NO. 125085

IN THE SUPREME COURT OF ILLINOIS

MATTHEW GORAL, KEVIN BADON, MICHAEL MENDEZ, MILAN STOJKOVIC, DAVID EVANS III, and LASHON SHAFFER, on behalf of themselves and others similarly-situated,	) Petition for Leave to) Appeal from the Illinois,) First Judicial District)) No. 1-18-1646
Plaintiffs-Respondents,	) There Heard on Appeal) From The Circuit Court of
THOMAS J. DART, Sheriff of Cook County; COOK COUNTY, ILLINOIS; THE COOK COUNTY SHERIFF'S MERIT BOARD; and TONI PRECKWINKLE,	) Cook County, County, No.) 17-CH-15546)) The Hon. Sophia H. Hall) Judge Presiding
Defendants-Petitioners.	)

BRIEF OF PLAINTIFFS-RESPONDENTS

ORAL ARGUMENT REQUESTED

/s/ Christopher Cooper
Christopher Cooper, Esq. ARDC #6307550
Law Office of Christopher Cooper, Inc.
105 West Madison Street, Suite 1350
Chicago, Illinois 60602
P: (312) 371-6752
E: cooperlaw3234@gmail.com
Counsel for Plaintiffs-Respondents

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Carolyn Taft Grosboll
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On behalf of Plaintiffs-Respondents Goral, Badon, Mendez and Stojkovic

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POINTS AND AUTHORITIES

NOW COME Plaintiffs-Respondents Goral, Mendez, Stojkovic, and Badon, by counsel, Christopher Cooper, and respond to Defendants'-Petitioners' opening brief. Through counsel, Plaintiffs state as follows:

Nature of Case

Although, the Supreme Court rules do not require Plaintiffs to file a "nature of case statement" the Plaintiffs, namely Goral, Mendez, Stojkovic, and Badon do so, since the Petitioners'-Defendants' description is inaccurate.

The nature of this case involves police officers who were ultimately found innocent for refusing to carry out Mr. Dart's intended campaign of arrests and raid type operations on Christmas Day 2014. Mr. Dart wanted bodies in handcuffs; however, the Plaintiffs' superior, a retired, experienced Chicago Police officer turned Sheriff's supervisor, knew better. He wanted families to feel secure and officers to stay safe by their avoiding large gatherings of families marked with Christmas Day cheer and emotions heightened by love and alcohol. Front and center four police officers (Plaintiffs) assigned to Mr. Dart's fugitive apprehension unit.

Mr. Dart wanted the officers crashing through front doors of Christmas gatherings and wrestling well-meaning grandmothers coming to the aid of grandsons about to be taken to the jailhouse for failure to appear in a traffic case, inter alia, by example. Commonsense dictated that the Plaintiffs "lay low" unless, by example, a "very bad man" [sic] was wanted for a heinous crime.

The Plaintiffs followed instructions of superiors not to make unnecessary arrests on Christmas Day 2014. Mr. Dart sought termination of employment for each officer --for [their] inactivity on Christmas Day 2014. Mr. Dart outrageously reasoned that since there were no arrests, the officers were absent from work. The two detectives who joined Mr. Dart in seeking termination of the brave men in blue, never interviewed the officers' direct supervisor (the retired CPD person, supra.) to find out what the officers had been told (ordered).

The officers, all with stellar records until Mr. Dart sought their termination, were now thrust into an adverse action/discipline experience starting September 16, 2016 (Day 1 of the suspension, see C1379-C1490; C1667-C1776) that lasted nearly three long --very long—(unnecessary) years. This is not an allegory about policemen who failed to exhaust. Nor about the de facto officer doctrine; rather, this is about police officers who were wallowing in stagnation (a holding pattern) because of Thomas Dart's steadfast defiance of the Court in Taylor, infra. These are police officers with families, mortgages, and children who wanted Christmas presents from dad.

Three of the officers ended up financially destitute and one lost his home as a result of Thomas Dart's actions (inclusive of the loftiest degree of sloppy, incompetent investigative work by Cook County Sheriffs' Sgt.

