IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SATKAR HOSPITALITY INC., SHARAD K. DANI, HARISH DANI	)	
Plaintiffs,	)	
v.	)	
	)	**No. 10 CV 06682**
COOK COUNTY BOARD OF REVIEW, LARRY ROGERS, JR., JOSEPH BERRIOS, BRENDAN F. HOULIHAN, SCOTT M. GUETZOW, JOHN P. SULLIVAN, THOMAS A. JACONETTY, FOX TELEVISIONS STATIONS, INC., FOX CHICAGO NEWS, NEWS CORPORATION, ILLINOIS REVIEW, FRAN EATON, DENNIS G. LACOMB, DANE PLACKO, MARSHA BARTEL, CAROL FOWLER, PATRICK MULLEN, FOX TELEVISION HOLDINGS, INC.	)	**HONORABLE JUDGE MATTHEW F. KENNELLY**
Defendants.	)	

PLAINTIFFS' RESPONSE TO DEFENDANTS' COOK COUNTY BOARD OF REVIEW, LARRY ROGERS, JR., JOSEPH BERRIOS, BRENDAN F. HOULIHAN, SCOTT M. GUETZOW, JOHN P. SULLIVAN, AND THOMAS A. JACONETTY'S MOTIONS TO DISMISS.

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I. Introduction

Under Federal Rule of Civil Procedure 12(b)(6), dismissal of a complaint is proper where it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim on which relief may be granted. Hickey v. O'Bannon, 287 F.3d 656, 657 (7 Cir., 2002). The standard for dismissal of a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) is where the Plaintiff has failed to state a claim upon which relief can be granted. However, all well-pleaded facts, and any reasonable inferences drawn therefrom, are accepted as true and are construed in favor of the plaintiff. *Id.*; Stachon v. United Consumers Club, 229 F.3d 673, 675 (7 Cir. 2000).

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." A complaint so pled, "must provide the defendant with fair notice of what the ... claim is and the grounds upon which it rests." Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007) (alteration in original) (citation omitted). Though the Supreme Court in Twombly did find that a complaint must contain "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action" *Id.* at 555, it nonetheless concluded that "To survive a motion to dismiss, a complaint need not provide detailed factual allegations." *Id.* at 555-56.

In Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009), the Supreme Court explained that a complaint cannot contain mere legal conclusions "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id., citing Twombly, at 556. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a

sheer possibility that a defendant has acted unlawfully." Id. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.' " Id., citing Twombly, at 557.

"When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Iqbal, 129 S.Ct. at 1950. The Court in Twombly made clear that in order to survive a motion to dismiss, there must be factual allegations sufficient to "raise the right to relief above the speculative level." Twombly at 545.

II. Facts

Satkar is an Illinois Corporation that owns, operates and manages a Wingate Hotel in Schaumberg, IL. Plaintiffs' Amended Complaint ("AC") at 6. Satkar is owned and operated by Sharad Dani and Harish Dani, the other named Plaintiffs. AC at 7. Defendants Larry Rogers Jr., Joseph Berrios, and Brendan Houlihan, are Commissioners at the Board of Review, which reviews assessments of property tax valuations on the part of the Assessor's office. AC at 9. Scott Guetzow is a Chief Deputy Commissioner of the Board of Review. AC at 10. Thomas Jaconetty and John P. Sullivan are both First Assistant Commissioners at the Board of Review. AC at 11.

The Cook County Board of Review's role is to hear appeals of property tax valuations made by the Cook County Assessor's office. AC at 20. The Illinois Constitution mandates that the Board render its valuations in a uniform manner. AC at 22. Instead of following that mandate, the Board Defendants have established a system of pay for play, wherein those real estate tax appeal lawyers who contribute to the campaigns of the Commissioners achieve better results for their clients than non-contributing lawyers and non-contributing taxpayers. AC at 24.

When the Plaintiffs appealed the hotel's 2007 property taxes, the Board of Review lowered its valuation such that it would save over $40,000/year in property taxes. AC at 26.

In May through July of 2009, and for several months thereafter through December 2009, the Fox Defendants began to run a story on their local television station (and on the Internet, where the stories are visible to this day) alleging that Illinois State Rep. Paul Froehlich was engineering successful Board of Review appeals for his constituents in return for large campaign contributions. AC at 27. The story also ran on the Illinois Review blog, where the accusations of guilt by association to Rep. Froehlich ran rampant. AC at 31. These stories claimed that Plaintiffs had given large campaign contributions to Rep. Froehlich in exchange for lowered property tax valuations – in essence, bribing Rep Froehlich, AC at 29, despite the fact that Rep. Froehlich was not a Commissioner on the Board of Review, and had no authority to grant reductions. AC at 36.

