In the

United States Court of Appeals

For the Seventh Circuit

No. 20-2396

FKFJ, INC., *et al.*,

Plaintiffs-Appellants,

v.

VILLAGE OF WORTH, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 18 C 2828 — **Jorge Alonso**, *Judge*.

ARGUED APRIL 14, 2021 — DECIDED AUGUST 26, 2021

Before MANION, SCUDDER, and KIRSCH, *Circuit Judges*.

MANION, *Circuit Judge*. Isam Samara and Muwafak Rizek formed FKFJ, Inc.[1] to operate Saraya Restaurant & Banquet and Zaman Café in Worth, Illinois. Mary Werner was Village President at the time, and she decided to run for reelection the

[1] For simplicity, the plaintiffs-appellants are collectively referred to as "FKFJ."

year Saraya opened. FKFJ supported Werner's political opponent in the election.

Around the same time, FKFJ had various disputes with the Village of Worth. Based on these clashes, FKFJ filed this § 1983 action alleging First Amendment, equal protection, and due process violations. The district court granted summary judgment for the defendants. On appeal, FKFJ argues the court erred by ignoring genuine disputes of material fact and by making credibility determinations. While our review of the record reveals various factual disputes, none are genuine and material. We affirm.

I. Background

In June 2016, Samara and Rizek formed FKFJ, Inc., and Saraya Restaurant opened a month later. The restaurant was located at 7011 W. 111th Street in Worth, Illinois. FKFJ leased the property from Samara's brother, Husam,[2] for $6,000 a month. Beside Saraya to the west, at 7013 W. 111th Street, FKFJ operated a hookah lounge called Zaman Café.

Meanwhile, Werner was Village President.[3] Her term was set to expire in April 2017, so she began circulating petitions for reelection in September 2016, a couple months after Saraya opened. That same September, Randy Keller, Werner's political opponent, asked FKFJ to support his campaign for Village President. FKFJ agreed and held campaign events at Saraya

[2] The record contains multiple spellings of Samara's brother's name. We, like the district court, use the one that appears most often.

[3] The titles "Village President" and "Mayor" are interchangeable. *See* 65 Ill. Comp. Stat. 5/3.1-15-10.

from October 2016 through March 2017. Werner eventually beat Keller in the election.

As for the parties' relationship with one another, Samara first met Werner in 2011 but started to interact with her more around January 2013. Until September 2016, Samara and Werner had a business relationship which he described as "always very friendly." Werner and Rizek also knew each other "on a professional level" but were not friends. According to Rizek, Werner became "[v]ery hostile" in January 2017. Rizek described Werner as "very aggressive" with him and Samara. He also stated Werner's attitude changed "[a]s soon as we started supporting Randy Keller."

FKFJ alleges four basic problems with the Village which it argues stem from its political support of Keller.

1. Delayed Parking Lot Project

The area around Saraya and Zaman Café did not have sufficient parking.[4] International Realty owned the 7015 lot, the property next to Zaman Café on its west side. The 7015 lot had a single-family home on it and was residentially zoned.

In August 2016, FKFJ and International entered into an oral agreement to allow FKFJ's customers to park in the space behind the home on the 7015 lot. FKFJ planned to purchase

[4] On brief, FKFJ argues this fact was not asserted by either party. However, Samara directly stated in his deposition that "the whole area on 111th is in desperate need of parking. … there is not enough parking in that whole area." Dkt. 151-1 at 27, lines 14–16. Rizek also stated "parking was always an issue on that street." Dkt. 151-2 at 41, lines 3–4.

the home[5] once the residents moved out (which was set for October 2016) and convert the entire lot into a parking lot. According to FKFJ, Werner encouraged demolition of the home on the 7015 lot in September 2016.[6]

In order to convert the 7015 lot into a parking lot, FKFJ needed to obtain a demolition permit from Cook County. FKFJ also needed a special use permit from the Village of Worth since the property was residentially zoned. That process required FKFJ to apply to the Real Estate Development Board[7] ("REDB") which would make a recommendation to the Village Board of Trustees. The Village Board was to make the ultimate decision on whether to issue the permit.

FKFJ, rather than International, paid for the construction of the parking lot.

a. Demolition permit

In order to obtain the demolition permit, FKFJ separately needed a permit from the Illinois Department of Transportation ("IDOT") to shut off the water and sewer connections because there was a water line across the street on state property that needed to be shut off. By August or September 2016, the Village had not received any paperwork from Cook County or IDOT. By August 2016, Rizek started coming to Village Hall

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[5] According to Rizek, International obtained title to the house after the tenants moved out, but in any event, the agreement between International and FKFJ was to make the entire lot into a parking lot.