Sullivan and Deputy Chief Stajura).[1] (See C114-C128, the declarations of the officers\Plaintiffs in which they describe financial hardship, inter alia). The source of it all is found in Thomas Dart's public acts of defiance of and against *Taylor v. Dart*, 2016 IL App (1st) 143684. The defiance thrusted the Plaintiffs into the cruelest form of abeyance. Waiting and waiting, and more waiting. The Board members pretended like everything was copacetic. As to many cases, they convened monthly status hearings and managed Discovery processes. In the case of the Plaintiffs, in addition to many status hearings, there was a significant, hours long pre-trial event

[1] Tangential, but worth mention, is the knowledge had by attorneys (like the undersigned) with a bevy of practice experience before the Cook County Sheriff's Merit Board at times when the Board had\has been under Mr. Dart's leadership. Perhaps, as many as fifty percent of the cases brought by the sheriff should have never been brought. By time the administrative trial comes to bear, the Discovery process has showed that the investigation leading to the charges is best described as horridly, raw, and bungling. Countless careers and lives of law enforcement officers ruined by an investigation process with little oversight or accountability of the amateurish investigators, and, in some cases, investigations based on vindictiveness. Wins for police and correctional officers before the Board, although appearing to be more common as of recent, are generally rare.

The members of the Board are appointed by the Sheriff and answerable to the Sheriff. Election records show instances of Board members having donated to Mr. Dart's political campaigns (plural). The lawyers who practice before the Board know too well the rumors as to former Board members removed by Mr. Dart when they voted to acquit too many times. The undersigned recalls one of his cases before the Board in which Mr. Dart's investigator, on the stand, exulted and exalted his investigative skills as to his purported video surveillance of the accused officer. The investigator's target was an average build, bald, white Latino male. The man in the surveillance, engaged in activity, for which Sheriff Dart charged the officer, was a bald Latino man named "Chino" who had little resemblance to the officer. The Board had no choice not to terminate the officer (as Mr. Dart requested) when that evidence came to bear. That case was related to *Roman v. Cook County Sheriff's Merit Board*, Et Al. 17 NE 3d 130 (App. Court, 2014). In Roman, the Appellate Court issued a 155-paragraph opinion which can be interpreted as a scathing, stinging indictment of Mr. Dart's investigation joined with arbitrary and capricious punishments handed down by the Board at Mr. Dart's request. In Roman, the Appellate Court reversed terminations, etc., and returned officers to work, etc.

to capture testimony from an ailing witness. (See transcript of testimony of Morrison, for the purpose of showing that the Plaintiffs availed themselves of the administrative process). Plaintiffs intend to seek leave to supplement the Supreme Court record with the transcript). The tribunal even set trial dates, as to the Plaintiffs, for June 2017 and again for December 2017 when June could not happen. Meanwhile, starting September 16, 2016, Mr. Dart suspended the officers' without pay, then forbade the officers from taking other employment during the pendency of the illegal board proceedings. The men suffered damages when Sheriff Dart intentionally and unnecessarily, subjected the police officers to a prolonged disciplinary process, where he had no authority to start or to maintain a disciplinary process. Recall that Taylor was decided September 23, 2016 and the officers were charged September 16, 2016. By November 2017, the officers had waited long enough, so they filed a lawsuit –the one for which this appeal is the subject.

ARGUMENT

I. The General State of Affairs

Plaintiffs' operable Complaint avers (as do earlier versions) that long before the first Taylor decision (September 23, 2016), Sheriff Dart and his Board members were aware that the Cook County Sheriff's Merit Board ("Board") was illegal, to include that Board members were well aware that their appointments were law violative. (E.g., see C1184-1223; emp., on

C1214-C1220; C963-C968; emp., on C994). There should be no bar to Plaintiffs maintaining a cause of action with such allegations.

Without exhausting "an" administrative process, such claims, as those filed by Plaintiffs, can and could be brought by Cook County Sheriff's deputies not facing discipline as much as the claims could be brought by deputies facing discipline. Acceptance of the former precept and latter precept, enable for recognition that the Defendants' exhaustion and de facto officer doctrine arguments are defeated where the field of possible plaintiffs (with "standing" of course), not shackled with procedural constraints, is quite sizeable, as is the case.

The first Taylor decision was a ubiquitous cue to Defendant Dart that he needed to cease administrative prosecutions. Not a lofty or deleterious undertaking by any circumstance. In the requisite milieu of Loudermill,[2] as of September 23, 2016 (Taylor decision date), Mr. Dart, at a minimum, should have restored salaries for [the] suspended officers (the Plaintiffs included) until he (Mr. Dart) complied with the mandate of Taylor. However, that is not what Defendant Dart did. He continued to prosecute officers, and even brought as many as fifty new cases (to the Board [Cf. C-1281 to C-1288]). The contemptuous conduct causes a reasonable person to ask: *"What is the purpose of having courts instructing and ordering sheriffs, when if you're the Cook County Sheriff, you can do what you want, when you want, and how you want, in the face of a court*

[2] *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

order that says otherwise?" We now know it took Mr. Dart nearly a year and one half to cease with the recalcitrance.

