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

MARK GLENNON, Plaintiff, v. BRANDON JOHNSON, in his official capacity as Mayor of Chicago; MELISSA CONYEARS-ERVIN, in her official capacity as Chicago City Treasurer; CITY OF CHICAGO; CHARLES SCHMADEKE, SEAN BRANNON, STEPHAN FERRARA, and DIONNE HAYDEN, in their official capacity as Chairman and Members of the Illinois Gaming Board; BALLY'S CHICAGO INC.; BALLY'S CHICAGO OPERATING COMPANY, LLC; and BALLY'S CORPORATION, Defendants.	)	No. 25-cv-1057 Hon. Franklin U. Valderrama

CITY DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER

Defendants City of Chicago, Mayor Brandon Johnson, and Treasurer Melissa Conyears-Ervin ("City Defendants"),[1] by and through their undersigned counsel, respectfully submit this response in opposition to Plaintiff's motion for a temporary restraining order ("TRO"). Plaintiff seeks to enjoin the closing of an Initial Public Offering ("IPO") by Bally's Chicago, Inc. of stock in Bally's Chicago Casino and Resort. Plaintiff alleges that, as a white male, he was excluded from participating in the IPO based on his race and gender. He bases his request for a TRO on alleged Fourteenth Amendment violations, brought under 42 U.S.C. § 1983. Pl.'s Mem. in Supp. of Mot. for Preliminary Injunction and TRO ("Pl. Mem.") 6-12.

[1] City Defendants treat Plaintiff's Complaint as against the City. Mayor Johnson and Treasurer Conyears-Ervin are sued in their official capacities, and it is clear that "an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985).

Plaintiff's request for injunctive relief should be denied. For the reasons explained in the opposition brief filed by Defendant Bally's Chicago, Inc. (together with Bally's Chicago Operating Company, LLC, and Bally's Corporation, the "Bally's Defendants"), Plaintiff fails to carry his burden on any of the required elements for a TRO: He does not demonstrate a likelihood of success on the merits, nor does he show that he will suffer irreparable harm if the IPO proceeds. Further, the harm to Defendants and the public if the IPO were enjoined far outweighs any possible harm to Plaintiff if a TRO is denied. City Defendants write separately to further explain that Plaintiff fails to base his request for injunctive relief on any valid section 1983 claim against City Defendants—or against any Defendant, and that the City Defendants are not proper parties for such relief in any event.

BACKGROUND

The Illinois Gambling Act, 230 ILCS 10/1 et seq., authorized the City to issue a single casino license for an integrated casino resort within the City. 230 ILCS 10/7(e-5)(1); Pl. Mem. 2. The Act requires casino license applicants to provide "evidence the applicant used its best efforts to reach a goal of 25% ownership representation by minority persons and 5% ownership representation by women." 230 ILCS 10/6(a-5)(9); Pl. Mem. 7. In 2021, the City solicited proposals from private developers to build and operate a casino. Pl. Mem. 2. Bally's Corporation was chosen as the developer with the winning proposal in the summer of 2022. *Id.*

Bally's Chicago Operating Company, LLC then negotiated a Host Community Agreement ("HCA") with the City. *See* Pl. Mem. Ex. B. The HCA was reviewed and approved by a special committee of aldermen and the full Chicago City Council. Compl. ¶ 19. To satisfy the Illinois Gambling Act's minority and women ownership provision, the HCA included a requirement of 25% minority ownership in the casino project, with minority being defined as

including women. Pl. Mem. Ex. B, § 4.4(m); *id.*, Ex. A-9 thereto. The HCA was executed on June 9, 2022.[2]

To fulfill its obligations under the HCA, Bally's Chicago, Inc. structured an IPO that made a percentage of stock in Bally's Chicago Casino and Resort available to "qualified investors," defined as women and minorities (as defined in Municipal Code of Chicago, Ill., § 2-92-670(n)). Compl. ¶¶ 3, 29; Pl. Mem. Ex. B at 8. Indications of interest were accepted in January 2025, and the IPO is scheduled to close on February 7, 2025. Pl. Mem. 12.

Plaintiff alleges that, as a white male, he was ineligible to participate in the IPO because he did not meet the criteria to be a qualified investor. Compl. ¶¶ 4, 32. His three-count Complaint claims that City Defendants, Bally's Defendants, and the Illinois Gaming Board discriminated against him based on race and sex. Count I alleges, pursuant to 42 U.S.C. § 1983, that Defendants violated the Fourteenth Amendment's Equal Protection Clause by imposing racial restrictions on stock ownership in the casino. Compl. 8-11. Count II alleges that defendants violated the Equal Protection Clause by imposing similar restrictions based on sex. *Id.* at 12-13. Count III alleges that the IPO restrictions violated 42 U.S.C. § 1982, which states that "all U.S. citizens shall have the same right . . . as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property." *Id.* at 13-14. Plaintiff now moves for a TRO based on his Fourteenth Amendment claims in Counts I and II.[3] He asks the Court to enjoin the IPO from closing.