Perhaps in response to the reports, and for the appearance o clean hands, the Board required Plaintiffs to appear and answer questions regarding the relationship between Froehlich and Plaintiffs. AC at 37. Not content to announce that they were investigating the sinister link between Froehlich and a constituent of his, who did business in his district, the Board claimed that they were going to be investigating the value of the hotel property. AC at 38-39. They sent the notices to Plaintiffs via US mail. AC at 38. On June 18, 2009, the Board conducted an interrogation – not into the value of Plaintiffs' property, but into the relationship between Plaintiffs and Rep. Froehlich. AC 39. Despite the Board's apparent attempt to investigate corruption, none of the Defendants ever bothered to question Rep. Froehlich, or even to ask Plaintiffs whether they had given any form of consideration to Rep. Froehlich in return for property tax reductions. AC at 40-41. There was no testimony taken under oath at that hearing (or any other) suggesting that Plaintiffs had done anything illegal. AC at 43. (One would think

that during an investigation into illegal activity, the savvy investigator would ask, at some point, whether illegal activity had taken place).

Though Plaintiffs – under the unfortunate impression that Defendants were interested in finding out what their property was worth – presented evidence that the Hotel had, indeed, lost value in 2007 and 2008 (those years corresponding to the beginning of our current economic downturn that has been blamed in falling property values, after all). AC at 45. Defendants, ignored the evidence, explaining simply, "we can do anything we want," and rescinded lower assessments that *it had produced only months before*. AC at 46. Defendant Guetzow explained the Board's position by claiming that there "was a larger issue between the relationship between the people involved" (in other words, the relationship between Plaintiffs and Rep. Froehlich. Despite the fact that every American has a Constitutional right to contribute to political candidates without fear that their taxes will be raised as a result, the Board singled out Plaintiffs for no reason other than their association with Rep. Froehlich. AC at 48-50.

On information and belief, the Board has already red-flagged Plaintiffs' property, preventing PTAB, the body that hears appeals from the Board, from rendering substantial justice (whenever they get around to rendering any justice – hopefully some time this decade). AC at 53. Further, PTAB is not authorized to hear issues of substantive due process or equal protection. The 2009 appeal was denied outright, and Plaintiffs were informed that the Board was not prepared to look at or even discuss the property for the 2010 round of appeals, and that Plaintiffs' counsel would be prudent to move forward on all of his other case – but not this one. AC at 54-55. By way of explanation, Plaintiffs were informed by Larry Rogers, a Commissioner for the Board, that the denials were a result of the Plaintiffs' connection with Rep. Froehlich and not due to the merits of Plaintiffs' appeal. AC at 56.

The Commissioners of the Board of Review are powerful members of the Cook County Democrat Party, and exert political influence over the State judiciary. AC at 68. For example, Joseph Berrios has been Chairman of the Cook County Democrat Party for over four years, and was a Committeeman of the Party for over eighteen years. AC at 68. He is also the Vice Chairman of the Judicial Slating Committee, and has been for nearly a decade. As such, he has been involved with slating over two hundred of Cook County's four hundred and forty-five circuit judges, and the appointment of many others for the past twenty-two years.

III. Argument

Defendants Board of Review, Berrios, Jaconetty, Rogers, Guetzow, Sullivan, and Houlihan ("Board Defendants") have joined in a motion to dismiss claiming that 1.) Plaintiffs' § 1983 claims are barred by the Rooker-Feldman Doctrine, 2.) Plaintiffs' claims are barred by absolute immunity; 3.) Plaintiffs' claims are barred by qualified immunity; 4.) Plaintiffs' equal protection claim is legally insufficient; 5.) Plaintiffs' due process claim is legally insufficient; 6.) Plaintiffs' First Amendment claim is legally insufficient; 7.) 42 U.S.C. § 1983 claims cannot be premised upon vicarious liability.

A. Absolute immunity

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it." Butz v. Economou, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978). Therefore, the official seeking absolute immunity bears the burden of showing that it is justified by the function in question. *Id.*; Burns v. Reed, 500 U.S. 478, 111 S.Ct. 1934, 114 L.Ed.2d 547 (1991). The Supreme Court has generally been quite sparing in its recognition of claims to absolute official immunity. Forrester v. White, 484 U.S.

219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988). Absolute immunity for judges is premised upon the desire to avoid collateral attacks, and to protect the finality of judgment. *Id.* Because the underlying purpose of immunity is to preserve judicial independence in the decision-making process, these defendants will be entitled to absolute immunity if their actions meet a two-part test: first, the acts must be within the judge's jurisdiction; second, these acts must be performed in the judge's judicial capacity. Dellenbach v. Letsinger, 889 F.2d 755 (7 Cir., 1989).

Absolute immunity is available to members of *quasi*-judicial adjudicatory bodies when they perform duties that are functionally comparable to those of a judicial officer. Tobin for Governor v. IL State Bd. of Elections, 268 F.3d 517 (7th Cir., 2001). In other words, the rules applicable to judges are similar to those applicable to administrative law judges acting in a *quasi*-judicial capacity.

