



Civil Rights Update

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A Police Officer Does Not Have a Protected Property Interest in Promotion Examination Free from Cheating or Rigging

The Court of Appeals for the Seventh Circuit recently reiterated the criteria for the recognition of a constitutionally protected property interest. In *Word v. City of Chicago*, 946 F.3d 391 (7th Cir. 2020), the Seventh Circuit held that a city police officer did not have a protected property interest in a police department promotion or in a fair examination for a promotion for purposes of a due process claim. *Word*, 946 F.3d at 394-95. The court held that although the police officer may have had an expectation, created by Illinois law, that the examinations would be fair, that expectation was insufficient to create a constitutionally protected property interest. *Id.*

Factual Background

In *Word*, the plaintiff Hosea Word is a sergeant in the Chicago Police Department (CPD). *Id.* at 393. As part of its promotional process, CPD periodically gave an examination to sergeants seeking promotion to lieutenant. *Id.* “While the CPD retained discretion over whom to promote, those who scored highest on the exam were generally first in line.” *Id.* When Word took the exam in 2006, he was ranked 150th. *Id.* The sergeants ranked 1 through 149 received promotions; Word was the highest-scoring sergeant who did not. *Id.* When Word took the exam in 2015, he ranked 280th. He was passed over again. *Id.*

Word filed his complaint in early 2018, suing the City of Chicago and three individual defendants who served as senior members of CPD leadership. *Id.* Word alleged that the individual defendants’ “‘wives or paramours’ were CPD sergeants who took the 2015 exam and then received promotions.” *Id.* at 393. He alleged that one of the individual defendants “had early access to the exam and provided test content to the wives and paramours, who formed a clandestine ‘study group’ that cheated their way to passing scores.” *Id.* Word alleged two counts: (1) violations of equal protection and due process under section 1983; and (2) breach of contract. *Id.* The defendants moved to dismiss all counts and the district court granted their motion. *Id.* Word appealed.

On appeal, Word argued that he had a constitutionally protected property interest in a fair lieutenants’ examination; that he was a member of a protected gender class, and established an equal protection claim because he was irrationally treated differently than the “wives and paramours;” and that he had cognizable breach of contract claims. *Id.* at 394-98. The Seventh Circuit found none of his arguments persuasive and affirmed the district court. *Id.* at 394, 398.

Breach of Contract Claim

The court quickly disposed of Word’s breach of contract claim, finding that Word failed to identify any statement that would induce a reasonable belief in Word that the City offered an examination free of cheating, and that Word could bind the City by accepting it. *Id.* at 397. The court also found that Word could not bring a third-party beneficiary claim. *Id.* at 397-98. Word argued that he was a third-party beneficiary of the City and the examination administrator’s contract that prohibited cheating and contained confidentiality requirements. *Id.* In rejecting this argument, the court found that Word could not overcome the strong presumption that the City and the examination administrator intended the contract to apply solely to themselves. *Id.*

Due Process Claim

As to Word’s due process claim, Word argued that he and other test-takers had a constitutionally protected property interest in a fair lieutenants’ examination “free of cheating and rigging.” *Id.* at 394. Word attempted to support this claim by citing to the Illinois Municipal Code’s language that “[n]o person or officer shall . . . willfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, or to be examined, being appointed, employed or promoted.” *Id.* at 394 (citing 65 ILCS § 5/10-1-26).

Word relied on two cases in support of his due process claim that the Seventh Circuit found inapt. First, the Seventh Circuit examined *Mueller v. Board of Fire & Police Commissioners of the Village of Lake Zurich*, 267 Ill. App. 3d 726 (2d Dist. 1994), in which the Illinois Appellate Court Second District held that a village’s process for hiring paramedics was subject to judicial review under the Illinois Administrative Review Law. *Word*, 946 F.3d at 394 (citing *Mueller*, 267 Ill. App. 3d at 734). The Seventh Circuit then examined *Peoria Police Sergeants v. Peoria Board of Fire & Police Commissioners*, 215 Ill. App. 3d 278 (3d Dist. 1991), in which the Illinois Appellate Court held that a city’s promotional procedure violated the Illinois Municipal Code, which required police and fire boards to “provide for promotion in the fire and police departments on the basis of ascertained merit and seniority in service and examination.” *Word*, 946 F.3d at 394 (citing *Peoria Police Sergeants*, 215 Ill. App. 3d at 279, 282).

