IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BRIGHTON PARK NEIGHBORHOOD COUNCIL, LOGAN SQUARE NEIGHBORHOOD ASSOCIATION, and SOUTH SUBURBAN HOUSING CENTER,

Plaintiffs,

v.

JOSEPH BERRIOS, in his official capacity as the Cook County Assessor; and COUNTY OF COOK, a body politic and corporate,

Defendants.

No. 17 CH 16453
Judge Celia Gamrath
Calendar 6

MEMORANDUM OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT

This matter came to be heard on Defendants Joseph Berrios and the County of Cook's motion to dismiss Brighton Park Neighborhood Council, Logan Square Neighborhood Association, and South Suburban Housing Center's (collectively "Plaintiffs") First Amended Complaint for Injunctive and Other Relief ("Complaint") pursuant to 735 ILCS 5/2-619.1.

Plaintiffs' Complaint is premised on the notion that the Cook County property tax assessment system is more variable and regressive in certain neighborhoods and has a discriminatory impact on property owners in majority-Hispanic and African-American neighborhoods. They seek, among other relief, an injunction requiring Defendants to adopt and implement improved and more transparent valuation methods.

For the following reasons, Defendants' motion to dismiss Plaintiffs' Complaint is denied as to Counts I, V, and VI, and granted as to Counts II, III, and IV.

Section 2-619.1 Motion

A motion with respect to pleadings under Section 2-615 and a motion for involuntary dismissal under Section 2-619 may be filed together as a single motion under 735 ILCS 5/2-619.1. A Section 2-615 motion to dismiss challenges the legal sufficiency of a pleading based on defects apparent on its face. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 364 (2004). In reviewing the sufficiency of the pleading, the court accepts as true all well-pleaded facts and reasonable inferences that may be drawn from those facts. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96-97 (2004). The court construes the allegations in the pleading in the light most favorable to the plaintiff. *King v. First Capital Fin. Servs. Corp.*, 215 Ill. 2d 1, 11-12 (2005).

A Section 2-619 motion to dismiss admits the legal sufficiency of all well-pled facts in a complaint, but raises defects, defenses, or other affirmative matter that avoid the legal effect of plaintiff's claim. *Advocate Health & Hosp. Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (1st Dist. 2004). Section 2-619(a)(9) permits involuntary dismissal where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9). Lack of standing is such affirmative matter. *Chicago Title & Trust Co. v. Weiss,* 238 Ill.App.3d 921, 925 (2d Dist. 1992). "Where standing is challenged by way of a motion to dismiss, a court must accept as true all well-pleaded facts in the plaintiff's complaint and all inferences that can be reasonably drawn in the plaintiff's favor." *Int'l Union of Op. Eng. v. Ill. Dept. of Empl. Sec.,* 215 Ill.2d 37, 45 (2005).

Defendants' Motion to Dismiss for Lack of Standing Under Section 2-619(a)(9) is Denied in Part and Granted in Part

Defendants argue Plaintiffs' Complaint should be dismissed under Section 2-619(a)(9) because it is barred by the affirmative matter of Plaintiffs' lack of standing. In Illinois, standing requires a plaintiff to have "some injury in fact to a legally cognizable interest." *Greer v. Illinois*

Housing Development Authority, 122 Ill.2d 462, 492 (1988). The injury must be (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Id.* at 492-93.

Organizational Standing Under Havens

More than 35 years ago, the United States Supreme Court applied the same standing test for individual plaintiffs to organizational plaintiffs, holding that organizational standing requires allegations of "such a personal stake in the outcome of the controversy as to warrant invocation of jurisdiction." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). In *Havens*, a nonprofit fair housing organization (H.O.M.E.) asserted that the discriminatory steering practices of Havens had frustrated its counseling and referral services, thereby draining its resources. The Supreme Court found the drain on resources was a concrete, demonstrable, direct injury sufficient to establish organizational standing. *Id.*

Illinois state courts have not officially adopted the organizational standing rule of *Havens.* However, Illinois commonly looks to federal law as persuasive authority on such matters and tends to be more liberal in its view on standing. *Greer,* 122 Ill.2d at 491.