As the Illinois Supreme Court ruled, regarding the power of administrative agencies like the Board of Review:

> *An administrative agency is different from a court because an agency only has the authorization given to it by the legislature through the statutes. Consequently, to the extent an agency acts outside its statutory authority, it acts without jurisdiction. The term 'jurisdiction,' while not strictly applicable to an administrative body, may be employed to designate the authority of the administrative body to Thus, in administrative law, the term "jurisdiction" has three aspects: (1) personal jurisdiction--the agency's authority over the parties and intervenors involved in the proceedings, (2) subject matter jurisdiction--the agency's power to hear and determine causes of the general class of cases to which the particular case belongs, and (3) an agency's scope of authority under the statutes. Business and Professional People for Public Interest v. Illinois Commerce Com'n, 136 Ill.2d 192 (Ill., 1989).*

Therefore, the only way the Board of Review could have had jurisdiction to act would have been for them to have complied with the statute (including and especially all of the procedural requirements set out in statute) in the execution of their power. Here, the agency, in recalling a matter long after if had made a decision, and rendering a new decision (without

basing the decision on any evidence) not only for that year, but for the foreseeable future, exceeded the scope of its authority, and acted outside of its jurisdiction.

The Board of Review cannot make an assessment; it can only review assessments made by the County Assessor. Goodfriend v. Board of Appeals of Cook County, 305 N.E.2d 404, 18 Ill.App.3d 412 (Ill. App. 1 Dist., 1973), quoting Jarman v. Board of Review, 345 Ill. 248 (Ill. 1931). In counties with 3,000,000 or more inhabitants, until the first Monday in December 1998, the board of appeals in any year shall, **on complaint** that any property is overassessed or underassessed, or is exempt, review and order the assessment corrected. 35 ILCS 200/16-95 (emphasis added). The statute cited (but not produced) by the Board in its Motion states, in full , that the Board of Review

> *may, upon written motion of any one or more members of the board that is made on or before the dates specified in notices given under Section 16-110 for each township and upon good cause shown, revise, correct, alter, or modify any assessment (or part of an assessment) of real property regardless of whether the taxpayer or owner of the property has filed a complaint with the board. No assessment may be changed by the board on its own motion until the taxpayer in whose name the property is assessed and the chief county assessment officer who certified the assessment have been notified and given an opportunity to be heard thereon. All taxing districts shall have an opportunity to be heard on the matter. 35 ILCS 200/16-19(2).*

Section 16-110 states the following:

> *In counties with 3,000,000 or more inhabitants, at least one week before its meeting to revise and correct assessments, the [board of review] shall publish a notice of the time and place of that meeting. The board shall, from time to time, publish notices which shall specify the date and place at which complaints may be filed for those townships or taxing districts for which property assessments have been completed by the county assessor, and which will then be considered for revision and correction at that time. All notices required by this Section may provide for a revision and correction at the specified time of one or more townships or taxing districts. All such notices shall be published once in at least one newspaper of general circulation published in the county.* ***The board at the time and place fixed, and upon notice as provided in this Section, may receive and hold hearings on all those complaints and revise and correct assessments within those townships or taxing districts. Taxpayers shall have at***

> ***least 20 days after the date of publication of the notice within which to file complaints***. *35 ILCS 200/16-110 (emphasis added).*

The Board's Motion did not indicate the filing period for Schaumburg when the Board reviewed Plaintiff's assessments. Though the Board cites the statute giving the Board authority to review assessments "on its own motion," the Board does not cite the entire statute. The Board did not, for example, cite the section 16-110, which limits the Board's jurisdiction over properties to specific periods of time during which certain municipalities and neighborhoods are reviewed specifically. The Board's Motion gives the impression that its jurisdiction extends to any property, at any period of time, and with no limitations. Incidentally, it is precisely that attitude that has caused the Board to end up here before this Court defending its decision to "review" (without examining any evidence) the assessment of Plaintiff's property in a manner outside of its jurisdiction and authority. Should the Board disagree with this analysis, then it will have an opportunity to demonstrate, through discovery, that the review of Plaintiff's property actually took place within the time period indicated by section 16-110.

The Board's Motion does not even claim that the Board was acting "on its own Motion" (for there was very little about the Board's actions that resembled the kinds of niceties, like equal protection and Constitutional due process, that accompany actual court proceedings). The AC (which must be taken as true, at this stage) states that whatever procedural name the Board gave to its actions, the effect of such was the severe raising of Plaintiff's taxes without any cause, and outside of any formal constitutionally sound proceeding.

The Board of Review promulgates various rules affecting its operation. Under the rules for contesting an underassessed property, Rule 3 states as follows:

> *Within two (2) business days after the filing of the complaint forms, the party alleging undervaluation must send a "Notice of Filing", together with any documentary evidence filed with the Board under Rule 2, to both the tax assessee of record and the titleholder of record. If documentary evidence is not filed with the complaint forms, a second transmission to the tax assessee of record and titleholder of record must be undertaken. Proof of such notice(s) shall be filed with the Board. Failure to attempt to provide such notice(s) may be subject of a motion contesting the jurisdiction of the Board.*

The Board did not follow these procedures when it decided to alter Plaintiffs' assessments because it was not acting pursuant to statute. Instead, the members of the board were on a frolic, doing whatever it felt like doing, without any concern for whether their actions infringed upon the constitutional rights of others, whether their actions were sanctioned by law, or whether their actions were within their authority or jurisdiction. It was as if the Board of Review had decided, by *fiat*, that it could do whatever it wanted to. In so clearly exceeding its jurisdiction and the limited authority conferred by statute, the Board destroyed whatever immunities it could have hoped to hide behind.

