv-463, 2017 WL 956362, at *9 (M.D. Ala. Mar. 3, 2017); *see Fant v. City of Ferguson*, No. 4:15-cv-253, 2016 WL 6696065, at *6 (E.D. Mo. Nov. 15, 2016) (finding no "coherent" argument "as to why Eleventh Amendment immunity would apply" in a similar case against a city); *Odonnell v. Harris Cnty.*, 227 F. Supp. 3d 706, 754 (S.D. Tex. 2016) (denying immunity in similar case).

II. Because this is an interlocutory appeal based on the denial of immunity, this Court lacks jurisdiction to address the City's other argument: that the complaint fails to adequately allege "an unlawful policy or custom on the part of Maplewood." City Br. 45. The resolution of that merits issue is not "'necessary to ensure meaningful review of' the sovereign immunity issue,'" *Prescott v. Little Six, Inc.*, 387 F.3d 753, 756 (8th Cir. 2004), and hence is outside the scope of this appeal. Were this Court to hold otherwise, it would encourage parties to make baseless immunity claims, so they can obtain instant review of a liability issue that is ordinarily not immediately appealable.

At any rate, the City's argument that the complaint fails to plausibly allege a municipal policy of custom is wrong. The complaint easily clears the threshold of

allowing for a fair inference that a municipal policy or custom caused the plaintiffs' constitutional injuries. And the various additional immunity doctrines invoked by the City are beside the point—they exist to shield individual officers from personal liability, and have no bearing in a case against a municipality in which the plaintiffs allege a municipal policy or custom carried out by city employees and officials.

ARGUMENT

I. As a municipality, the City of Maplewood is not entitled to sovereign immunity.

A. Municipalities are not entitled to sovereign immunity.

For over a century, the Supreme Court has consistently held that "municipalities, unlike States, do not enjoy a constitutionally protected immunity from suit." *Jinks*, 538 U.S. at 466.[3] The Supreme Court has made clear that this settled rule applies to constitutional claims against a Missouri city under section

[3] *See N. Ins. Co. v. Chatham Cnty.*, 547 U.S. 189, 193 (2006) ("[T]his Court has repeatedly refused to extend sovereign immunity to counties" because "only States and arms of the State possess immunity from suits authorized by federal law."); *Alden v. Maine*, 527 U.S. 706, 756 (1999) ("The immunity does not extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State."); *Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 401 (1979) ("[T]he Court has consistently refused to construe the [Eleventh] Amendment to afford protection to political subdivisions such as counties and municipalities."); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977) (noting that "counties and similar municipal corporations" are not arms of States); *Workman v. City of New York*, 179 U.S. 552, 570 (1900) ("[A]s [a] municipal corporation[,] . . . the city of New York, unlike a sovereign, was subject to the jurisdiction of the court."); *Lincoln Cnty. v. Luning*, 133 U.S. 529 (1890) (first identifying this rule).

1983. *Owen v. City of Independence*, 445 U.S. 622, 647–48 (1980). And the rule applies even though cities "exercise a 'slice of state power.'" *Chatham Cnty.*, 547 U.S. at 194.

B. The plaintiffs' allegations are against the City of Maplewood, not the State of Missouri.

1. The City of Maplewood doesn't challenge this unbroken line of precedent. Nor does it cite a single case in which a municipality has ever successfully asserted sovereign immunity by claiming that it is an arm of the state. To the contrary, the City expressly *disavows* any argument that it is "entitled to absolute immunity as a municipality." City Br. 64. The City instead contends that this Court should dismiss the case on sovereign-immunity grounds because the allegations are "in essence against a State even if the State is not a named party." City Br. 50 (quoting *Lewis v. Clarke*, 137 S. Ct. 1285, 1290 (2017)).