[6] FKFJ contests whether the idea to demolish the home was initially Samara's or Werner's. Rizek stated Werner encouraged demolition of the home. Any dispute of fact on this matter is immaterial.

[7] REDB is composed of appointed commissioners who are unpaid volunteers.

more frequently about demolishing the house. He was told he needed to contact Cook County and obtain a demolition permit first, and a permit from IDOT, before the Village could get involved.

In October 2016, FKFJ applied for the demolition permit. Shortly thereafter, Rizek called Lori Zetterberg, who was an independent contractor for International at the time, and told her she needed to handle the permits because he was having issues with the Mayor. According to Zetterberg, "it was no secret that [Rizek] and the mayor did not like each other."

According to Samara, Werner made it difficult to obtain the permit by reaching out to Cook County about the water lines.[8] According to Werner, Rizek caused the delays in obtaining the necessary permit from IDOT. She claimed the Village assisted by contacting IDOT to try to get the permits expedited. The process to get IDOT to mark the water line took ninety days.

In January 2017, Samara noticed Werner's tone toward him changed. She was not as friendly and would talk to him "in a mean way on the phone." Werner complained that the demolition permit application was not complete and FKFJ had not paid all required fees. She also complained to Samara about Rizek.

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[8] Samara's testimony on the matter is vague and fails to specify what Werner did that caused a delay. Rather, his testimony is conclusory, stating that "from [his] perspective," she made the process difficult. Similarly, Rizek testified Werner "made our life a miserable hell, in order to knock the rest of the building down." His vague testimony also fails to delineate any actions Werner took.

In March 2017, FKFJ obtained the necessary demolition permit and the house on the 7015 lot was torn down.

b. Special use permit

In April or May 2017, FKFJ submitted its application for a special use permit, including a check for fees. The first check for fees was for an incorrect amount. A few weeks later, FKFJ submitted a check for the correct amount ($2,500), but the check bounced.[9] In May 2017, FKFJ submitted another check for fees, and it cleared. However, the special use permit application was still incomplete because FKFJ had not submitted a site plan. (The REDB could not hold a hearing without the site plan.)[10]

A separate but related issue concerned FKFJ's need to request a variance. The Village had specific requirements for parking lots (such as the number of feet deep for a parking stall) with which FKFJ could not comply. Although obtaining a variance was separate from the special use permit, the REDB hearing would address everything at once. FKFJ was unsure how to fill out the form for requesting a variance, so Werner assisted in filling out the necessary paperwork.

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[9] On brief, FKFJ argues the check for the fees did not bounce, but it does not point to contrary evidence. *See* Dkt. 151-7 at 138–39.

[10] Additionally, FKFJ complains the Village made the process of getting a special use application difficult for Phillip Riley Architects, the company FKFJ hired to ensure the design of the parking lot complied with the municipal code. But Samara's testimony is entirely speculative. *See* Dkt. 151-1 at 83, lines 6–22 (explaining that when the architect submitted drawings, a trustee would complain and speculating the complaints resulted from Werner pushing him to complain, "or we assume that she did").

In June or July 2017, FKFJ submitted a site plan. After the requisite paperwork had been submitted, the Village required a minimum of 15 days' notice in the newspaper and notice to be posted on the property.

In August 2017, REDB held a hearing in which it expressed concern with FKFJ's site plan. Specifically, REDB was concerned about the depth of the parking spaces, rainwater runoff pouring across the sidewalk, space to make a three-point turn, among other concerns. REDB voted to continue the meeting. At the following meeting in the beginning of September, REDB recommended approval.

In late October or November 2017, the Village Board approved the special use permit. All six trustees voted yes.

2. Ticketing

In March 2017, right after FKFJ demolished the house on the 7015 lot, it filled the lot with gravel. Gravel did not comply with the Worth ordinance on parking-lot construction. According to Rizek, three-fourths of the lot already contained gravel, so FKFJ wanted gravel for the part of the lot where the house had been. The record contains conflicting evidence on FKFJ's initial knowledge gravel was non-compliant with the Worth ordinance. Rizek, on behalf of FKFJ, testified the Village told FKFJ to use gravel. He also stated FKFJ did not know the lot was not in compliance. According to Werner, gravel was first dumped in the parking lot in front of Zaman Café when the Superintendent of Public Works instructed Rizek not to spread the gravel because it is the wrong type of rock per Village ordinance. She stated FKFJ spread the gravel anyway and the Village immediately informed FKFJ the parking lot was illegal and no one could park there.