[2] The HCA is publicly available at https://www.chicago.gov/content/dam/city/sites/chicago-casino/pdfs/Ballys-June-9-2022-HCA-Fully-Executed-with-Exhibits.pdf

[3] Count III does not include a request for injunctive relief. *Compare* Compl. ¶¶ 49, 59 *with* Compl. ¶ 65.

LEGAL STANDARD

"The standards for granting a temporary restraining order and preliminary injunction are the same." *USA-Halal Chamber of Commerce, Inc. v. Best Choice Meats, Inc.*, 402 F. Supp. 3d 427, 433 n.5 (N.D. Ill. 2019) (collecting cases). A preliminary injunction is "never awarded as of right," *Munaf v. Geren*, 553 U.S. 674, 690 (2008), and "is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion," *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quotations omitted). More specifically, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). On the merits, an applicant must make a showing of how it "proposes to prove the key elements of its case." *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 763 (7th Cir. 2020). "[A] possibility of success is not enough. Neither is a 'better than negligible' chance." *Id.* at 762. Movants must also demonstrate clearly, with specific factual allegations, that they will suffer immediate and irreparable injury absent the order. *See, e.g.*, *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983).

ARGUMENT

I. City Defendants Are Not Proper Parties For Injunctive Relief.

As a threshold matter, the injunctive relief Plaintiff seeks may not lie against City Defendants. Plaintiff seeks an order preventing the IPO from closing. Pl. Mem. 15. "A proper party for injunctive relief is the person who 'would be responsible for ensuring that any injunctive relief is carried out.'" *Werner v. Hacker*, No. 3:21-CV-1431, 2022 WL 1154660, at *2 (S.D. Ill. Apr. 19, 2022) (quoting *Gonzalez v. Feinerman*, 663 F.3d 311, 315 (7th Cir. 2011)). But

the City is not conducting the IPO, and thus City Defendants are not the parties who could stop the IPO or implement the injunction requested here.

II. Plaintiff Fails To Show A Likelihood Of Success On The Merits Of His Section 1983 Claims.

Not only are City Defendants improper parties for injunctive relief, Plaintiff fails to make the necessary showing of a likelihood of success on his claims against them. *See Ill. Republican Party*, 973 F.3d at 762. Plaintiff's request for injunctive relief is based only on his Fourteenth Amendment claims, which he asserts under section 1983, and so he must satisfy the requirements for a section 1983 claim. One of those requirements is that a government policy caused the deprivation of Plaintiff's rights. But as explained below, the event allegedly causing Plaintiff's injury here—the IPO—was not issued by the City. Indeed, the issuance of the IPO was not state action at all, and so it cannot support a section 1983 claim. And to the extent Plaintiff purports to challenge the HCA, any attack on that agreement is time-barred, as it was executed in June 2022, over two and a half years before Plaintiff filed his lawsuit. Thus, Plaintiff fails to demonstrate that he can prevail on any section 1983 claim—against City Defendants, or any other defendant.

A. The IPO is not a City policy that could subject City Defendants to section 1983 liability.

To begin, because the IPO is not a City policy, it cannot be the basis for a section 1983 claim against City Defendants. A municipality is liable for a constitutional violation only if a municipal policy caused the violation. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978). As the Seventh Circuit has explained, "local governments are responsible only for 'their *own* illegal acts'; they are not responsible for *others'* acts falling outside an official local-government policy." *Burger v. Cty. of Macon*, 942 F.3d 372, 373 (7th Cir. 2019) (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479 (1986)); *see also Leahy v. Bd. of Trs. of Cmty. Coll. Dist. No. 508.*, 912 F.2d 917, 922 (7th Cir. 1990) (affirming dismissal of

section 1983 claim because plaintiff failed to allege "the requisite causal connection between [a municipal] policy and the constitutional injuries complained of"). And "*Monell*'s holding applies to § 1983 claims against municipalities for prospective relief as well as to claims for damages," *Los Angeles Cty. v. Humphries*, 562 U.S. 29, 34 (2010), so Plaintiff must satisfy its requirements to be entitled to a TRO.

The IPO is not a City policy. The IPO is being offered and administered by Bally's Chicago, Inc., *see* Compl. ¶ 29, a private actor. While Plaintiff attempts to paint the IPO as a City policy by conflating the IPO with the HCA, *e.g.*, Pl. Mem. 6, those are two different things. The HCA contains a provision setting a 25% minority ownership commitment by Bally's Chicago, Inc., but it does not reference an IPO—much less this particular IPO—as the means by which to achieve it. It states that the "Developer commits that 25% of the Project equity will be owned by Minority individuals and Minority-Owned and Controlled Businesses no later than twelve months following commencement of the Term or such later date as may be determined by the City, and will continue for no less than five years thereafter." Pl. Mem. Ex. B, Ex. A-9 thereto. It does not require that this ownership arrangement be accomplished via an IPO. Thus, even on Plaintiff's view that the IPO violated his rights, that cannot support a section 1983 claim against City Defendants because the IPO is not a City policy.