In making this argument, however, the City does not attempt to show that "the remedy sought is truly against the sovereign," *id.* (quoting *Lewis*, 137 S. Ct. at 1290)—"the most important factor" in any sovereign-immunity analysis, *U.S. ex rel. Fields v. Bi-State Dev. Agency of the Mo.-Ill. Metro. Dist.*, — F.3d —, 2017 WL 3254401, at *7 (8th Cir. Aug. 1, 2017). This factor cuts decisively against finding immunity here, because only the City would be liable for satisfying a judgment. The judgment would not be enforceable against the State. *See Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 430 (1997) ("[T]he question whether a money judgment against a state instrumentality or official would be enforceable against the State is of

considerable importance to any evaluation of the relationship between the State and the entity or individual being sued."); *Hess v. Port Authority Trans–Hudson Corp.*, 513 U.S. 30, 48 (1994) (referring to "the vulnerability of the State's purse as the most salient factor in Eleventh Amendment determinations").

The City also ignores the other key factor in the analysis: whether the State would suffer an indignity by making the municipality of Maplewood—a separate entity with authority to sue and be sued—defend its allegedly unconstitutional policy in federal court. *See Bi-State*, 2017 WL 3254401, at *7 (explaining that dignity is one of sovereign immunity's "twin reasons for being," along with the "prevention of federal-court judgments that must be paid out of a State's treasury"); *see* City Br. 52 (emphasizing the importance of "respect" in the sovereign-immunity analysis, but failing to explain why it entitles the City to immunity here). This factor, too, forecloses a finding of immunity. "The specific indignity against which sovereign immunity protects is the insult to a State of being haled into court without its consent." *Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 258 (2011). That indignity cannot be suffered if the State itself is not haled into court, and "the object of the suit" is not "to reach funds in the state treasury." *Id.*

2. Rather than demonstrate that this suit is really against the State of Missouri, the City devotes much of its brief to establishing the proposition that

"municipal divisions of the Missouri state circuit courts are arms-of-the-state." City Br. 54. But the relevance of that assertion depends on a premise that the City spends barely a page trying to support: that the Maplewood municipal court is "the real party in interest in this case." City Br. 47–48. It is not.

This is a case against the City of Maplewood, in both form and substance. As the district court recognized, "the complaint clearly alleges" systemic unconstitutional conduct "driven by the policies and practices implemented by the City for the purpose of increasing City revenue." JA 80. The allegations lay out a scheme in which the City targets people for arrest based on minor municipal violations; extracts payments from arrested inmates and their families in exchange for immediate release and access to court; detains anyone who does not make a cash payment in full, unless they can afford to hire a lawyer; and fails to ensure that its inmates are not being held in jail simply because they are too poor to purchase their freedom. *See* JA 2–4, 8–10, 12–14. No state law requires any of these unconstitutional policies. The City is not required to pursue arrests for nonpayment or failure to appear in municipal court. It is not even required to *have* a municipal court. *See* Mo. Stat. §§ 479.040, 050. Nor is it required to generate revenue using jail and threats of jail to coerce people into making a payment.

The district court also correctly noted that these policies, as alleged, are carried out by employees and officials who "act under the authority of the city

council." JA 80. Based on the plaintiffs' allegations, city employees and officials are not only aware of how the City's policies and practices work—they execute and enforce these policies at every step: automatically generating the warrants without judicial involvement, making the arrests, demanding full cash payments to avoid jail time, collecting money on behalf of the City, deciding when to release someone who has not paid the full fee, and refusing at any point to investigate a person's ability to pay. *See, e.g.*, JA 34 (police officers); JA 14, 31–32 (assistant city manager); JA 20–21, 25–26, 39 (jail staff); JA 9, 14, 29, 31, 35 (municipal clerk or other administrative personnel). Because the City has no sovereign immunity as a municipal corporation, these allegations—regardless of whether they are ultimately proven—cannot possibly raise any sovereign-immunity concerns.

That is true notwithstanding the fact that the City's unlawful policies are executed in part through its municipal court. Although that court is subject to certain rules and procedures, and its judicial decisions are reviewable in state court, that does not mean that the City lacks the ability to exert any control or influence over its own municipal court. The City supervises the court, appoints its judge, pays his salary, and pays the salaries of everyone who works there (including the clerk).