The Board, and related Defendants, may wish to counter, by stating that this approach favors form over substance. However, "It is significant that most of the provisions of the Bill of Rights are procedural, for it is procedure that marks much of the difference between rule by law and rule by fiat." Wisconsin v. Constantineau, 400 U.S. 433 (1971). The Board is a creature of statute, and is therefore bound to follow statute. It is also bound by its own internal policies. It cannot simply choose the abrogate statute, and its own policies, at the first sign of inconvenience. It is significant that no evidence was brought to justify the Board's determination. The determination was not based upon any evidence at all. This is significant not because it underscores that the Board's decision was wrong, but that the Board had no concern whatsoever for following its own established procedures, and with compiling with statutory procedures that are designed to insure that each property owner is rendered substantial justice that comports with notions of due process under the law. The Board must not be allowed to operate through *fiat*,

rendering decisions that have no connection with reality simply because its elected members know they can-unchecked and undeterred by the law.

Defendants also cite Heyde v. Pittenger, ___ F.3d. ____ (7 Cir. 2011). Heyde, decided after this matter was filed, involves a claim against Tazewell County Board of Review brought under 42 U.S.C. § 1983 in which the Board of Review successfully asserted an absolute immunity defense. The case, while sharing some elements with the instant matter, is nonetheless distinguishable.

In Heyde, the property at issue came before the Board of Review year after year, and the value thereof fluctuated around $150,000.00. In 2006, after the plaintiff had filed numerous appeals to the Board of Review regarding that year, and previous years' assessments, the Board raised the value of the property to $436,276.00. A suit premised under 42 U.S.C. § 1983 followed. Defendants moved to dismiss, claiming absolute immunity, and the Court dismissed. On appeal, the Seventh Circuit, affirming the Circuit Court's decision, reasoned that "the cloak of immunity is designed to prevent a situation in which decision-makers act with an excess of caution or otherwise skew their decisions in ways that result in less than full fidelity to the objective and independent criteria that ought to guide their conduct." Heyde; quoting Tobin for Governor v. Ill. State Board of Elections, 268 F.2d 517 (7 Cir. 2001). When determining whether a public official is entitled to absolute liability, the following (among other factors) ought to be considered: (1) the need to assure that the individual (or *quasi*-judicial body) can perform his functions without harassment or intimidation… (3) insulation from political influence… (5) the adversarial nature of the process. Heyde; quoting Butz, 438 U.S. at 512.

Responding to claims that the Board of Review's function is largely investigatory rather than adjudicative, the Court underscored that the BoR is empowered to "summon any assessor, deputy, or any other person to appear before it to be examined under oath concerning the

method by which any evaluation has been ascertained.," but "can only increase an assessment if it gives the property owner notice and an opportunity to be heard.

Heyde is distinguishable: Firstly, the factors Heyde brings favor a determination against immunity. Of the six factors brought, at least three cut completely towards Plaintiff: The Board of Review obviously does not fear harassment, as evidenced by its amazing disregard for due process, and the rule of law. Plaintiffs here do not claim that the Board merely arrived at the wrong conclusion after a haphazard analysis. Plaintiffs claim that the Board engaged in *no analysis of the facts whatsoever*. Instead, the Board brought Plaintiffs before the Board to ask questions about Paul Froehlich. The Board was not remotely interested in evidence of the value of Plaintiff's property. The insulation from political influence is the least of the Board's concerns in this litigation. It was the Satkar's political connection to Paul Froehlich that earned it the increase in taxes Plaintiffs received from the Board. In this case, the Board was much more concerned with political pressure and the need to create a political scapegoat than with the rule of law. This action was brought to do substantial justice when the Board, due to political influence and caprice, refused to do so. Finally, this proceeding was not adversarial. Plaintiffs were the only parties.

The Board did not summon anyone to give testimony on the relevant issue: the value of Plaintiffs' property. Finally, the fact that Plaintiffs were physically present when the Board attempted to grill them about their connections to Paul Froehlich does not mean they were given an opportunity to be heard, when the Board made it obvious that it was not interested in hearing anything as inconvenient as evidence. Unlike in Heyde, the Board conducted no actual investigation into the Plaintiffs' property taxes, rather they used their title and office to try and abrogate the powers of the State's Attorney's Office-in violation of their jurisdiction, their grant of authority under statute and in blatant abuse of their office.