The Seventh Circuit found that *Mueller* and *Peoria* say nothing about a constitutionally protected property interest. *Id.* at 394. According to the court, although Word argued that cases and statutes need not contain language explicitly declaring a property interest exists, he failed to show why the court should find a property interest in his case. The court observed, “[i]t takes little imagination to foresee the chaos that would result if we began to recognize every act forbidden by law as implying a mirror-image property right to the act’s non-existence.” *Id.*

In rejecting Word’s due process argument, the court noted that existing law already set forth that there are “no protected property interests in either promotion within the police department or a fair examination for such preferment.” *Id.* This rule was established in *Bigby v. City of Chicago*, 766 F.2d 1053 (7th Cir. 1985), in which a group of police sergeants contended that an examination for promotion to lieutenant was arbitrary and capricious, and therefore violated due process. *Bigby*, 766 F.2d at 1057. In *Bigby*, the court held that while a police officer had a property interest in retaining his job, he had no such interest in an unattained higher rank. *Id.* at 1056. Accompanying this conclusion, the court also held that there is “no constitutionally protected property interest in a fair examination for promotion,” as the statute and



ordinance create an expectation examinations and subsequent promotions in the civil service will be fair but that expectation is not so definite as to be “property” in a constitutional sense.” *Word*, 946 F.3d at 395.

Word tried to distinguish himself from the sergeants in *Bigby* on the basis that he did not claim a property interest in the promotion, but in a fair examination for the promotion. But, the court, as it did in *Bigby*, rejected this distinction: “[I]t is not the examination that the applicant is interested in—no one likes taking tests—but the job.” *Id.*

Equal Protection Claim

Word asserted two arguments as to his equal protection claims—that he was arbitrary and irrationally treated (a “class-of-one” theory) and that he is in a protected gender class—both of which the Seventh Circuit rejected. Under a class-of-one theory, an individual plaintiff can bring an equal protection claim against a state actor for “irrational and wholly arbitrary treatment.” *Willowbrook v. Olech*, 528 U.S. 562, 565 (2000). The plaintiff is a “class-of-one” when she alleges that the government is subjecting only her to differing and unique treatment compared to others similarly situated. *Willowbrook*, 528 U.S. at 564.

Rejecting the “class-of-one” claim, the Seventh Circuit cited to *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591 (2008), which held that class-of-one equal protection claims are barred in the public employment context. *Word*, 946 F.3d at 395-96. Rejecting Word’s protected gender class claim, the Seventh Circuit found that any alleged lack of favoritism toward Word was not based on his gender. Under Word’s theory, disadvantaged competitors could be either male or female who had not engaged in romantic relationships with the individual defendants. *Id.* at 396. Therefore, any alleged favoritism was not based on sex discrimination. *Id.*

Conclusion

The message from *Word* is clear: to have a constitutionally protected property interest in a benefit, a person must have more than an abstract need or desire or unilateral expectation. She must, instead, have a legitimate claim of entitlement to it.

About the Author

Keith B. Hill is a partner in the Edwardsville office of *Heyl, Royster, Voelker & Allen, P.C.* He has extensive experience advising governmental entity clients with respect to state and federal civil rights law as well as litigating claims brought under state and federal constitutions and other civil rights statutes. Mr. Hill has defended civil rights claims filed by detainees and inmates against correctional health care professionals, sheriffs, correctional officers, and police officers.

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