That is why the city of Ferguson (another municipal corporation in St. Louis) was able to change its policies as part of its consent decree with the Department of

Justice, even though the policies were implemented in part through its municipal court. *See United States v. City of Ferguson*, No. 4:16-cv-180, ECF No. 12-2 (E.D. Mo. Mar. 17, 2016), *available at* https://www.justice.gov/opa/file/833431/download. The City of Ferguson agreed to eliminate fees for failure-to-appear violations, to accept partial payment and allow payment methods other than cash, to "ensure that defendants are provided with appropriate ability-to-pay determinations," and to "ensure that arrest warrants are not being issued in response to a person's financial inability to pay a fine or fee." *Id.* ¶¶ 326, 339, 340, 342, 348. The City of Maplewood could make similar policy changes here, but it has chosen instead to continue imposing its pay-to-play system for the purpose of generating revenue.

In sum: The complaint alleges that the City has "created a series of policies to increase municipal revenue through stops, ticketing, and arrests," including unlawful policies specifically devised and implemented to collect fines and fees that are deposited into the municipal treasury. *McCullough v. City of Montgomery*, No. 2:15-cv-463, 2017 WL 956362, at *9 (M.D. Ala. Mar. 3, 2017); *see* Mo. Rev. Stat. § 479.080. These allegations of "municipal revenue generation" plainly "concern the creation of policy for the City or for the municipal courts on behalf of the City." *McCullough*, 2017 WL 956362, at *9 (holding that the plaintiffs stated a claim "that the City is liable" for a judge's revenue-generating policies "because he was acting as a City official in creating those policies"); *accord Fant v. City of Ferguson*, No.

4:15-cv-253, 2016 WL 6696065, at *6 (E.D. Mo. Nov. 15, 2016) (finding no "coherent" argument "as to why Eleventh Amendment immunity would apply" in a similar case against a city); *Odonnell v. Harris Cnty.*, 227 F. Supp. 3d 706, 754 (S.D. Tex. 2016) (denying sovereign immunity in similar case). They do not support the application of sovereign immunity.[4]

None of this is to say that municipalities are vulnerable to any suit for damages based on a constitutional violation. As this Court has recently reiterated, "[m]unicipalities already enjoy some protection in that they can only be liable under section 1983 if municipal policy or custom caused the unconstitutional injury." *Sample v. City of Woodbury*, 836 F.3d 913, 917 (8th Cir. 2016). But that is a defense on the merits; it has nothing to do with immunity. *See Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 166 (1993) ("This argument wrongly equates freedom from liability with immunity from suit."). Indeed, even when a municipality is acting "under the command of state or federal law"—and thus might be protected from liability under section 1983 on the theory that "it is the policy contained in that state or federal law, rather than anything

[4] The three cases cited by the City (at 60) are inapposite because the *municipal court*—not the municipality—was the defendant. That is a key distinction for sovereign-immunity purposes. *See Harris v. Mo. Court of Appeals, W. Dist.*, 787 F.2d 427, 429 (8th Cir. 1986) (distinguishing between "municipal corporations (cities)" and "courts as entities"); *Alkire v. Irving*, 330 F.3d 802, 811 (6th Cir. 2003) (treating a county differently than the county court and holding that the county "is not an arm of the state that is entitled to Eleventh Amendment immunity").

devised or adopted by the municipality, that is responsible for the injury"—the municpality "does not have the shield of the Eleventh Amendment" and cannot claim immunity. *Bethesda Lutheran Homes & Servs., Inc. v. Leean*, 154 F.3d 716, 718 (7th Cir. 1998) (Posner, J.). It cannot do so here either.

II. This Court lacks jurisdiction to consider the City's non-immunity-based argument that the complaint fails to state a claim under *Monell*, and that argument is wrong in any event.

A. The City cannot obtain interlocutory review of its argument on the merits by smuggling it in with its argument for immunity.

Although this Court has appellate jurisdiction to review the district court's denial of sovereign immunity, that jurisdiction does not extend to other issues unless they are "inextricably intertwined" with the immunity question. *Prescott*, 387 F.3d at 755–56.