In any event, assuming FKFJ did not know the gravel was non-compliant when it was spread, it is clear FKFJ eventually found out the parking lot violated the Worth ordinance. The lot also had not received a special use permit. In April 2017, FKFJ blocked off the parking lot with cones, garbage cans, and yellow ribbons to prevent people from parking there, but people started parking there anyway. Worth police officers ticketed the owners of the vehicles directly. The vehicle owners appeared in administrative hearings to dispute the tickets and argued they were valeted to the lot. FKFJ claims (and we accept as true at this juncture) it never valeted anyone to the gravel lot.

At a Village board meeting, Police Chief Mark Micetich learned FKFJ's new parking lot had not received proper permits, but cars were parked there continually. On May 30, 2017, Micetich issued a memorandum instructing other police officers that there was to be no parking in the 7015 lot. The memo directed officers to ticket Saraya, since vehicle owners complained they had not personally parked in the lot. The memo required tickets to be hand-delivered to a Saraya manager. According to Micetich, no one directed the memo. He had issued similar memoranda in the past. Micetich had never issued citations under the municipal code sections used for the tickets to FKFJ to any other business or individuals.

Before May 2017, FKFJ did not have any issues with the Village regarding parking tickets. However over the next few months, dozens of tickets were issued, some of which FKFJ claims were issued for vehicles in the vicinity of the restaurant, not just on the 7015 lot. A police officer would drop the tickets off at Saraya's reception desk.

FKFJ raised the ticketing issue to the Village, stating that people parked their own cars in the lot. Micetich approached Village counsel about the issue. In October 2017, counsel advised Micetich to issue a memo directing police officers to write six tickets for each car on the 7015 lot—three tickets to Saraya and three to the property owner, International. On October 18, 2017, following counsel's advice, Micetich issued an updated memo directing each entity be issued three tickets: one for Saraya not having the required license, one for not complying with the requirements for operation of parking lots, and one for not having a special use permit.[11] FKFJ received hundreds of tickets in total. After the parking lot was completed to code, the tickets stopped being issued.

In December 2017, FKFJ put a fence around the parking lot. The special use permit had been approved by that point, but the parking lot was not completed until July or August of 2018.[12]

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[11] The relevant code sections are § 3-17-2 (requiring a license for maintaining and operating a parking lot), § 3-17-4-C (specifying the requirements for surfaces of parking lots), and § 5-6A-3 (special uses).

[12] FKFJ also complains about this delay. It claims that an asphalter it was working with backed out of asphalting the 7015 lot because the Village was making the project difficult. There is no evidence from which a jury could find the Village actually made the project difficult, though. Samara's deposition testimony states the asphalter felt the process would be "sticky, lengthy, [and] ugly" because a Village official told the asphalter what he needed to do, such as how many feet to dig out. Dkt. 151-1 at 121, lines 1–20. This is not enough for a jury to find the Village made the project difficult.

At a hearing on February 19, 2018, the Village voluntarily dismissed all tickets against Saraya since it was not the owner of the property.

3. Arrest for Bounced Check

On March 30, 2017, Rizek purchased limestone rock from Schroeder Materials to landscape Saraya. The next day, Schroeder attempted to deposit Rizek's check, but it bounced. Schroeder tried again on April 3, 2017, and it bounced a second time.[13] Schroeder contacted Rizek about the bounced check.

On May 17, 2017, Village police investigated the matter. An officer spoke with Schroeder and Rizek to determine what had happened. The record contains factual disputes about what happened next. According to the May 17th police report, Rizek said he would pay Schroeder on May 22, 2017. The officer returned to Schroeder, told the business Rizek would drop off payment on May 22nd, and instructed Schroeder to contact the police if Rizek did not pay on that date. According to Rizek, he had been informed about the bounced check and told Schroeder he would pay after it sent him documentation the check was returned due to insufficient funds. On May 17th, Rizek informed the officer he knew about the bounced check and intended to pay.

