

**ENSURING ACCESS TO
FEDERAL COURT: THE
SEVENTH CIRCUIT LIMITS
THE *PARRATT V. TAYLOR*
DOCTRINE**



By Chris Keleher

Abuse of power is a lure some government officials can't resist. When state or local officials succumb to this temptation, one recourse for individuals and businesses directly harmed is a federal procedural due process claim. The Due Process Clause of the Fourteenth Amendment prohibits the government from taking a property interest without first providing notice and an opportunity to be heard. Procedural due process claims arise in a variety of contexts: public sector employment, zoning, licensing schemes, and government assistance, to name a few.

Governments can defeat this broad range of claims via the Supreme Court decision of *Parratt v. Taylor*. The *Parratt* doctrine is implicated if the property interest deprivation stems from the unauthorized act of a rogue government employee, a pre-deprivation hearing is impractical, and an adequate state court remedy exists. In other words, the availability of a state court lawsuit after the property interest deprivation occurs will satisfy federal due process, foreclosing federal jurisdiction.

But applying *Parratt* is tricky. By its own admission, the U.S. Court of Appeals for the Seventh Circuit wavers between narrow and expansive *Parratt* interpretations. Circuit Judge Frank Easterbrook likens the court's approach to a "drunken sailor's path." The most recent example of this tension is *Bradley v. Village of University Park*, which involved a terminated police chief's procedural due process claim. Over a lengthy dissent from Judge Daniel Manion, the majority rejected the Village's *Parratt* invocation and reversed the district court's dismissal. The court declined to hear the case en banc.

This article traces the history of *Parratt* in the Seventh Circuit from the earliest opinions to the court's most recent decision in *Bradley*. While the *Parratt* doctrine



appears arcane at first blush, the stakes are high access to federal courts for individuals and businesses harmed by the government and ultimately, the very viability of 42 U.S.C. § 1983.

The fundamentals of procedural due process

The Fourteenth Amendment to the United States Constitution guarantees that no state shall “deprive any person of life, liberty or property without due process of law.” A procedural due process claim under § 1983 presents two inquiries. The first is whether a protected property interest exists. Where state law gives individuals a benefit and creates a system of nondiscretionary rules for revoking that benefit, there is a property interest. If the plaintiff establishes a property interest, the second inquiry considers the process due. Part of this assessment includes whether the property deprivation involves established state procedures or the random and unauthorized conduct of state actors—the *Parratt* doctrine.

***Parratt* and its progeny**

In *Parratt*, a prison inmate brought a procedural due process claim after correctional employees misplaced his hobby kit. The Supreme Court held this property loss stemmed from a correctional employee’s “random and unauthorized” act rather than an established state procedure. Short of clairvoyance, the government could not foresee the hobby kit would be negligently lost and provide a pre-deprivation hearing. Given this impossibility, a post-deprivation state tort was all federal due process required. Federal court was thus closed.

Three years after *Parratt*, the Supreme Court considered a

deliberate property deprivation in *Hudson v. Palmer*. A jail guard confiscated an inmate's pillowcase during a cell inspection. The court rebuffed the inmate's procedural due process claim, holding that post-deprivation state remedies again sufficed. The court found no distinction between negligent and intentional deprivations of property insofar as the "practicability" of affording pre-deprivation process was concerned. The government could no more anticipate the random and unauthorized intentional conduct of its employees than similar negligent conduct.

The Supreme Court revisited *Parratt* a decade later to consider deprivations of liberty in *Zinermon v. Burch*. State hospital staff admitted the plaintiff for mental health treatment without assessing if he could consent. The state attacked the procedural due process claim by equating the staff's conduct to the jail guards' actions in *Parratt* and *Hudson*. The court disagreed and permitted a federal claim to proceed. The *Zinermon* staff had unlimited discretion as state law authorized it to admit patients without ensuring their competence. Conduct is not

"no state shall "deprive any person of life, liberty or property without due process of law."

random and unauthorized if state actors have the authority to affect the deprivation and the duty to initiate procedural safeguards. Nor is conduct random and unauthorized if it involves an ultimate decision-maker. Finally, the *Zinermon* court cautioned that *Parratt* is restricted

to "special" situations where post-deprivation torts suffice because "they are the only remedies the State could be expected to provide."

As *Zinermon* makes clear, *Parratt* is inherently logical. Providing pre-deprivation relief before an unpredictable act occurs is impossible. Government defendants occasionally seize on this logic and cloak predictable conduct or that of ultimate decision-makers in the garb of random and unauthorized. The following cases demonstrate this approach is meeting increasing resistance in the Seventh Circuit.

Reading *Parratt* narrowly

In three cases culminating in *Bradley*, the Seventh Circuit has contemplated *Parratt's* reach. While the facts of these cases vary, the results do not—defeat for

governmental entities. The other constant is Judge David Hamilton, who authored all three opinions.