B. Bally's is not a state actor suable under section 1983.

Plaintiff cannot bring his Fourteenth Amendment claims under section 1983 for a second reason: the event that he claims harmed him—the issuance of the IPO—was not state action. Section 1983 is triggered only by government action; it does not apply to purely private conduct. *See West v. Atkins*, 487 U.S. 42, 48 (1988) ("To state a claim under § 1983, a plaintiff must . . . show that the alleged deprivation was committed by a person acting under color of state law."). But Bally's Chicago, Inc. is a private entity, and its conduct in issuing the IPO is not state action.

A private entity can qualify as a state actor "in a few limited circumstances," including: (1) when the private entity performs a traditional, exclusive public function; (2) when the government compels the private entity to take a particular action; or (3) when the government acts jointly with the private entity. *See Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019). But Plaintiff does not demonstrate that any of these circumstances exist with respect to Bally's Chicago, Inc.'s issuance of the IPO.

First, Plaintiff does not argue that Bally's Chicago, Inc. is performing a traditional, exclusive public function. Indeed, this is a limited category and does not apply here. "[I]t is not enough that the function serves the public good or the public interest in some way. Rather, to qualify as a traditional, exclusive public function . . . , the government must have traditionally and exclusively performed the function." *Id.* Issuing an IPO for stock ownership in a casino is not a traditional public function. And the fact that a private enterprise operates within a highly regulated environment, like the casino industry, does not transform its actions into state action. *See, e.g.*, *Rendell-Baker v. Kohn*, 457 U.S. 830, 841 (1982) (nonprofit's receipt of nearly all its income from the government did not make its discharge decisions state actions).

Second, Plaintiff fails to show that Bally's Chicago, Inc. was compelled by City Defendants to take a particular action. Plaintiff makes only a conclusory argument to this effect, that "[t]hrough the Agreement imposed by the City, Bally's is being compelled by the government to discriminate to fulfill the government's discriminatory policy goals." *See* Pl. Mem. 7. But while the HCA sets a 25 percent minority ownership commitment, Plaintiff points to nothing in the HCA that "compelled" Bally's to issue the IPO, so as to transform the IPO into an act of the government.

Third, Plaintiff does not show that the City and Bally's acted jointly in issuing the IPO. Plaintiff argues that Bally's "actions are inextricably intertwined with those government policies," Pl. Mem. 7, but that too is just a conclusory statement. Plaintiff does not point to any assistance from the City with respect to issuing the IPO such that the City should be deemed to be a joint actor in the IPO offering. To the contrary, Plaintiff alleges that Bally's registered the IPO. Compl. ¶ 29.

Plaintiff, as the party seeking a preliminary injunction, bears the burden of showing that one is warranted, *Finch v. Treto*, 82 F.4th 572, 578 (7th Cir. 2023), which includes demonstrating why Bally's Chicago, Inc. should be considered a state actor, rather than a private entity. He fails to make that showing. Bally's Chicago, Inc.'s action in issuing the IPO is not state action, and it does not support Plaintiff's Fourteenth Amendment claims, nor Plaintiff's request for a TRO.

C. Any challenge to the HCA is time-barred.

The HCA, a publicly available document, was executed on June 9, 2022. And as Bally's Chicago, Inc. explains, the HCA was well-publicized. "This circuit has consistently held that the appropriate statute of limitations for § 1983 cases filed in Illinois is two years." *Ashafa v. City of Chicago*, 146 F.3d 459, 461 (7th Cir. 1998). To the extent Plaintiff purports to challenge the minority ownership provision in the HCA, Plaintiff's action was filed on January 30, 2025, *see* Dkt. 1, more than two and a half years after the execution of the HCA, and any challenge to that agreement is time-barred.

For these reasons, Plaintiff fails to show any likelihood of success on the merits of his claims against City Defendants, nor any likelihood of success on the merits of his section 1983 claims against any Defendant.

III. Plaintiff Fails To Establish The Other Requisite Factors For Injunctive Relief.

As explained by Bally's Chicago, Inc., Plaintiff fails to make a clear showing that he has satisfied the other elements necessary to justify the extraordinary remedy of a TRO. Most obviously, where money damages will make a party whole, injunctive relief is inappropriate, because the plaintiff cannot show irreparable harm. *See Orr v. Shicker*, 953 F.3d 490, 502 (7th Cir. 2020) (defining "irreparable harm" as harm "for which money compensation is inadequate"). Plaintiff provides no reason why the investment avenue afforded by the IPO is anything but a financial opportunity, fungible with any other potential way he might earn money. Thus, damages would suffice to make him whole. The TRO may be denied on that basis alone.

CONCLUSION

For the foregoing reasons, City Defendants respectfully request that the Court deny Plaintiff's motion for a TRO.

Date: February 4, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ellen McLaughlin, an attorney, hereby certify that on February 4, 2025, I caused a copy of the foregoing **City Defendants' Response in Opposition to Plaintiff's Motion for a Temporary Restraining Order** to be electronically filed with the Clerk of the United States District Court for the Northern District of Illinois using the CM/ECF system, which will send notifications of such filing to all parties that have appeared in this action.

/s/ Ellen W. McLaughlin
Chief Assistant Corporation Counsel