

Civil Rights Update

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A Rebate Ordinance Does Not Create a Protected Property Interest

In *Bell v. City of Country Club Hills*, 841 F.3d 713 (7th Cir. 2016), the plaintiff claimed the City of Country Club Hills deprived her of her constitutional rights and violated 42 U.S.C. § 1983 when it repealed an ordinance that provided a 25 percent tax rebate to qualifying homeowners. The District Court, Northern District of Illinois, granted the defendant's Federal Rule of Civil Procedure 12(b)(6) motion to dismiss holding that the tax rebate ordinance did not confer a vested property right upon the plaintiff.

The City of County Club Hills City Council (City) adopted an ordinance that provided a 25 percent tax rebate of 2010 city property taxes paid in 2011 to homeowners who completed an application that the clerk approved. *Bell*, 841 F.3d at 715. The City had offered this program for a number of years prior to 2012. *Id.* The application for the rebate stated that filing the application did not guarantee that the City would approve it.

The plaintiff filed her lawsuit in May of 2015 claiming, pursuant to section 1983, that the city's refusal to issue rebates constituted a taking in violation of the Fifth and Fourteenth Amendments of the United States Constitution as well as article 1, section 15 of the Illinois Constitution. The court reviewed the taking clause of the Fifth Amendment that was made applicable to the states through the Fourteenth Amendment.

The City prepared the rebate checks, but never distributed them. *Id.* at 716. The plaintiff, Leora Bell, filed her section 1983 complaint in May of 2015 alleging that the city's refusal to disburse the tax rebates was a taking in violation of the Fifth and Fourteenth Amendments of the United States Constitution. *Id.* at 716. While the Fifth Amendment prohibits the taking of private property without just compensation, the Fourteenth Amendment guarantees that property will not be taken without due process of law. *Id.* at 717. Plaintiff also alleged the City violated article 1, section 15 of the Illinois Constitution. The district court dismissed her complaint under Rule 12(b)(6). *Id.* The Court of Appeals, Seventh Circuit's review was *de novo* accepting all well-pleaded facts as true. *Id.*

The plaintiff contended that the City's failure to issue the rebates was a taking without due process of law. *Id.* The court noted that in any case where deprivation of property without due process is alleged, the first question is whether a protected property interest actually exists. *Id.* The Seventh Circuit further articulated the standard that for a property interest in a benefit to exist, the person has to have more than an abstract need or a desire for it, more than a unilateral expectation of it, the person must have a legitimate claim of entitlement to it. *Id.*

Plaintiff's principal claim was that her property interest in the rebate derived from the April 2012 ordinance and that the rebate was a vested right under Illinois law and the City could not use subsequent legislation to deny homeowners the rebates. *Id.* The court rejected plaintiff's argument that she had a vested property right under the Fourteenth Amendment citing *Eitel v. Lindheimer*, 371 Ill. 367 (1939). *Bell*, 841 F.3d at 718. The principle from *Lindheimer* is that when a right is derived from a remedial statute, the right is not vested and the legislature may repeal or amend the statute. *Id.* at 718-19. In *Lindheimer*, the court held that a plaintiff did not have a vested right in a rebate because they could not show more than a mere expectation of based upon anticipated continuance of existing law. *Id.* As such, the legislature

had the right to repeal the statute because there is no vested right in public law, which is not akin to a private grant. *Id.* The court found the *Lindheimer* case to be very similar to that of *Leora Bell*. *Id.*

In *Bell*, the plaintiff failed to raise any meaningful distinctions between the April 2012 ordinance and the statute in *Lindheimer*. *Id.* at 719. The April 2012 ordinance was a remedial statute and did not confer a vested right upon the plaintiff. *Id.* at 719. Thus, she did not have a protected property interest in the rebate. *Id.* The City, therefore, acted within its scope of legal authority in repealing the ordinance. *Id.* The ordinance itself demonstrated that the city explicitly retained, repealed or amended the statute. *Id.* at 720. The plaintiff argued that the rebate program was a private grant because it was directed toward a specific group of individuals “all eligible homeowners,” not the general public. *Id.* at 719. The court rejected this theory because it was not supported by either case law or statute. *Id.*

The Seventh Circuit’s opinion addressed the nature of ordinances and statutes that apply to citizens. The court noted that because a citizen’s obligation to pay taxes arises from a statute, any refund offered by the legislature is of statutory origin. *Id.* at 718. The plaintiff did not have a vested right in the rebate because she could not establish anything more than a mere expectation based on her anticipation of continuance of the existing ordinance. *Id.* The court held that there is no vested right in public law, which is not in the nature of a private grant. *Id.* at 720. The guiding principal from *Lindheimer* is that the legislature had ongoing authority to repeal or amend the ordinance. *Id.*

The *Lindheimer* court described the tenuous relationship between property owners and property tax rebates. That relationship is about mere expectations rather than vested rights. *Id.* The rebate program, as noted by the lower court, was a discretionary measure by the city that it was free to nullify under Illinois law. *Id.* No state law or ordinance guaranteed plaintiff entitlement to the rebate. *Id.* at 720. Plaintiff had no constitutional protected property interest in the rebate and could not state a claim for unconstitutional taking. *Id.*

This case provides an excellent review of state and federal property interest law. *Bell* demonstrates that a plaintiff must show more than a mere expectation of a benefit based upon anticipated continuance of the existing law. The municipal ordinance was a remedial statute incapable of conferring vested rights, and a program such as the rebate program in this case, was a discretionary measure and the municipality was free to nullify it. It was immaterial that the rebate program existed for many years. The court concluded its analysis with a finding that the rebate program is the type of “unilateral expectation” that does not rise to the level of a property interest and plaintiff had no constitutionally protected property interest in the rebate and cannot state a claim for an unconstitutional taking under 42 U.S.C. § 1983. *Id.* Instead, the plaintiff’s only recourse was to file a state law claim in state court. *Id.*

About the Author

Bradford B. Ingram is a partner with *Heyl, Royster, Voelker & Allen, P.C.* His practice concentrates on the defense of civil rights and municipal entities and the defense of employers in all types of discrimination claims. He is a frequent speaker before local and national bar associations and industry groups.

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