"Judge Hamilton rebuked the defendants' *Parratt* reliance as "profoundly mistaken"

The opening salvo is *Armstrong v. Daily*. The plaintiff alleged a federal due process violation for the destruction of evidence in his Wisconsin state criminal case. The defendants countered that the case should be in state court per *Parratt*. Writing for the court and affirming the denial of the defendants' qualified immunity, Judge Hamilton rebuked the defendants' *Parratt* reliance as "profoundly mistaken"

THE NATIONAL ACADEMY OF
DISTINGUISHED NEUTRALS
INDIANA CHAPTER

Check preferred available dates or schedule your appointments online directly with 26 of Indiana's Top-Rated Civil Mediators & Arbitrators

This web service is FREE, funded by our Indiana members

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25		27	28		

www.inmediators.org

because it disregarded *Zinermon*. *Parratt* concerned “a practical problem in a narrow subset of procedural due process cases” where pre-deprivation hearings are “nonsensical.” This was not a case where a pre-deprivation hearing would have been impractical since the plaintiff “was not deprived of his liberty until after he had gone through the most elaborate pre-deprivation procedural protections known to American law: a criminal trial.” *Armstrong* disavowed prior Seventh Circuit cases that read *Parratt* expansively and concluded that simply because state law might provide a remedy for the state’s wrongdoing did not bar a due process claim.

The next stringent interpretation of *Parratt* is *Simpson v. Brown County*. A septic installer was

removed from a list of county-approved installers. An Indiana county ordinance described the process for the approval but not removal of installers. The ordinance simply permitted removal of anyone violating the ordinance. This was its downfall. When the official revoked the plaintiff’s installer license without notice, he “was not acting unpredictably or breaking the rules: he did exactly what the ordinance told him to do.” *Parratt* was thus inapplicable as a pre-deprivation hearing could have occurred and the court revived the suit.

Simpson was followed by *Bradley v. Village of University Park*, with Judge Hamilton again at the helm. In defiance of Illinois law, the mayor and village board terminated the police chief without notice of the reasons for the firing or a pre-

termination hearing. They also refused a post-termination hearing. The district court invoked *Parratt* to dismiss the police chief’s procedural due process claim.

The defendants argued the summary firing—spearheaded by the village’s highest-ranking officials with final policymaking authority—was random and unauthorized. As such, state court was the proper venue. The Seventh Circuit rejected this view because there was no indication *Parratt* intended “to undermine or overrule so much bedrock § 1983 law.” Since official policymaking was incompatible with the concept of random and unauthorized conduct, the *Parratt* defense collapsed.

Judge Hamilton also drew heavily from *Zinermon*. In both *Bradley* and *Zinermon*, state law delegated to



AN INDEPENDENT TRUST COMPANY
 PROVIDING A FULL ARRAY
 OF TRADITIONAL TRUST SERVICES
 FOR THE PROBATE PRACTITIONER
 AND THEIR CLIENTS

HOOSIER TRUST COMPANY

- Estate and Guardian Administration
- Trust Administration and Fiduciary Accounting
 - Investment Management
 - Special Needs Trusts
- Farm and Property Management



Connie S. Allman, President • **George A. Buskirk, Jr., Legal Counsel**
 55 Monument Circle, Suite 800 • Indianapolis, Indiana 46204
 Phone: 317-816-4288 • Fax: 317-848-0586 • www.HoosierTrust.com

defendants the authority to affect the deprivation complained of and delegated to them the duty to initiate the procedural safeguards. **Zinermon** thus thwarted the defendants' **Parratt** reliance and the court reversed the district court's dismissal.

A dissenting **Judge Manion** contended that high-ranking officials could commit random and unauthorized acts if they did so "contrary to established state law." This is because whether an act is random and unauthorized is determined from the state's point of view, not the municipality's. Judge Manion concluded that since the defendants' termination ignored state-law procedures, the defendants' acts were random and unauthorized from Illinois' perspective, and **Parratt** precluded § 1983 relief.

While **Bradley, Simpson**, and **Armstrong** are recent, their strict view of **Parratt** is not. The dangers of a robust **Parratt** doctrine were highlighted 30 years ago in **Tavarez v. O'Malley**. County officials in **Tavarez** barred the plaintiffs from their store for weeks after a carbon monoxide leak. The Seventh Circuit reversed the dismissal of the due process claim, finding the plaintiffs deserved a prompt opportunity to reenter. Denouncing the district court's broad **Parratt** reading, the **Tavarez** court warned that if post-deprivation state torts could replace federal causes of action, even a police shooting could be barred from federal court, "provided the killing was a tort under state law." **Tavarez's** concerns about the viability of § 1983 and access to federal courts have been used to refute municipal arguments in **Bradley, Simpson**, and **Armstrong** that the existence of state remedies obviated a federal due process claim.