This is not the case, as in Heyde, where Plaintiffs disagree with the legal reasoning employed by the Board in arriving at a modified assessment, and claim further that there was some bad faith underlying the Board's decision. This is a case in which the Board did not employ *any reasoning whatsoever* in arriving at its decision, and made the decision entirely in bad faith. There can be no immunity when there is no attempt at substantial justice (that would be worth protecting by offering a shield of immunity).

Finally, as argued before, since the decision was made without jurisdiction, no immunity applies.

B. The Rooker-Feldman Doctrine

The Board also attempts to cause this matter to be dismissed through the Rooker-Feldman doctrine. The Rooker-Feldman doctrine applies to

> *cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U. S. 280, 284 (2005).*

Exxon Mobil Corp. v. Saudi Basic Industries Corp notes preliminarily that the doctrine applies when the state court has acted within its jurisdiction. *Id.* "If the state-court decision was wrong, […] that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. *Id.* The doctrine precludes federal subject matter jurisdiction "only when, after state proceedings have ended, a losing party in state court files suit in federal court complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment." Holt v. Lake County Bd. of Com'Rs, 408 F.3d 335, 336 (Fed. 7th Cir., 2005). The "crucial point is whether the district court is in essence being called upon to review the state-court decision." Taylor v. Federal Nat. Mortg. Ass'n, 374 F.3d 529, 533 (7th Cir., 2004).

Noticeably absent from the Board's analysis is any application of the Rooker-Feldman doctrine to the decision of an administrative or *quasi*-judicial body as the Board claims to be. This is because the doctrine *specifically* applies to decisions rendered by a trial court. *Id.*; Exxon Mobil Corp, *supra.*

Plaintiff does not seek to review a decision made by the Board on its merits. That would simply be an appeal. The Board's decision has no merits, because it was not made with any mind towards evidence (admissible or otherwise). It was a complete breach of the Board's authority, made without a mind to whether the Board had jurisdiction over the parties (it did not). The Board's claim is tantamount to a claim that if the Board had arbitrarily picked out a political enemy, or even someone who all of the members of the Board simply disliked, and doubled that person's property taxes, that person would be forced to appeal the Board's decision and demonstrate that it was incorrect under the circuit court's deferential standard rather than complain of the obvious and offensive abuse of power before this Court.

C. Equal Protection

The Board Cites Avila v. Pappas, 591 F.3d 552 (7th Cir., 2010) to suggest that probable cause is a rational basis for official action. *Id.* However, Avila is inapposite. Avila involves a former Cook County employee who was terminated and then prosecuted after claiming that she would "go postal" at a disciplinary hearing. *Id.* While the plaintiff claimed that her statement was a joke, the Court nonetheless found that it gave probable cause, as a matter of law, for an arrest. *Id.* In stark contrast to the operative facts in Avila, Defendants here claim that since certain allegations were made about Rep. Froehlich over the local Fox affiliate, this "provided a rational basis for the Board to call the individuals mentioned before them to see if a prior property tax assessment was correct." Board's Motion to Dismiss at 10. As usual, the Board substitutes its own version of the facts for what was stated in the

Amended Complaint; and at this stage, all well-pleaded facts, and any reasonable inferences drawn therefrom, are accepted as true and are construed in favor of the Plaintiffs. Stachon v. United Consumers Club, 229 F.3d 673, 675 (7 Cir. 2000).

Plaintiffs do not complain that the Board launched in investigation into alleged wrongdoing on Froehlich's part. Rather, Plaintiffs complain that without any reason, and without conducting any meaningful investigation, the Board raised Plaintiffs' property taxes, and then subsequently announced their decision to do so via Fox News.

Defendant's cite to Engquist v. Oregon Department of Agriculture is similarly inapposite. Engquist v. Oregon Department of Agriculture, 128 S.Ct. 2148 (2008). Enquist only states that

> *"the class-of-one theory of equal protection—which presupposes that like individuals should be treated alike, and that to treat them differently is to classify them in a way that must survive at least rationality review—is simply a poor fit in the public employment context." Id. at 2155.*

The Supreme Court certainly never claimed that the "discretionary decision-making based on a vast array of subjective, individualized assessments" defeats any Equal Protection claim! *Id.* "Government has significantly greater leeway in its dealings with citizen employees than it does when it brings its sovereign power to bear on citizens at large." *Id.* at 2151. The Supreme Court specifically contrasted employment with property, claiming that with respect to property, "the Fourteenth Amendment requires that all persons subjected to . . . legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." *Id.* at 2153.

The Equal Protection Clause of the Fourteenth Amendment most typically reaches state action that treats a person poorly because of suspect classifications such as political affiliation, among others, or because the person has exercised a "fundamental right," or

because the person is a member of a group that is the target of irrational government discrimination. Abcarian v. Mcdonald,___ F.3d ___ (7th Cir., 2010).