Cases nationwide, including the 7th Circuit Court of Appeals and the Northern District Court of Illinois have adopted the *Havens* rule on organizational standing, with some courts extending it beyond fair housing organizations to taxicab drivers, immigrant organizations, and medical societies in connection with civil rights claims, violations of state statutes, and housing discrimination. *See Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1526 (7th Cir. 1990); *H.O.P.E., Inc. v. Eden Mgmt. LLC*, 128 F. Supp. 3d 1066, 1077 (N.D. Ill. 2015); *Plotkin v. Ryan*, 1999 U.S. Dist. LEXIS 16214, at *17-18; *Morningside Comty. Org. v. Wayne Cty. Treas.*, No. 16-008807-CH (Cir. Ct. Mich. 2016), *aff'd on other grounds,* 2017 Mich. App. LEXIS 1504

(Unpublished); *Animal Legal Defense Fund v. LT Napa Partners LLC,* 184 Cal.Rptr.3d 759, 766-69 (Cal. Ct. App. 2015); *Georgia Latino Alliance for Human Rts. v. Gov. of Georgia*, 691 F.3d 1250, 1260 (2012); *Nnebe v. Daus,* 644 F.3d 147 (2d Cir. 2011); *Haw. Med. Ass'n v. Haw. Med. Serv. Ass'n, Inc.,* 113 Hawaii 77, 100-04 (2006); *Ragin v. MacKlowe Real Estate Co.*, 6 F.3d 898, 905 (2d Cir. 1993); *H.O.M.E. v. Cincinnati Enquirer, Inc.*, 943 F.2d 644, 646 (6th Cir.1991); *see also Central Austin Neighborhood Ass'n v. City of Chicago*, 2013 IL App (1st) 123041 (opinion does not discuss *Havens* or standing, but court allowed the ACLU and a neighborhood organization to sue under ICRA).

Furthermore, the Illinois Supreme Court has at least acknowledged the idea of organizational standing in *Landmarks Preservation Council v. City of Chicago*, 125 Ill.2d 164 (1988). In *Landmarks*, three landmark/architectural preservation organizations sought to challenge the repeal of an ordinance designating a building as a Chicago landmark. Although the court ultimately denied standing to two of the organizations on the basis they failed to state a legally cognizable interest, the court recognized the potential of such organizations to have standing based on some injury in fact to a legally recognized interest. *Id.* at 175. This suggests in Illinois that organizational standing can exist outside of the fair housing agency context, so long as the organizations properly allege an actual or threatened injury traceable to defendant's conduct.

The question here is whether Plaintiffs have established organizational standing to survive Defendants' motion to dismiss for each count. The court finds, based on established case law, Plaintiffs have established organizational standing to survive Defendants' motion to dismiss under the Illinois Civil Rights Act (Count I) and Fair Housing Act (Count V), both which have exceedingly broad language permitting any aggrieved party to seek redress. However, they lack

standing under the uniformity and equal protection clauses (Counts II, III, and IV). Standing only accords to those who are personally denied uniformity or equal treatment by the challenged discriminatory conduct. As explained below, Plaintiffs do not allege an injury suffered as a direct result of having personally been denied equal treatment or uniformity in their own tax assessments. The court finds their alleged injury concerning diversion of resources too remote and tangential to give rise to standing under these constitutional provisions.

Plaintiffs' Missions and Purposes

Plaintiffs are three neighborhood-based, nonprofit organizations with congruent missions. Brighton Park Neighborhood Council's ("BPNC") mission is to create a safer community, improve the learning environment at public schools, preserve affordable housing, provide a voice for youth, protect immigrant rights, promote gender equality, and end all forms of violence. Logan Square Neighborhood Association's ("LSNA") mission is to convene networks to work together to empower and maintain the communities as diverse, safe, and affordable neighborhoods in which to work and live. Neither BPNC nor LSNA identify specifically as a fair housing agency, but they have been working on economic justice, housing counseling, affordable housing, and foreclosure prevention for years.

The third Plaintiff, South Suburban Housing Center ("SSHC"), does identify as a fair housing agency with a mission designed to eliminate all forms of discrimination in the housing market through the operation of fair housing enforcement and affirmative housing counseling programs. All three Plaintiffs claim direct injury from Assessor Berrios' discriminatory practices as a result of their having to investigate such practices and divert valuable resources of time and money away from their advocacy and counseling services.