Predictable and authorized conduct

Tavarez and its progeny notwithstanding, the Seventh Circuit's **Parratt** ledger is not one-sided. Government entities successfully invoke the **Parratt** doctrine in the Seventh Circuit. Most of these municipal victories can be traced to the 1990 en banc opinion in **Easter House v. Felder**. There, an adoption agency claimed state officials stymied its license renewal by refusing a hearing. The court considered whether the officials' failure to grant pre-deprivation relief implicated an established state procedure. The answer turned on the discretion the state gave officials. The en banc opinion acknowledged

"In defiance of Illinois law, the mayor and village board terminated the police chief without notice"

the vacillating view on **Parratt** but ultimately concluded **Zinermon** supported an expansive **Parratt** interpretation. Unlike the staff in **Zinermon**, which had the authority to affect the deprivation, the **Easter House** defendants could not revoke a license without using procedural safeguards. Disregarding these safeguards was neither predictable nor authorized where the state had not bestowed the power to deprive. State court was thus the proper venue.

Easter House is the **Parratt** doctrine's high watermark in the Seventh Circuit. **Armstrong, Simpson**, and **Bradley** pay their respects to **Easter House** but then part ways. For example, Simpson

Continued on page 37

Intellectual Property is Complex.

Team with our attorneys to protect your client's creative and intellectual assets. Focused exclusively on patent, trademark, copyright and trade secret matters, our attorneys support your practice and provide a cost-effective, team approach for your client.



**WOODARD, EMHARDT,
HENRY, REEVES &
WAGNER, LLP**

Make your ideas *untouchable*.®

uspatent.com

111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, IN 46204

317.634.3456

Continued from page 15

emphasized that the *Easter House* officials “conspired to freeze the plaintiff adoption agency’s license renewal” and lied to third parties by stating the plaintiff had no active license. In other words, the extreme misconduct in *Easter House* was absent in *Simpson*. In *Armstrong*, the court cited *Easter House* but in the same breath limited it by noting “the *Parratt* doctrine responded to a practical problem in a narrow subset of procedural due process cases.” Finally, *Bradley* distinguished *Easter House* because it “dealt with state officials, not local governments,” and thus “did not address . . . any question of municipal liability under *Monell*.”

Parratt is limited to special situations

Bradley provides clarity on the *Parratt* doctrine. While other federal circuits have grappled with the doctrine, none have done so to the extent of the Seventh Circuit. Still, guidance from the Supreme Court on how expansively to interpret *Parratt*, along with the interplay between *Parratt* and *Zinermon*, is warranted. But in the meantime, *Bradley’s* strict approach is the law of the circuit.

Bradley reached the correct result. Restricting *Parratt* follows the letter and spirit of not only *Parratt*, but also *Zinermon*. It is *Parratt’s* unique facts, a jail guard negligently losing an inmate’s hobby kit, that molded its narrow holding. Pre-deprivation process was a nonstarter in *Parratt* because of how the property loss occurred. Stated another way, the controlling inquiry is whether the state can provide pre-deprivation process. In situations like *Bradley*, *Armstrong*,

and *Simpson*, pre-deprivation protections are entirely practical and as in *Bradley*, enshrined in state law. Thus, the very catalyst for *Parratt*—the inability to provide pre-deprivation process—was lacking in *Bradley*, *Armstrong*, and *Simpson*.

Easter House, the mainstay of Judge Manion’s dissent in *Bradley*, is difficult to reconcile with this premise. Further, *Easter House* downplays the fact that *Parratt* is not the Supreme Court’s last word on the subject, *Zinermon* is. And the *Zinermon* court read *Parratt* narrowly, rejecting the defendant’s *Parratt* reliance, and expressly confining *Parratt* to “special” situations. It was “absurd” to require the government in *Parratt* to “to do the impossible” and provide pre-deprivation process. In sharp contrast, garden variety public employment dismissals like *Bradley* and county licensing disputes like *Simpson* are tailor-made for pre-deprivation process, rendering *Parratt* inapplicable.

The consequences of an expansive *Parratt* reading are significant. Namely, the gutting of § 1983 as the Seventh Circuit warned in *Tavarez*. In crafting § 1983, Congress intended federal courts to be the primary guarantors of constitutional rights, regardless of other remedies available. Morphing due process claims into state torts could mark the demise of federal enforcement of the due process guarantee. Because federal remedies are essential to further the Civil Rights Act, any expansion of the *Parratt* doctrine warrants scrutiny.

In sum, due process claimants in the Seventh Circuit now have a strong counter to any effort to dismiss.

Bradley, along with *Armstrong* and *Simpson*, have rightly curtailed the *Parratt* doctrine to the rare situations where a pre-deprivation hearing is impractical. And the oft-raised argument by defendants that federal court is barred because state law remedies exist has been discredited. Thus, for individuals and businesses with wrongly deprived property interests, *Bradley* paves the way for federal jurisdiction. 