The City asserts, without explanation, that the Court has pendent jurisdiction over its argument that the complaint fails to state a claim for liability. City Br. 17. But this Court has recognized that the question whether an entity is liable on the merits "is an issue distinct from whether the Eleventh Amendment provides the entity with immunity from suit." *U.S. ex rel. Fields v. Bi-State Dev. Agency of the Mo.-Ill. Metro. Dist.*, 829 F.3d 598, 600 (8th Cir. 2016). Addressing whether the plaintiffs have adequately alleged a municipal policy is not "necessary to ensure meaningful review of the sovereign immunity issue,'" *Prescott*, 387 F.3d at 756,

because the City has *no* sovereign immunity. The City is thus in the same position as any other non-sovereign: it may not obtain immediate appellate review of the district court's denial of a motion to dismiss for failure to state a claim.

If this Court were to exercise pendent jurisdiction here, it would encourage parties to assert immunity even when they are obviously not entitled to it, so that they can "petition for premature appellate review by piggybacking the issue of liability on [their] appeal from the order concerning Eleventh Amendment immunity." *Brotherton v. Cleveland*, 173 F.3d 552, 568 (6th Cir. 1999) (declining to exercise pendent jurisdiction). This Court should not permit that result.

B. The complaint alleges a plausible claim regardless, and the personal-immunity doctrines raised by the City are irrelevant.

Even if this Court had jurisdiction to consider the merits, the plaintiffs have easily made out a plausible claim. There is no "heightened pleading standard" for constitutional claims brought against a municipality. *Leatherman*, 507 U.S. at 168. The question is simply whether the complaint gives rise to a fair inference that the municipality imposed a policy or custom that caused a violation of the plaintiffs' constitutional rights. *See Corwin v. City of Independence*, 829 F.3d 695, 699–700 (8th Cir. 2016); *Crumpley-Patterson v. Trinity Lutheran Hosp.*, 388 F.3d 588, 591 (8th Cir. 2004). As explained above, the plaintiffs have easily cleared that bar here.

In arguing otherwise, the City does not contend with the allegations in the complaint. Nor does it deny that arresting and jailing people for nonpayment,

without ensuring their ability to pay, is unconstitutional unless the City can justify its policy under scrutiny. *See Williams v. Illinois*, 399 U.S. 235, 242 (1970) (holding that no one may be imprisoned "solely because he is unable to pay [a] fine"); *Tate v. Short*, 401 U.S. 395, 397–98 (1971) (reaffirming that "imprisonment for nonpayment" amounts to "unconstitutional discrimination" if a person is "subjected to imprisonment solely because of his indigency"); *Bearden v. Georgia*, 461 U.S. 660, 661 (1983) (reiterating "the impermissibility of imprisoning a defendant solely because of his lack of financial resources"); *see also United States v. Salerno*, 481 U.S. 739, 749–50 (1987) (emphasizing that "the government may not detain a person prior to a judgment of guilt in a criminal trial" unless the detention policies are "narrowly focus[ed]" to advance a "compelling" interest).

Instead, the City cites a handful of cases (at 74–77) in which the plaintiffs did not allege (or failed to establish) that a municipal policy or practice violated the plaintiffs' constitutional rights. But those case-specific holdings are no response to the allegations in *this* case. The appellate decisions (at 74–75) stand only for the "limited proposition that a municipality may not be held liable under Section 1983 for actions taken by a municipal judge pursuant to his or her authority under state law" in individual adversarial proceedings, because "the judge's actions in such a case are properly attributed to the state rather than the municipality." *Singletary v. District of Columbia*, 685 F. Supp. 2d 81, 92 & n.7 (D.D.C. 2010) (discussing these

same cases). These cases do not "establish the overarching principle that judicial action can never give rise to municipal liability," much less that no action by any municipal-court employee or official may ever help establish a city practice or custom. *Id.* at 92; *cf. Supreme Ct. of Va. v. Consumers Union of the U.S., Inc.*, 446 U.S. 719, 731 (1980) (holding that the establishment of "rules of general application" that "do not arise out of a controversy which must be adjudicated," even if made by a judge, are not judicial in nature). And they have nothing to say about whether a city may be held liable for creating a system in which liberty and court access are conditioned on an ability to pay the city cash out of pocket. *Cf. Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 59 (1991) (holding that a local government "is not immune from systemic challenges, such as this class action" challenging detention policies at the local jail).