Standing Under Counts I and V

Turning to whether Plaintiffs have standing, the court believes SSHC clearly does have standing under *Havens* and based on the allegations pled in Counts I and V. SSHC operates as a fair housing agency in much the same way as the organizational plaintiff did in *Havens.* It similarly claims deflection of time and money sufficed to withstand a motion to dismiss. It also points to the use of grant monies to assist homeowners with property tax arrearages stemming from discriminatory practices.

Likewise, BPNC and LSNA have standing under Counts I and V. Despite not identifying exclusively as housing agencies, both organizations claim the particular kind of direct injury adjudged to be sufficient for establishing organizational standing for purposes of fair housing and civil rights claims. The missions and stated purposes of BPNC and LSNA are to preserve and empower affordable housing and provide advocacy and counseling services in neighborhood communities. Neither organization claims to be one whose primary purpose is to investigate claims of discrimination in housing and regressive tax assessments. Diversion of their resources toward investigation of Assessor Berrios' discriminatory tax assessment practice and advocacy and counseling to combat it is a direct injury to their missions. *Cf. Plotkin*, 1999 U.S. Dist. LEXIS 16214, at *17-19 (BGA denied organizational standing because the direct injury alleged, diversion of resources to the investigation of claims, was the very purpose of the organization and, thus, did not connote injury).

Viewing Paragraphs 15 through 22 of the Complaint in the light most favorable to Plaintiffs, the court finds these paragraphs set forth in detail Plaintiffs' direct economic injury as a result of the Assessor's alleged discriminatory practices and explain how the court could redress it through injunctive or declaratory relief. The harm alleged is more than Plaintiffs' mere

concern with affordable housing and discrimination, but amounts to a concrete injury by the frustration of their organizational missions and diversion of time and money away from their programs and services to investigating and counteracting the discriminatory assessment methods, counseling and assisting homeowners in filing property tax appeals, petitioning Defendants to adopt new assessment methods, and using funds to assist those at risk of foreclosure with property tax arrearages. At least at the pleadings stage, these allegations of injury are sufficient to afford BPNC and LSNA organizational standing as to Counts I and V. This is consistent with the aforementioned cases, which have permitted such claims by neighborhood organizations to stand.

Lack of Standing Under Counts II, III, and IV

In contrast, as to Counts II, III, and IV, the court has found no case in the realm of property taxation that has allowed an organization to sue on its own behalf under the uniformity clause or equal protection clause for a violation of someone else's rights. Plaintiffs have made clear they are suing on their own organizations' behalf – not for their members, not for taxpayers, and not for individual homeowners or a class. They assert organizational standing only, not associational standing. Generally, a plaintiff "must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties." *Powers v. Ohio,* 499 U.S. 400, 410 (1991). This is the challenge Plaintiffs face.

It is undisputed Plaintiffs are not personally subject to the challenged discrimination. They are neither the victims of the alleged non-uniformity in assessments nor the object of an equal protection violation. Plaintiffs' broad reference to unidentified persons affected by the non-uniform assessment methods is not sufficient to confer standing. In virtually all equal protection and uniformity clause cases, standing is given only to those who were personally denied equal

treatment or uniformity of their own taxation. In the context of property tax assessments, this means the taxpayer/property owner asserting their own legal rights and interests, not a third party claiming organizational standing. *See e.g., Nordlinger v. Hahn,* 505 U.S. 1 (1992); *Allegheny Pitts. Coal Co. v. Webster County Comm'n,* 488 U.S. 336 (1989); *Geja's Cafe v. Metro. Pier & Expo. Auth.*, 153 Ill. 2d 239 (1992); *Valley Forge Towers Apts. N. LP v. Upper Merion Area Sch. Dist.*, 640 Pa. 489 (2017); *Elwell v. County of Hennepin,* 301 Minn. 63 (1974) (all involving property owner/taxpayer-plaintiffs, not third-party organizations, who challenged a tax or tax assessment scheme for lack of uniformity or violation of equal protection).

Plaintiffs' claimed injury is not an injury suffered as a direct result of having personally been denied equal treatment or non-uniformity of their own taxation. The line of causation is far too attenuated to support standing without there being a direct violation of Plaintiffs' rights. An overly broad reading of organizational standing, without established case authority, would permit virtually anyone to seek relief for a violation of another's rights to uniformity and equal protection, thus swallowing the rule of standing in property taxation altogether. The court declines the opportunity to expand organizational standing beyond the anomalies of ICRA and the Fair Housing Act in this particular case.