While Mr. Dart was ignoring the mandate of Taylor, the Plaintiffs filed a lawsuit (the instant matter). The officers sought injunctive,[3] declaratory, and mandamus relief joined with averments accusing the Sheriff and his Merit Board members of fraud, inter alia. After all, following Taylor I, supra., and Taylor II,[4] the Chicago area employment law bar (at least those representing sheriffs' deputies) unwittingly delayed in realizing the full extent of illegal appointments on the Board. Thank goodness for freedom of information (FOIA) queries undertaken.

The undersigned attorney (Cooper), with his colleagues (in the furtherance of defending Cook County Sheriff' deputies), sent FOIA request after FOIA request to the Sheriff's Department. What the attorneys (the undersigned included) unearthed was disquieting of the highest degree: Mr. Rosales was not the only illegal board member, but all of them (board members) were illegal with few exceptions. (E.g., C209-230). Suddenly, FOIA results in hand, the Plaintiffs and their attorney (undersigned) realized that the past year [plus] of discovery hearings, etc., and court reporters… had all been theater.

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[3] AT AHEARING BEFORE THE CIRCUIT COURT. BY MR. COOPER: *The Board is void. It is non-existent. It should not be doing anything. The Board should close its doors. Mr. Nally stated on November 21st, so we're going to enter and continue all motions to the 7th of December at 10 a.m.* (6: 19-24) (R 8) THE COURT: Okay. So the relief you are seeking is to what? MR. COOPER: To enjoin the Board from doing anything. The Board is void. (7:1-4) (R 9)

[4] *Taylor* v. *Dart*, 2017 IL App (1st) 143684-B

By this time, October 2017, perhaps more than one thousand (1000) documents were produced in what was then ongoing Discovery… germane to the Plaintiffs. The prosecution and defense of the officers as robust as could be. The undersigned had caused service of more than twenty trial subpoenas (twice, one set for June 2017 and another for December 2017 [C1364, 22:13-24]) many with witness fees included. In this regard, Petitioners' opening brief assertion, that the Plaintiffs declined to use the Merit Board process, is disingenuous.

Erving Goffman's Dramaturgy –life is a play-- having come to life. The undersigned and his clients (none of whom are destined for Hollywood lights) were involuntarily cast in, not one, not two, not three, but multiple Twilight Zonish episodes\status hearings and pre-trial evidentiary hearings in which, on the record, Cook County Sheriff's Merit Board members\hearing officers pretended (C-1962 at 4:2-6), that with Mr. Rosales banished, all was well (as night watchmen once bellowed). We (clients and the undersigned) had no idea, that all of them were illegal (exclamation mark). The unruly storm was not confined to Mr. Rosales.

On notice by the Taylor decision, Sheriff Dart and his Board took no action to fix Board's defects. By example, Attorney Matteo-Harris, the first hearing officer in the Plaintiffs' consolidated Board case, had been appointed to serve approximately two years and one half, not six as required (see 55 ILCS 5/3-7002 and at A142 of Dec 4, 2019 Brief of Appellees Appendix). That made her illegal from the first day she became

the hearing officer in the Plaintiffs' consolidated matter. (C-330; C-574-C-576). The undersigned was taking fees from the Plaintiffs for his delivering legal services --and he and his clients, collectively, naively thought things were moving along nicely and expediently. The undersigned was actively preparing for trial. Looking forward to those Perry Mason moments where he would hope to wow his clients and best his opponent at the impending trial. But much to the absolute chagrin of the Plaintiffs and their counsel (undersigned), there was no trial to be had anytime soon.

The December 2017 trial was yanked days before its start. On December 4, 2017, in open court (Judge Hall presiding), counsel for the Merit Board alerted the court that she had received a text or e-mail on her cell phone. (C-899-C-890). The Board's counsel, a stellar attorney simply acting as a messenger, told the undersigned and Judge Hall that the Plaintiffs' Board cases were removed from the docket (C142; cf. C979; & see R 9:16-20). This was one time when a cellphone in court (by both Cooper and his opponent) was welcome. Sounded splendid, "I thought." Two weeks before Christmas. The undersigned's clients' respective young children chomping at the bit for Christmas morning conveyances. After all, the cases were off the docket. Now the officers must be restored to the payroll --so we thought. Never happened (exclamation mark). Instead, the officers sat unpaid, in more limbo. On December 17, 2017, the new legislation took effect, as well as new board member appointments;

although, the same people were appointed except for one newcomer, Attorney Baltierres. (C949-C951).