As for the unpublished district-court decisions (at 76–77), they too are inapposite. In *Ray v. Judicial Corrections Services, Inc.*, the court decided at summary judgment that plaintiffs challenging the actions of a single rogue judge had failed, as a factual matter, to establish any municipal policy—a question of liability, not immunity. No. 2:12-cv-02819, 2017 WL 660842, at *20 (N.D. Ala. Feb. 17, 2017). The court refused to hold the city liable "merely because it appointed and paid a judicial officer who recklessly failed to supervise the Municipal Court's private probation service." *Id.* The plaintiff in *Harris v. City of Austin* similarly challenged

only "municipal court proceedings conducted by a judge in the exercise of his or her judicial authority"—she didn't allege any municipal policy beyond those "proceedings." No. A-15-CA-956, 2016 WL 1070863, at *8 (W.D. Tex. Mar. 16, 2016). Moreover, the jail in that case was run by the county sheriff—not the city. *Id.* at *3. Once again, the plaintiffs here "do not seek to hold the City liable for the judicial decisions made by a municipal court judge in particular cases," or to otherwise challenge discretionary decisions in specific, isolated instances. *Fant*, 2016 WL 6696065, *6. The plaintiffs here allege, rather, that their injuries were "caused by the City's own unconstitutional policies and by the continuing and pervasive unconstitutional practices of a wide range of City employees." *Id.* At this stage, no more is needed.

Finally, the City asserts (at 64) that "there cannot be any liability against the municipality" under section 1983 because the individual employees involved would be entitled to immunity if they were sued in their personal capacities. That is wrong. For one thing, the case on which the City relies, *Patterson v. Von Riesen*, 999 F.2d 1235 (8th Cir. 1993), involved "a *respondeat superior* theory" of liability—*i.e.*, a theory that the government was responsible for acts taken by its individual agents. *Sample*, 836 F.3d at 917 n.3 (discussing *Patterson*). But that is not the theory of liability alleged in this case, as the district court correctly recognized. JA 82; s*ee*

Monell v. Dep't of Social Servs. of N.Y., 436 U.S. 658, 691 (1978) ("[A] municipality cannot be held liable under § 1983 on a *respondeat superior* theory.").

For another thing, the various immunity doctrines invoked by the City (at 66–73) are irrelevant. They are doctrines against imposing *personal* liability on individual officials. *See Lewis*, 137 S. Ct. at 1291 (noting that "absolute prosecutorial immunity" is a "*personal* immunity defense[]"); *VanHorn v. Oelschlager*, 502 F.3d 775, 779 (8th Cir. 2007) ("[A]bsolute, quasi-judicial immunity is not available for defendants sued in their official capacities."). "Unlike government officials," however, "municipalities do not enjoy absolute immunity from suit under section 1983." *Sample*, 836 F.3d at 917; *see also Leatherman*, 507 U.S. at 163). If they did, it "would leave innocent persons harmed by the abuse of governmental authority without a remedy for compensation for their injury." *Sample*, 836 F.3d at 917. Fortunately, that is not the law. Municipalities that adopt unconstitutional policies may be held accountable for those polices, and so may the City of Maplewood.

CONCLUSION

The district court's denial of sovereign immunity should be affirmed.

Respectfully submitted,

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August 31, 2017

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)(B)

I hereby certify that my word processing program, Microsoft Word, counted 7,330 words in the foregoing brief, exclusive of the portions excluded by Rule 32(a)(7)(B)(iii). The brief has been scanned for viruses and is virus free.

/s/ Jonathan E. Taylor

August 31, 2017 Jonathan E. Taylor

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2017, I electronically filed the foregoing Brief for Plaintiffs-Appellees with the Clerk of the Court of the U.S. Court of Appeals for the Eighth Circuit by using the Appellate CM/ECF system. All participants are registered CM/ECF users, and will be served by the Appellate CM/ECF system.

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