Because Plaintiffs do not allege an injury suffered as a direct result of having personally been denied uniformity or equal treatment in their own taxation, the court finds their alleged injury concerning diversion of resources too remote and tangential to give rise to standing under the equal protection and uniformity clauses. Accordingly, Counts II, III, and IV are dismissed.

Conclusion on Standing

In conclusion, in Illinois, a plaintiff need not plead and prove standing; rather, it is the role of defendant to raise lack of standing by way of a motion to dismiss (*Int'l Union of Op. Eng.*, 215 Ill.2d 37), or to plead and prove lack of standing as an affirmative defense. *Greer*, 122 Ill.2d at 494. As such, Defendants remain free "to utilize normal civil discovery devices" (*id.*) and later move for summary judgment on Counts I and V to demonstrate Plaintiffs, in fact, suffered no direct injury as a result of the alleged discriminatory tax assessment practices under ICRA or the Fair Housing Act, or that the issues raised are not amenable to judicial redress.

The court does not disagree that the allegations in the Complaint about diverted resources are scant in evidentiary specifics, failing to give details about the size of the supposed resource diversion or the exact impact on Plaintiffs' other activities and organizational missions. But for now, taking the well-pleaded facts as true, Defendants have not met the rigorous standard of showing as a matter of law that Plaintiffs lack organizational standing as to Counts I and V. A wide range of plaintiffs are entitled to bring claims under ICRA and the Fair Housing Act, and courts around the country have permitted claims to stand when brought by an organization "aggrieved."

In contrast, when an organization seeks redress for its own injuries suffered from a lack of uniformity or violation of another person's equal protection rights, courts have not expanded the standing net so widely to permit organizational standing in the context of tax assessments. There must be some direct, logical link to the individual discrimination, not merely that an organization has utilized resources to combat the problem on behalf of unnamed third parties. As such, Defendants' motion to dismiss Counts I and V under Section 2-619(a)(9) is denied, but granted as to Counts II, III, and IV.

Defendants' Motion to Dismiss Under Section 2-615 Based on Property Tax Code is Denied

Defendants move to dismiss Plaintiffs' entire Complaint pursuant to Section 2-615 on the grounds equitable relief is unavailable where there is an adequate remedy at law. They contend Plaintiffs' Complaint is really a dressed-up tax objection claim that ought to be brought by individual property owners under the Property Tax Code.

Section 23-5 of the Property Tax Code provides that any person who wishes to object to all or part of a property tax for any reason other than that the property is exempt from taxation, must pay the disputed taxes under protest and file a tax objection complaint. 35 ILCS 200/23-5. The complaint must "specify any objections that the plaintiff may have to the taxes in question," but "no complaint shall be filed as a class action." 35 ILCS 200/23-15(a). "The court, sitting without a jury, shall hear and determine all objections specified to the taxes, assessments, or levies in question." 35 ILCS 200/23-15(b)(1). This is deemed to be "a complete remedy for any claims with respect to those taxes, assessments, or levies, excepting only matters for which an exclusive remedy is provided elsewhere in this Code." 35 ILCS 200/23-15(b)(1).

The problem with Defendants' argument is that Plaintiffs are not taxpayers. Nor are they seeking a refund of taxes, which is the essence of a tax objection complaint under the Code. *See Board of Trustees of Illinois Valley Community College District No. 513 v. Putnam County,* 2014 IL App (3d) 130344, ¶15 ("The only remedy available in a tax objection case is a refund of taxes paid by the objector," citing 35 ILCS 200/23-20). Rather, Plaintiffs seek a declaration that the current tax assessment method violates various constitutional provisions and an injunction requiring greater transparency and a new and improved valuation method.

Although individual taxpayers may be able to raise such claims as a tax objection under the Code, the organizational Plaintiffs have stated repeatedly this is not a tax objection case.

They swear emphatically they are not seeking a refund of taxes for anyone. Their prayer for equitable relief is prospective in nature to seek structural reform. Defendants' attempt to reframe the Complaint as a tax objection is unavailing at this stage of the pleadings.