The Plaintiffs remained suspended and unpaid; although, no legislation allowed for a suspension and a deprivation of salary (recall 55 ILCS 7002's "30" day limit). On or about January 28, 2018, Sheriff Dart re-charged the Plaintiffs[5] (C-1449-C1490) erroneously and foolishly defining and labeling the new complaints as "amended" although they were otherwise identical to the old complaints, except for the amended inscription (See C1449-C1490; cf. original complaints at C1379-C1490; and, C1667-C1776). The officers remained suspended in an unpaid status until their acquittal in July 2019. (See the four acquittal orders-opinions of Plaintiffs-Respondents Badon, Goral, Mendez and Stojkovic from July 2019 at p.10, https://www.cookcountysheriff.org/merit-board-decisions/).

The amended version of Section 7002, in the first sentence, reads: "the term of office of each member of the Board is *abolished* on the effective date of this amendatory Act of the 100th General Assembly." 55 ILCS 5/3-7002 (emphasis added). By this language, the "old" Board's jurisdiction over pending cases, including Plaintiffs' cases, was no more. Mr. Dart knew that fact and this explains why when he filed the old Complaints as new complaints, he filed them as "Amended" Complaints. (See C1449-C1490, copies the amended complaints). There would have

[5] The four cases were consolidated but each retained its own case number.

been no plausible basis for Mr. Dart to have filed "Amended" Complaints if he himself did not believe that the Board lost jurisdiction over the original cases after the December amendments.

Although, the Board backdated its July 10, 2019 acquittal orders two and one-half years to September 16, 2016, reinstating Plaintiffs Goral, Mendez, Stojkovic, and Badon, effective of the 16th day of September, 2016 (see the four acquittal orders-opinions at page 10 of https://www.cookcountysheriff.org/merit-board-decisions/), Sheriff Dart says he owes the Plaintiffs zero dollars of back pay, because in his opinion, the Board order does not state that backpay is ordered. (See *Mendez, Et Al. v. Dart, Et Al.*, 2019-CH-9302, Motion to Dismiss at pp. 4-10 (Sep. 16, 2019)). Plaintiffs respond: **"Nonsense."** The Board having backdated to September 16, 2016 obviously shows that back pay and benefits are due.

The 2019 action captioned *Mendez v. Dart*, supra., is an Administrative Review Law (ARL) action. It was filed in the furtherance of an attempt to cause Defendant Dart to abide by the July 2019 Board order (as in, to pay the Plaintiffs' backpay and to provide back benefits). The Sheriff, in its motion to dismiss, filed in the 2019 case, erroneously tells the Circuit Court that the theory for which backpay is sought by Plaintiffs in the 2017 Circuit Court Case (the above captioned) is indistinguishable from the 2019 case. (Id., Motion to Dismiss at page 7, Sep. 16, 2019). Nothing can be further from the truth, state the Plaintiffs.

The Supreme Court is alerted that the prominent theory for which backpay is sought in the 2019 Circuit Court case is that of the "backdate" of the final orders acquitting the officers.[6] As support, Plaintiffs cite to *Thaxton v. Walton*, 106 Ill.2d 513, 519 (1985) which evinces that Plaintiffs are entitled to back pay. (Id. at 514-519). The Thaxton Court having written in part:

> *Accordingly, we hold that plaintiff is entitled to recover full compensation, as defined in the Personnel Code (Ill. Rev. Stat. 1983, ch. 127, par. 63b111b), from July 23, 1981, the date he was illegally removed from his position, and we remand the cause to the circuit court for further proceedings consistent with this opinion. (Thaxton, 519)*

The police officers\Plaintiffs never intended to skip "an" administrative process and never did because there is and was not "an" administrative process for which they had to exhaust. Rather, when the cat was out of the bag (post September 23, 2016, Mr. Dart had been disobeying the Taylor decision and thus the Board was illegal…) they filed a lawsuit, --marching straight to court without rest stops. They accused Sheriff Dart and his Board of intentionally, and knowingly (inter alia) subjecting them to a sham process. The sham time period has a label. The undersigned, in the first Complaint, introduced the verbiage and notion of Period I as opposed to what he defined as Period II.