Equal protection claims may also involve a "class of one," where the plaintiff alleges that only he "has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. Bell v. Duperrault, 367 F.3d 703 (7th Cir., 2004); citing Village of Willowbrook v. Olech, 528 U.S. 562, 564, 120 S.Ct. 1073, (2000). The "class of one" plaintiff bears the burden of proving that he has suffered intentional, irrational, and arbitrary discrimination. *Id.* He can do so either by showing that he was treated differently from identically situated persons for no rational reason, or that he was treated worse than less deserving individuals for no rational reason. *Id.*

Uniformity in taxation is a must under the equal protection clause. "The equal protection clause of the Fourteenth Amendment protects the individual from [..] discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment." Chicago Rys. Co. v. Sullivan, 175 F.2d 282 (7 Cir. 1949).

D. Due Process

Defendants also claim that Plaintiffs do not have a substantive due process claim. Defendants' entire argument is premised upon the claim that there is no due process interest at stake here, because "[Plaintiffs] have not demonstrated that they have a protected right to a lowered assessed value." This is a serious (purposeful?) misreading of Plaintiffs' *AC*. Plaintiffs do not complain merely that they did not get the assessed value they thought they deserved, based upon a disagreement with the Board about what the evidence showed. Plaintiffs were subjected to unequal treatment, and denied a uniform tax assessment. Uniform taxation is a due process right. Great Northern Railway Co. v. Weeks, State Tax

Commissioner, 297 U.S. 135 (1936). In other words, if the decision of the Board denied Plaintiffs a uniform assessment (the same assessment their property would have received if they had not contributed to the political campaign of someone who had fallen out of favor with the Board of Review's members, for example), Plaintiffs have a due process right that was violated. Under state law, the requirement for uniformity is stricter than the requirement recognized by the United States Constitution. Hoffman v. Clark, 69 Ill.2d 402, 420 (Ill. 1977). So Defendants' claim that there is no right at stake here is somewhat mysterious.

Next, Defendants argue that the existence of an appeal to PTAB defeats any substantive due process claim. In making this claim, Defendants point out that PTAB (technically) offers a *de novo* review, and that the Circuit Court can review decisions of the Board under administrative review. Defendants recognize, however, that the AC addresses these very objections, and therefore dismisses the AC's factual allegations as "simply meritless," without citation to any authority whatsoever.

Defendant Joe Berrios is the current chairman of the Cook County Democrat Party. AC at 69. He was a powerful Democrat Party committeeman for 18 years. AC at 69. He has been the vice chairman of the Democrat Party's slating committee, which is responsible for the slating of many of the judges in the Circuit Court of Cook County. AC at 69. Many of those judges who he did not personally slate were nonetheless slated by the Democrat Party that Berrios chairs. While the Circuit Court of Cook County, and PTAB, are both qualified to hear appeals of decisions made by the Board of Review, *this particular* decision was highly political. Indeed, the decision (according to the AC, the factual allegations of which must be taken as true at the present time) was made entirely for political reasons, and not for any

legitimate reasons. It was also a highly public decision, implicating the interests and the very leadership of the Democrat Party of Cook County itself.

Moreover, in the case of a substantive due process claim (as opposed to a procedural due process claim), the fact that there might have been adequate state remedies does not save Defendants. In analyzing whether the alleged existence of an adequate state remedy defeated one plaintiff's due process claim, the Seventh Circuit noted "If the failure to exploit all available legal remedies were a defense to a deprivation of substantive constitutional rights (that is, rights to more than a fair procedure), which it is not, the defendants' argument would still be vulnerable — to the charge of being unrealistic." Pena v. Mattox, 83 F.3d 894 (7 Cir. 1996). In other words, even if Defendants' claim had legal merit, the fact that Plaintiffs would be challenging the leadership of the Democrat Party of Cook County on its home turf would be very relevant. Defendants cannot dismiss that reality by calling factual allegations (that Defendants, notably, do not dispute in their Motion to Dismiss) "simply meritless." However, Defendants' claims do not have legal merit here where Plaintiffs have alleged - not that they were denied the right to proper procedures before the Board of Review - but that there was simply no substantive forum for their claims to be heard, given that Berrios & Co. were determined to make a political example out of Satkar due to Satkar's relationship with Rep. Froehlich. All of Defendants' cites are to cases involving procedural due process, not substantive due process. *See* Belcher v. Norton, 497 F.2d 742 (7 Cir. 2007) ("if the property deprivation occurs as a result of a random unauthorized act, it does not constitute a violation of a litigant's procedural due process rights where the state provides "a meaningful post-deprivation remedy." Emphasis added); Gable v. City of Chicago, 296 F.3d 531, 540 (7 Cir. 2002)(noting that [because there was an adequate state remedy, "the plaintiffs were not deprived of procedural due process," but that "In order to

prevail on a substantive due process claim involving a deprivation of a property interest, a plaintiff must "show either the inadequacy of state law remedies or an independent constitutional violation.") Here, Plaintiffs likely can claim violations of both. But there is no question that Defendants have failed to even address Plaintiffs independent substantive due process claims.