Case law supports the notion that when a plaintiff does not seek a tax refund or an injunction to enjoin the collection of taxes, equitable relief outside the Property Tax Code is allowed. *See Board of Trustees of Illinois Valley Community College District No. 513,* 2014 IL App (3d) 130344, ¶15; *Dozoretz v. Frost,* 145 Ill.2d 325, 335 (1991); *Hawkins v. Far South CDC, Inc.,* 2013 IL App (1st) 121707, ¶23. Defendants try to avoid this by claiming Plaintiffs' request for damages would necessarily depend upon an examination of each particular property assessed under the Property Tax Code. However, Plaintiffs' only monetary claim for damages is for the diversion of its resources stemming from the alleged discriminatory practices. No monetary damages are sought for the overassessment of neighborhood properties. Accordingly, the Property Tax Code does not appear to provide Plaintiffs with a remedy, let alone an exclusive remedy, that requires dismissal of the Complaint. As Plaintiffs note, were this court to hold an equitable action could not be maintained to challenge a tax assessment method solely because the Code exists, the Assessor could engage in discriminatory tax assessments with impunity.

Finally, the court rejects Defendants' argument that the Complaint lacks specificity insofar as it is based solely on hearsay articles and not specific facts. At oral argument, Plaintiffs' counsel described the particularized efforts they took to construct the two charts on pages 12 and 13 and gather the specific facts pleaded in paragraphs 30 through 52 of the Complaint for the years 2011 through 2015. These allegations ostensibly show the percentage gap and lack of uniformity of the tax rate and tax assessment basis in the same taxing districts.

Illinois law requires Plaintiffs to plead ultimate facts, not evidence. *City of Chicago,* 213 Ill.2d at 369. The court finds they have done so to withstand the motion to dismiss. The supporting evidence and underlying documents are discoverable and will be revealed should this case move forward. If no such evidence exists, the court may deal with it on summary disposition. For these reasons, Defendants' motion to dismiss the entire Complaint under Section 2-615 is denied.

Count I: Violation of the Illinois Civil Rights Act

Turning specifically to Count I, Plaintiffs have sued Defendant Berrios, in his official capacity as Assessor, for a violation of Section 5 of the Illinois Civil Rights Act (ICRA). Section 5 provides:

> (a) No unit of State, county, or local government in Illinois shall:
>
> (1) exclude a person from participation in, deny a person the benefits of, or subject a person to discrimination under any program or activity on the grounds of that person's race, color, national origin, or gender; or
>
> (2) utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender. 740 ILCS 23/5(a).

Under ICRA, "[a]ny party aggrieved by conduct that violates subsection (a) may bring a civil lawsuit, in a federal district court or State circuit court, against the offending unit of government." 740 ILCS 23/5(b). Like the language of the Fair Housing Act, this language is exceedingly broad. It is intended to create a state venue for anyone aggrieved by a governmental policy or practice that has an adverse impact on a protected class. This includes Plaintiffs, who have sufficiently alleged organizational standing by virtue of a direct injury, *i.e,* diversion of time and resources and frustration of their missions, to withstand a motion to dismiss.

Defendants argue Count I should be dismissed under Section 2-615 because the Assessor is not a unit of local government that can be sued under ICRA. The court disagrees. A suit against the Assessor in his official capacity is a suit against the office, not the individual. *Schlicher v. Bd. of Fire & Police Comm'rs,* 363 Ill. App. 3d. 869, 883 (2d Dist. 2006), citing *Ky. v. Graham,* 473 U.S. 159, 167 (1985).

The Illinois Constitution defines "units of local government" as "counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts." Ill. Const. 1970, art. VII, §1. "The Constitution has a two-prong test: (1) an adequate statutory designation; and (2) the exercise of limited governmental powers. Ill. Const. 1970, art. VII, §1." *District 925, Service Employees Int'l Union v. Ill. State Labor Relations Bd.*, 168 Ill. App. 3d 1026, 1030 (1988).