[6] See the four acquittal orders-opinions at page 10 of https://www.cookcountysheriff.org/merit-board-decisions/

Period I, represents the period of time for which prosecutions should have been stopped, because the Board had jurisdiction over no one. Cook County Sheriff's deputies thought to have engaged in wrongdoing could still be "Loudermilled" and stripped of law enforcement powers; however, because the Board was illegal, Mr. Dart was limited to taking an officer's salary for thirty days.[7] And, had all been done "properly" --there would have been zero purpose for the instant lawsuit. The Plaintiffs would have been placed on administrative leave, with pay, on September 16, or 23, 2016. If not leave, then given desk jobs away from the public. (At the latest, paid leave would have commenced and or been restored September 23, 2016, the day Taylor was announced). Let us not forget the period for which their cases were removed from the docket (December 4, 2017 to January 28, 2018), supra.

Consider the following colloquy between the Board and Judge Hall's court, November 17, 2017 at C1364:

> *THE COURT: The concern I have, counsel, is that Exhibit D, which has been properly authenticated by the witness without any objection, is that there are, according to this, multiple trials that have been set beginning December 5 and continuing through December - continuing through January 17. Is it your representation those are not trials but really status dates?*

[7] Pre 2018: 55 ILCS 5/3-7011 (from Ch. 34, par. 3-7011) Sec. 3-7011. Disciplinary measures prescribed by the Board may be taken by the sheriff for the punishment of infractions of the rules and regulations promulgated by the Board. Such disciplinary measures may include suspension of any deputy sheriff in the County Police Department, any full-time deputy sheriff not employed as a county police officer or county corrections officer and any employee in the County Department of Corrections for a reasonable period, not exceeding 30 days, without complying with the provisions of Section 3-7012 hereof. (Source: P.A. 86-962.)

> *MS. STEIN: My representation is that as those dates come up, they have not been conducting any trials and they've notified the parties that, in fact, they've been converted to statuses. (22:13-24). Up until this point what they did in October is that they basically took all the trials that were on the schedule and converted them to statuses as of November 30, and the expectation at the time was in hopes that things would be resolved… (23:1-5).*

Plaintiffs had no duty to exhaust administrative remedies where the Board had been presented with the Taylor decision, but that the Board decided to thumb its nose at the court. Nor was there such a duty where the officers filed suit accusing the Sheriff and Board members of knowingly presenting themselves as legitimate\legal board members. The Board members, many of them well educated lawyers, knew that they were in violation of the law (hence the basis for accusing them of duping police officers… the Plaintiffs included). Following Taylor 1, Mr. Dart is caught with his hands in the cookie jar. What follows is Mr. Dart and Board members continuing with a business as usual mantra, literally, when they knew better. Eerily reminiscent of the 1977 movie Capricorn One, in which astronauts believe they have landed on Mars. Little do they know they are in a west coast desert. NASA officials are hell bent on keeping the astronauts in the dark… literally. The story line is that [the] funding ran low, but rather than cancel the mission, faking had more appeal.

II. The Message of Taylor I to Defendant Dart

The Taylor 1 holding was a ubiquitous sign to Sheriff Dart and his Board members that they needed to stop prosecutions and proceedings and to re-group. September 23, 2016 was Ground Zero, Day 1 for Mr. Dart

to engage the necessary steps to make the Board legal whilst ceasing proceedings and restoring officers to a pay status (receiving pay although, perhaps stripped of law enforcement powers). Instead, knowing that he was in violation of law as were his board members (just as complicit since they had to know they were illegal appointees), it was business as usual. Again, the Board held status hearings almost daily, etc. The Sheriff suspended officers without pay and the Board "accepted" the cases it had no authority to accept and further --and unlawfully, suspended officers from 12am on the completion of thirtieth day. (See 55 ILCS 7011-7012).

The Board members knew they were illegal appointees yet went along with the plan. Mr. Dart knowingly caused the Plaintiffs to be removed from the payroll on September 16, 2016 and to remain off the payroll well into the winter of 2018, as the Board remained illegal (and notwithstanding that the officers stayed in that non paid position until after their late July 2019 acquittals). Defendant Dart heralded that the Board had jurisdiction of the officers' disciplinary matters when the Board did not. If Mr. Dart receives a "pass" for the swath of time September 16 to 22nd, 2016, this would not be a cause for celebration; however, what excuse can Mr. Dart possibly proffer for the period September 23, 2016 to December 17, 2017 (new board established and appointments made; however the Board was still illegal despite the fixes, infra.); December 18, 2017-January 28, 2018 (the latter is the date the officers were charged by way of amended complaints); and for the final stretch of time from January

29, 2018 up to perhaps early March 2018, when Mr. Dart would assert that he [finally] made the Board legal by re-appointing Attorney Mateo-Harris. The appointment fixed the political balance shortcoming. The exact date of the appointment is not known. Discovery, should the case go back to the Circuit Court, will bear out that date.