E. Qualified Immunity

"The resolution of immunity questions inherently requires a balance between the evils inevitable in any available alternative. In situations of abuse of office, an action for damages may offer the only realistic avenue for vindication of constitutional guarantees." Harlow v. Fitzgerald, 457 U.S. 800, 813-815 (1982); quoting Butz v. Economou, 438 U.S. 478 (1978). qualified immunity would be defeated if an official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff]. *Id.* at 815. If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. *Id.* at 818-819.

Defendants cite Edwards v. Gilbert, an 11th Circuit decision, stating: "An official will be immune if the law with respect to his actions was unclear at the time the cause of action arose or if 'a reasonable officer could have believed his actions to be lawful, in light of clearly established law and the information [the officer] possessed." Edwards v. Gilbert, 867 F.2d 1271 (11 Cir. 1989). But to the extent that Edwards applies in this 7th Circuit matter, it clarifies what it means be stating that "for purposes of qualified immunity, an abstract mandate to act ;with care; or ;reasonably' is too vague; generalities are just not helpful." *Id.* No vagueness is apparent in the instant matter.

Defendants also cite Knox v. McGinnis, 998 F.2d 1405 (7 Cir. 1993). In that case, a prisoner sued because he has been placed in a higher security facility (after several weapons were found in his possession), which required him to wear a special handcuff device known as a black box which hurt his wrists. The Court ruled that qualified immunity applied because it had already ruled, in a previous case, that similar devices were acceptable to be used on prisoners when such was necessary for the safety of others. The prior decision had mentioned the "black box" by name, and found nothing wrong with its use. In other words, even if the use of a black box, in light of information provided through discovery in Knox, violated the 8th Amendment, the Defendants would nonetheless be immune to damages because they could not have been aware of a Constitutional violation when a previous Court in the Seventh Circuit had said that use of the "black box" was permissible.

Defendants' cite to Krueger v. City of Algoma is also inapposite. Krueger v. City of Algoma, 1 F.3d 537 (7 Cir. 1993). Krueger deals with probable cause determinations made by police officers. Citing from the decision in Krueger itself is necessary to underscore exactly what the Krueger Court meant in stating that if a reasonable *police officer* could have found probable cause, qualified immunity would attach:

> *The district court found that because Krueger stuck his head out of the window and yelled "[w]hy don't you direct that G- D- traffic?" there was a sufficient basis "to find that Officer Haltaufderheid was qualifiedly immune based on his reasonable belief that probable cause existed for the ordinance violation of provoking a disturbance or disrupting good order." The district court proceeds to note: "The subsequent acts flowing from the stop also support Officer Haltaufderheid's qualified immunity. Todd Krueger, himself, admits that he had been drinking and that he was underage. His blood alcohol level tested at .08 percent." We agree with the district court. As a matter of law, a police officer could have reasonably believed he had probable cause to arrest under such circumstances.*
>
> *Next, Krueger claims that Officer Zahn illegally arrested him at the Bruemerville Dam. He posits that Officer Zahn should not have arrested him after observing him speeding and disobeying traffic signals. Again, we must determine*

> *whether any reasonable police officer could have concluded that there was probable cause for arrest under such circumstances. Obviously, police officers have probable cause to arrest in light of such flagrant traffic violations. The propriety of the arrest is confirmed by the fact that Krueger pointed a gun at Officer Zahn after the stop. Because of his behavior, Krueger was a danger not only to himself but the community. Id.*

There is not a Court in the world that would not find against the Defendant police officers, given those facts. A police officer must be allowed to make quick decisions in situations like the above, and should not have to worry that his conduct might subject him to liability unless his conduct is patently and obviously unreasonable. But that is a far cry from what happened here.

As previously stated, uniformity in taxation is a must under the equal protection clause. "The equal protection clause of the Fourteenth Amendment protects the individual from [..] discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment." Chicago Rys. Co. v. Sullivan, 175 F.2d 282 (7 Cir. 1949). Property owners have a due process right to uniform taxation. Great Northern Railway Co. v. Weeks, State Tax Commissioner, 297 U.S. 135 (1936).

F. First Amendment

Defendants' claims that there was no First Amendment violation are similarly meritless. Defendant begins by claiming that First Amendment rights are not unlimited, then complains that Plaintiffs do not allege that their campaign contributions to Froehlich had to do with Froehlich's ability to win property tax reductions (it is not clear how this Complaint helps Defendants at all), then returns to claiming that the Board had a right to investigate whether tax assessments given in prior years were appropriately awarded (as if Plaintiffs have ever questioned that).