While the Assessor may not stand "on equal footing with the county or the other units of local government specified therein" (*Blanchard v. Berrios,* 2016 IL 120315, ¶41), the Assessor meets the two-prong test. The office of the Assessor is created under the Constitution (Ill. Const. 1970, art. VII, §4(c)) and has an adequate statutory designation under the Property Tax Code. 35 ILCS 200/3-50. The Code limits the Assessor's exercise of governmental powers to the making and prescribing of rules for the assessment of properties. 35 ILCS 200/9-5. The Assessor has final discretionary authority with respect to property tax assessments. His alleged violation of law in setting the criteria or methods of administration constitutes a recognized governmental policy and is sufficient to satisfy the two-prong test to qualify him as a unit of local government. *See District 925, Service Employees Int'l Union*, 168 Ill. App. 3d at 1030 (setting forth the two-prong test for a unit of local government).

The court recognizes the holding in *Thorncreek Apts. III, LLC v. Vill. of Park Forest*, 970 F. Supp. 2d 828 (N.D. Ill. 2013), which stands for the proposition that only the state, counties, and local governments themselves may be sued under ICRA. However, in *Thorncreek,* the Village, which employed the individual defendant-Trustees, was sued along with them, making the naming of them as individual defendants superfluous. Here, Plaintiffs' suit against Assessor Berrios in his official capacity is really a suit against the office, though the office is not named. The office of the Assessor constitutes a unit of local government under the two-prong test above.

Defendants also ask for dismissal of Count I on the grounds Plaintiffs have failed to plead detailed factual allegations to state a claim under ICRA. The court must accept as true all well-pleaded factual allegations contained in the Complaint and draw all permissible inferences in favor of Plaintiffs. *See City of Chicago*, 213 Ill.2d at 369. Plaintiffs are not required to set out evidence; rather, only the ultimate facts to be proved. *Id.*

Plaintiffs' Complaint alleges the Cook County Assessor employs tax assessment methods and practices that disparately assess residential properties in predominantly minority census tracts at higher rates than properties in predominantly white census tracts. It identifies the methods and classifies primarily minority neighborhoods of Brighton Park, Hermosa, Sauk Village, Harvey, and Park Forest as being especially affected by the discriminatory and discretionary valuation practices of the Assessor. The Complaint further alleges the disparate assessments disproportionately shift the cost of government services upon minority and less affluent property owners, which ultimately affects affordability in homeownership and the rental market. Plaintiffs offer in their Complaint statistical data and charts created with underlying documents – documents that must be produced in discovery – sufficient to show the Assessor's practice has caused a disparate effect, subjecting individuals to discrimination because of their

race, color, or national origin, which has resulted in injury to Plaintiffs. Therefore, Plaintiffs have sufficiently pled facts to support a claim under Section (a)(2) of ICRA.

Plaintiffs have not, however, alleged sufficient facts demonstrating the required intentional discrimination under Section (a)(1) of ICRA. Plaintiffs concede their claims are not brought under Section (a)(1), but are brought solely on a disparate impact theory under Section (a)(2). As such, reference to Section (a)(1) in the Complaint is stricken, but Defendants' motion to dismiss Count I, which challenges the criteria or methods of administration of the Assessor under Section (a)(2) of ICRA, is denied.

Count V: Violation of the Fair Housing Act, 42 U.S.C. §§3604-3605

Defendants argue Count V should be dismissed pursuant to Section 2-615 because Plaintiffs fail to state a claim for violation of the Fair Housing Act. The court disagrees. Although Plaintiffs quote Sections 3604 and 3605 in Count V, they clarify in their response brief that they are proceeding only under Section 3604(a), which makes it unlawful "To...make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin." Accordingly, reference in the Complaint to Sections 3604(b) and 3605(a) is stricken.

As Plaintiffs correctly identify, courts have construed the language, "otherwise make unavailable or deny" to encompass "mortgage 'redlining,' insurance redlining, racial steering, exclusionary zoning decisions, and other actions by individuals or governmental units which directly affect the availability of housing to minorities." *Bloch v. Frischholz*, 587 F.3d 771, 777 (7th Cir. 2009). Thus, post-acquisition practices in housing can form the basis for violations under the Fair Housing Act. *Id.*

The Fair Housing Act places limits on policies, including tax assessment policies, which make unavailable or deny a dwelling to racial minorities without proper justification. In support of their claim for unavailability in housing, Plaintiffs allege the Assessor's chronic over-assessment of predominantly minority communities and under-assessment of predominantly white communities place a disproportionate burden on African-American and Hispanic neighborhoods, which affects the affordability of homeownership, the rental market, and the availability of housing. They claim the Assessor's tax assessment policy exacerbates existing patterns of residential segregation and makes housing unavailable in violation of the Fair Housing Act. This, they allege, has resulted in harm to their organizations by diversion of resources, frustration of their missions, and depletion of grant monies.