To provide a bit more information as to the significance of Attorney Mateo-Harris' appointment, consider that following "the" legislation passed into law in December 2017, the Board continued to be improperly constituted. It continued to lack authority to hear and decide Plaintiffs' and similarly-situated cases for at least the following reasons: (a) the Board's jurisdiction and authority continued to be defective as to Plaintiffs' cases because it was invalidly constituted when it received (attempted to accept) the original charges against Plaintiffs on September 16, 2016; (b) the political affiliation requirements of the new Act were not met following the passage of the amendments. The Board had four persons affiliated with the Democratic party/organizations/politicians, and three persons affiliated with the Republican party/organizations/politicians; (c) the Chairperson, James Nally, had served in the position for far longer than the two-year period authorized by the Act's plain language and obvious intent; (d) the Secretary had held his position for longer than the two-year period authorized by the Act's plain language and obvious intent; and, (e) the Board fatally compromised its ability to be fair or to appear fair in Plaintiffs' and similarly-situated officers' cases because it had taken

adversarial positions (e.g., as in repeatedly motioning the circuit court to join in motions with the sheriff and that such motions were granted, see C2322 by example) in lockstep with the Sheriff, to the Plaintiffs and putative class members in this case with no evident reason for it doing so.

As to the latter, it is the only basis not of a procedural ilk. If the Plaintiffs can succeed on this claim, then the re-appointment of Attorney Mateo-Harris did not make the Board legal, germane to anyone who comprises the putative class.

III. The "*De Facto* Officer" Doctrine & Exhaustion Theory are Inapplicable

As the Appellate Court in Goral rightly concluded, *"[o]nce a court decides that a board is illegally constituted, that board can't keep hearing pending cases, much less entertain newly filed ones. To say otherwise would be to say that court decisions mean nothing.*" (Goral at ¶103). For the Supreme Court to give buy-in to Defendants' positions on the issue of the "*de facto* officer" doctrine would be to cause an expansion of the doctrine in such a way that there would be no incentive for a sheriff or an administrative board to get it right or to adhere to a court order. The Appellate Court appropriately defines an end result type of landscape as "*carte blanche* immunity to *continue* violating the law, going forward, and perhaps forever…." (Goral at ¶103).

The Appellate Court properly distinguished the instant matter from Lopez and its progeny (*Lopez v. Dart*, 2018 IL App (1st) 170733). The Court

having written, Plaintiffs "*unquestionably challenge the Board's lawful composition, and thus its authority to act. They clearly fit within the authority exception to the exhaustion requirement.*" (See ¶39 at which the panel cites to *Castaneda v. Ill. Human Rights Comm'n,* 547 NE 2d 437, 132 Ill.2d 304, 308-309 (1989) for support). Officers Goral, Mendez, Badon, and Stojkovic proclaim that nothing in Illinois law dictates that they are barred from a direct, uninterrupted route to court "in advance of the conclusion of administrative proceedings." (See Goral at ¶39 and *Castaneda, supra.).*

The authority exception to the exhaustion requirement applies (Id. at ¶43) because the Plaintiffs' allegations are that the Board had illegally appointed members; that the Board's members were not legal members; and that the Board was illegal and unlawfully constituted. As the Appellate Court concluded, "*these factors call into question the propriety of the Board's composition and authority to act. Such claims cannot be barred by the exhaustion doctrine.*" (Goral at ¶45).

Furthermore, counts IV and V are not banished by the exhaustion doctrine. These counts are Negligent Misrepresentation and common-law fraud claims, which have statutory-authority gravamen as the foundation of each count. (Cf. Goral at ¶55).