Defendants' citations to United States v. Williams and Buckley v. Valeo are totally inapposite. United States v Williams claims, unsurprisingly, that "Offers to engage in illegal

transactions are categorically excluded from First Amendment protection." United States v. Williams, 128 S.Ct. 1830, ___ U.S. ___ (2008). Defendants do not explain how that is remotely relevant in the instant matter, where Plaintiffs never allege that their actions violated any law or regulation (and where, notably, Defendants do not either). The citation to Buckley is similarly strange. Buckley determined (and Defendants quote it for the proposition that) a $1000.00 cap on political contributions is constitutional. Buckley v. Valeo, 424 U.S. 1 (1976). Here, no such cap was in place under Illinois state law, and Defendants have not claimed (nor could they claim) that Plaintiffs' contributions to Froehlich were illegal, or in violation of any campaign contribution limits. If Defendants are attempting to claim that discrimination against Plaintiffs based upon Plaintiffs' decision to contribute to Froehlich was legal and/or constitutional, Defendants are sorely mistaken, and have pointed to nothing that says otherwise.

Defendants accurately point out that Plaintiffs never claim that they made any campaign contribution to Froehlich because Froehlich obtained a reduction in their property tax assessments[1]. Defendants cite Gross v. FBL Financial Services, for their claim that but-for causation is required for claims under the First Amendment. Gross v. FBL Fin. Services, 192 S.Ct. 2343, 2350, ____ U.S.___ (2009). Gross has nothing to do with the First Amendment, was not brought under 42 U.S.C. § 1983, does not involve a municipal actor, and has nothing to do with the instant matter, or any defenses thereto. Defendants also cite Waters v. City of Chicago, for the same notion. Waters v. City of Chicago, 580 F.3d 575, 584 (7 Cir. 2009) ("In a First Amendment retaliation claim[…] the plaintiff must prove that his speech "was the `reason" that the [defendant] decided to act."). Plaintiffs AC is specifically that Plaintiffs' decision to associate

[1] Incidentally, Defendants never explain, if Plaintiffs' contributions did constitute a thank-you to Froehlich for getting them a property tax reduction, how that would "run headlong into Buckley and Williams. Giving a contribution to a politician because he has *already* performed an act that benefitted the donor certainly is not illegal, as per Williams, and it does not implicate a politician's honesty. However, this point is irrelevant because, as Defendants point out, Plaintiffs did not allege that their contributions to Froehlich had anything to do with Froehlich's successful prosecution of an appeal to the Board of Review on Plaintiffs' behalf.

with Rep. Froehlich was the but-for cause of Defendants' illegal acts. AC at 88-93, and *et seq.* Plaintiffs' reasons for donating to Froehlich's campaign is totally irrelevant to that claim.

Finally, Defendants fall back on the claim that the Board has the right to investigate whether property tax reductions were proper. Plaintiffs do not dispute that the Board has the right to investigate whether reductions that it has given out were proper. Plaintiffs *do* dispute that that is what occurred here. If Defendants' claim is that their interrogation of members of the Dani family about their relationship with Froehlich (in apparent homage to Torquemada) constituted an investigation into whether property tax reductions to Plaintiffs were proper, this claim only underscores how problematic Defendants' actions were: The AC alleges that not a single question asked of Plaintiffs had anything to do with whether Plaintiffs, or whether Froehlich, had illegally gamed the system. Rather, the questions had everything to do with whether Plaintiffs had a relationship with a state Representative. The Board took no evidence regarding the value of the property in question, or regarding improper activities or *quid pro quo* with Rep. Froehlich.

G. Vicarious liability

Finally, Defendants claim that no allegation of improper conduct was made against individual actors, and that claims against the Board are derivative in nature, and must be dismissed. These claims are mutually contradictory. If Plaintiffs' claims against the Board derive from conduct by individuals, then there must have been allegations made against individuals. If there were no claims made against individuals, then there would be no conduct upon which to derive claims against the Board.

For the purposes of a Motion to Dismiss, all well-pleaded facts, and any reasonable inferences drawn therefrom, are accepted as true and are construed in favor of the plaintiff. Stachon v. United Consumers Club, 229 F.3d 673, 675 (7 Cir. 2000). The Board of Review

is a body made up of three elected officials who vote on all decisions of the Board (and voted in this case), and three non-elected officials who are involved in most board decisions. Those six individuals are the six individual defendants here. When the Board acts, it does so through those six individuals (particularly those elected officials who voted on Plaintiffs' assessments). A fair and reasonable inference from Plaintiffs' AC is that the six figures (especially voting members of the Board) named in the AC made the decision to alter Plaintiffs' valuation, and to communicate having done so to Fox News, and the Illinois Review. Those decisions, made, as it were, by the Board's six controlling members (particularly the three voting members), constitute the policy of the Board, and were ratified by the Board at an official session of the Board.

IV. Conclusion

The Board Defendants have not presented any reason that the AC against them should be dismissed. The AC states claims against the Board, and against the individual members thereof, premised upon the First Amendment, Equal Protection, and Due Process – through 42 U.S.C. 1983. This Court should reject their attempts at immunizing their crooked behavior from liability under either qualified or absolute theories of immunity, or the Rooker-Feldman doctrine.

WHEREFORE, Plaintiffs ask this Honorable Court to Enter an Order denying Defendants' Motions to Dismiss, and requiring Defendants to Answer the Amended Complaint, and offering whatever other relief this Honorable Court deems just and equitable.

Respectfully submitted,

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