Ultimately, it is Plaintiffs' burden to prove the over-assessment of properties in predominantly minority communities has, in fact, caused the unavailability of housing, denial of housing, foreclosure, eviction, or unaffordable tax arrearages, putting housing in peril for racial minorities based on race, not mere economic status. Proving this may be difficult. It will be expensive and time consuming, requiring expert witnesses and a comprehensive analysis of specific assessments and property valuations. Nonetheless, Plaintiffs are entitled to the chance to prove it, for the court finds they have stated a cause of action under Section 3604(a) to withstand Defendants' motion to dismiss. *See Coleman v. Seldin*, 181 Misc. 2d 219 (N.Y. Sup. Ct. 1999); *Cmty. Dev., Inc. v. Sarpy Cty. Neb.*, 2016 WL 3748710, at *2-3 (D. Neb. May 26, 2016) (courts found similar challenges to property tax assessment methods stated a claim under Section 3604(a)).

Conclusion

Plaintiffs' Complaint is premised on the belief that the overall property tax assessment system in Cook County is regressive, discriminatory, and must be changed to conform to constitutional standards. Defendants question the court's authority to rule on this case, stating the question is a political one, not a justiciable one. However, "[t]he mere fact that political rights and questions are involved does not create immunity from judicial review." *Central Austin Neighborhood Ass'n,* 2013 IL App (1st) 123041, ¶18, quoting *Donovan v. Holzman,* 8 Ill. 2d 87, 93 (1956).

Defendants are correct that the court cannot tell the Assessor which tax assessment method and practices to employ. The selection of method is a discretionary function of the Assessor. But if Plaintiffs prove their allegations, the court can enforce the legal bounds of the tax assessment method and issue declaratory or injunctive relief to eradicate any unlawful practices.

Finally, the court would be remiss not to mention that the newly elected Assessor Kaegi is supposedly taking steps to change the challenged tax assessment methods. Publicly, Assessor Kaegi has promised more transparency, accountability, and implementation of a property assessment model he believes will fairly assess the value of homes in all neighborhoods. Some of this change will be imminent, some will take time. But this case may become moot if the issues cease to exist and it is clear the challenged practices could not reasonably be expected to recur. *See Forest Pres. Dist. of Kane Cnty v. City of Aurora,* 151 Ill.2d 90, 94 (1992).

The court may issue declaratory judgments only in cases of actual controversy. Thus, by law, if the court cannot grant effectual relief to Plaintiffs, the case is moot. *Green v. Bd. of Mun. Emps. Off. & Off. Annuity & Ben. Fund of Chicago,* 309 Ill.App.3d 757, 763-64 (1st Dist. 1999).

Although the court expresses no opinion on the merits of Plaintiffs' claims, it encourages the parties to work toward a sound resolution in a concerted effort to effectuate the desired change under Assessor Kaegi, who is substituted as a party-Defendant by operation of law. *See* 735 ILCS 5/2-1008(d).

IT IS ORDERED:

1. Defendants' motion to dismiss Counts II, III, and IV is GRANTED under Section 2-619 for lack of standing.
2. The motion to dismiss Counts I, V, and VI is DENIED.
3. Count I is allowed to proceed only on Section (a)(2) of ICRA. Reference to Section (a)(1) is stricken.
4. Count V is allowed to proceed solely on Section 3604(a) of the Fair Housing Act. Reference to Sections 3604(b) and 3605(a) is stricken.
5. Assessor Kaegi shall be substituted as a party-Defendant for Assessor Berrios by operation of law.
6. Defendants shall answer Counts I, V, and VI within 35 days.
7. Status on the pleadings is set for March 18, 2019 at 10:00 AM. Judge Celia Gamrath

ENTERED: FEB 07 2019
Circuit Court - 2031

Judge Celia Gamrath, #2031
Circuit Court of Cook County, Illinois
Chancery Division