IV. Back Pay and Back Benefits Should be Awarded

Mitchem v. Cook County Sheriff's Merit Bd., 196 Ill. App.3d 518, 534 (1st Dist. 1990) is irrelevant for reasons which include a conclusion that

it was overruled by *Walker v. Dart*, 2015 IL App (1st) 140087, ¶ 62 (1st Dist. 2015), as well as *Promisco v. Dart*, 2012 IL App (1st) 112655, ¶ 17 (1st Dist. 2012). Moreover, *Mitchem* was an administrative review action unlike the instant. *Mitchem* is best viewed as a moniker for the past but applicable statutory provision which disallowed the Sheriff from suspending an officer for more than 30 days under the Merit Board Act (*see Mitchem* at 533 and the pre-August 2018 version of 55 ILCS 5/3-7011).

In the instant matter, now before the Supreme Court, when Police Officers Stojkovic, Badon, Mendez, and Goral call the justices' attention to suspensions the officers experienced, the officers want to get across that they suffered a deprivation of pay and benefits for a period\swath of time for which Mr. Dart had zero authority from the conclusion of the thirty (30th) day, at 12:00am, following September 16, 2016 (day one of suspensions) to not pay them or to not provide work benefits. (See Section 7011).

The Plaintiffs' line of reasoning presented herein, bodes with the ideology of the Appellate Court decision in Goral which rightly latches onto the sort of activity having occurred in Period I (e.g., suspended without pay after the 30th day; and, thus illegal suspensions);[8] followed by a

[8] As opposed to Period II, which is distinguishable. It represents a point in time following December 31, 2017 –but not necessarily that date since there were still deficiencies into March 2018— and when the Board become legal).

superlative, meticulous analysis which boils down to a singular, simplistic inquiry: *Did Sheriff Dart have any legal\statutory authority to not (emphasis on not) pay the officers from September 23, 2016 (Taylor decision issuance) to December 31, 2017 (the day before the new board legislation took effect?* (By the preceding passage, the Plaintiffs are not waiving their argument that in 2018, the Board was illegal for a stretch of time and that the Board may have been illegal up until the point of their July 2019 acquittals).

The Petitioners rightly reported to the Supreme Court in their opening brief, that the Plaintiffs were acquitted by the Board, on July 10, 2019, following a trial, in which the undersigned represented the officers. The trial lasted, perhaps, approximately ten days or more (some full days and some partial) stretched between January and March 2019. Let us assume, hypothetically, that the officers had been found guilty. The position that the officers are entitled to back pay for Period 1 would remain unchanged. The Appellate Court in Goral having appropriately written at ¶51: *"The salient point is that the claim for backpay is based, in more ways than one, on the Board's or the Sheriff's statutory authority (or lack thereof) to act, and thus this claim is also excepted from the exhaustion doctrine*." (Id.). Had Sheriff Dart been imbued with lawful authority for the period September 23, 2016 to on or about January 28, 2018, to have deprived the Plaintiffs of back pay ---then, back pay would be a non-issue in the instant matter. (Cf. ¶53 of the Panel's Opinion advocating for this position).

"The Never-Ending Circle of No Relief" is the phrase coined by the undersigned's co-counsel ("co" as in equal in this circumstance), Mr. Casper. In this regard, please note that immediately following the Circuit Court's dismissal of the action, and in response to the Circuit Court's dismissal, Plaintiffs, through the undersigned, did file a "Complaint" with the Board on July 27, 2018 (by e-mail; and, by hard copy on July 31, 2018). The Complaint cited the Circuit Court's opinion that the Plaintiffs must exhaust before the Board.

The Complaint filed with the Board is identical to the Complaint filed in the Circuit Court, except that the caption is changed to that of the Cook County Sheriff's Merit Board, along with other similar changes. After all, the Petitioners successfully argued that the Plaintiffs needed to bring all of its Circuit Court Complaint averments to the Board first (as in exhaustion). Therefore, that is what the Plaintiffs did. Note that in the Complaint filed with the Board, backpay was demanded. Plaintiffs may seek leave to supplement the Supreme Court record with the Complaint. The Board has yet to act on the Complaint, seemingly taking the position that it lacks jurisdiction. Voilà, the Circle of No Relief.

Additionally, Plaintiffs filed two motions to dismiss before the Board. The board did not take action on either of the filings. The Board will not entertain motions to dismiss… (C-2349).

Should the Supreme Court reverse the Appellate Court, law enforcement officers in Illinois, in many instances (not all), may find

themselves prohibited from prosecuting anything against their employer other than Administrative Review Law (ARL) counts. That seems like a problematic landscape.

WHEREFORE, Plaintiffs Goral, Badon, Mendez, and Stojkovic respectfully request that the Supreme Court affirm the Appellate Court decision to include that the back pay and back benefits for Period I are appropriate.

/S/Christopher Cooper, Esq. ARDC #6307550

Law Office of Christopher Cooper, Inc.
105 West Madison Street, Suite 1350
Chicago, Illinois 60602
P: (312) 371-6752
E: cooperlaw3234@gmail.com
Counsel for Plaintiffs-Respondents

On behalf of Plaintiffs-Respondents Goral, Badon, Mendez and Stojkovic

CERTIFICATE OF COMPLIANCE WITH SUPREME COURT RULE 341

The undersigned hereby certifies that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 21 pages.

/S/Christopher Cooper, Esq. ARDC #6307550

Law Office of Christopher Cooper, Inc.
105 West Madison Street, Suite 1350
Chicago, Illinois 60602
P: (312) 371-6752
E: cooperlaw3234@gmail.com
Counsel for Plaintiffs-Respondents

On behalf of Plaintiffs-Respondents Goral, Badon, Mendez and Stojkovic

NO. 125085

IN THE SUPREME COURT OF ILLINOIS

MATTHEW GORAL, KEVIN BADON, MICHAEL MENDEZ, MILAN STOJKOVIC, DAVID EVANS III, and LASHON SHAFFER, on behalf of themselves and others similarly-situated,	) Petition for Leave to) Appeal from the Illinois,) First Judicial District)) No. 1-18-1646
Plaintiffs-Respondents,	) There Heard on Appeal) From The Circuit Court of
THOMAS J. DART, Sheriff of Cook County; COOK COUNTY, ILLINOIS; THE COOK COUNTY SHERIFF'S MERIT BOARD; and TONI PRECKWINKLE,	) Cook County, County, No.) 17-CH-15546)) The Hon. Sophia H. Hall
Defendants-Petitioners.	) Judge Presiding)

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on March 12, 2020, the undersigned caused to be electronically filed to the Clerk of the Supreme Court of Illinois, the attached BRIEF OF PLAINTIFFS-RESPONDENTS.

Respectfully submitted,

/S/Christopher Cooper, Esq. ARDC #6307550
Law Office of Christopher Cooper, Inc.
105 West Madison Street, Suite 1350
Chicago, Illinois 60602
P: (312) 371-6752
E: cooperlaw3234@gmail.com
Counsel for Plaintiffs-Respondents

On behalf of Plaintiffs-Respondents Goral, Badon, Mendez and Stojkovic

CERTIFICATE OF SERVICE

I, Christopher Cooper, Esq., state that a copy of the foregoing Brief and associated documents were served via this Court's electronic filing system, Odyssey E-File, to the attorneys listed below on March 12, 2020. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he verily believes the same to be true.

Respectfully submitted,

/s/ Christopher Cooper, Esq.
Christopher Cooper, Esq. ARDC #6307550
Law Office of Christopher Cooper, Inc.
105 West Madison Street, Suite 1350
Chicago, Illinois 60602
P: (312) 371-6752
E: cooperlaw3234@gmail.com
Counsel for Plaintiffs-Respondents

On behalf of Plaintiffs-Respondents Goral, Badon, Mendez and Stojkovic

SERVICE LIST

Counsel for Sheriff Dart:
SCHARF BANKS MARMOR, LLC
Stephanie Scharf, Esq.
Sarah Marmor, Esq. George Sax, Esq.
333 West Wacker Drive, Suite 450
Chicago, Illinois 60606
sscharf@scharfbanks.com
smarmor@scharfbanks.com
gsax@scharfbanks.com

Counsel for Cook County:
Jay Rahman, Esq.
Cook County State's Attorney's Office
Civil Actions Bureau
50 West Washington Street, Suite 500
Chicago, Illinois 60602
jay.rahman@cookcountyil.gov

Counsel for Cook County Sheriff's Merit Board:
Lyle Henretty, Esq.
Cook County State's Attorney's Office
Conflicts Counsel Unit
69 West Washington Street, Suite 2030
Chicago, Illinois 60602
lyle.henretty@cookcountyil.gov

Counsel for Amicus, Attorney General of Illinois:
Sarah A. Hunger
Deputy Solicitor General
Carson A. Griffis
Assistant Attorney General
100 West Randolph Street, 12 Fl. Chicago, Illinois 60601
CivilAppeals@atg.state.il.us
shunger@atg.state.il.us

Counsel for Amicus, City of Chicago:
Benna Ruth Solomon
Deputy Corporation Counsel
30 N. LaSalle Street, Suite 800
Chicago, Illinois 60602
benna.solomon@cityofchicago.org