Schroeder contacted the Village police sometime before May 23rd because it had not been paid. On May 23rd, Officer Luburich arrested Rizek at Saraya Restaurant for deceptive practices. According to the officer, Rizek offered to pay, so he

[13] The parties dispute the number of times the check bounced, but any dispute of fact is immaterial. For present purposes, we state the facts in FKFJ's favor.

was released. According to Rizek, he was forced to pay. Rizek claims the restaurant manager took out Rizek's debit card, and the police officer called and made the payment to Schroeder. The payment cleared and the matter was dropped. Police Chief Micetich called Werner after the fact to tell her about police involvement in the dispute between Rizek and Schroeder.[14]

4. Business License

The business licenses for Saraya and Zaman Café were set to expire on December 31, 2017. Before they could be renewed, Husam, the owner of the 7011 lot, leased the building to another business. The following events led to the new lease and failure of Saraya's business.

In September 2017, Husam approached Werner about $250,000 in unpaid rent that FKFJ owed.[15] He stated that so much was owed that he was unable to pay his property tax and expressed concern he would lose the building. If Husam could not pay, the building was to be sold by December 1st. He told Werner he needed a new tenant otherwise he would lose the building. Werner knew a man named Thaer Jbara wanted to open a hookah lounge in Worth. She told Jbara to

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[14] FKFJ also maintains that Werner threatened to prosecute Rizek unless FKFJ paid a cameraman it hired to install security cameras on its property. But it is undisputed FKFJ had received services from the cameraman and had not paid, presumably due to a bad check, at the time Werner called about the issue. Dkt. 151-1 at 68, lines 1–15. The incident occurred after FKFJ had already written a bad check to Schroeder Materials. And the dispute is not fleshed out in the record or with argument. Consequently, the incident has no effect on our analysis.

[15] FKFJ admitted having difficulty paying rent in 2016. Dkt. 151-1 at 108.

contact Husam. Husam decided to lease to Jbara. Jbara's lease term was to begin on December 31, 2017.

In October and November 2017, Husam and Jbara went through the process of applying for and obtaining a license to operate a retail tobacco business at 7011.

In December, FKFJ tried to renew Saraya's business license. The Village would not accept the application. Werner explained FKFJ was denied the opportunity to apply for a business license renewal because the Village had already issued a retail tobacco license to someone else at 7011 W. 111th Street. The Village could not issue a license to operate a restaurant and a retail tobacco license to the same building at the same time. Saraya closed down in December 2017.

FKFJ also sought to renew Zaman Café's business license. The Village was unable to renew the license because it had been conditioned on access to Saraya's valet parking. Without access to Saraya's parking, Zaman had insufficient parking, since the 7015 lot had not been completed. (Although the Board had approved the special use permit in the fall of 2017, the parking lot was not completed until July or August 2018.) The new business at 7011 would not be opening immediately due to remodeling, so the Village gave FKFJ four months leeway on the renewal of Zaman Café's business license. Zaman Café could operate while 7011 was under construction. However, the 7015 parking lot was still not completed when Jbara's business on the 7011 lot opened. Consequently, Zaman's license was rescinded. The café closed in May 2018. After the 7015 lot was completed, the Village renewed Zaman's business license and it reopened.

FKFJ filed this lawsuit asserting claims under 42 U.S.C. § 1983 and various state law claims. The district court granted the defendants' motion for summary judgment on the § 1983 claims and declined to exercise supplemental jurisdiction over the state law claims.

On appeal, FKFJ raises only three of the federal claims at issue below: First Amendment, equal protection,[16] and due process.[17] It sues Werner, in her individual capacity, and the Village.[18]

II. Discussion

A. Standard of Review

This Court reviews the district court's grant of summary judgment *de novo*, viewing the facts in the light most favorable to FKFJ, the non-moving party.[19] *Weaver v. Champion Petfoods*

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[16] International Realty was a plaintiff with respect to the equal protection claim, but it settled and stipulated to dismissal.

[17] FKFJ's brief makes perfunctory mention of its Fourth Amendment claim but does not legitimately raise this claim on appeal.

[18] Although Micetich was a defendant, FKFJ does not raise any of its claims against him on appeal. FKFJ also sued certain Village police officers, but the district court dismissed those claims since the officers were not identified by name in the complaint, nor were they served with process.

[19] FKFJ argues the district court did not view all the facts in the light most favorable to it. To the extent that was the case, the court can hardly be faulted when FKFJ provided it with incorrect record citations. We remind counsel to exercise care when submitting briefs and memoranda to the court. Unfortunately, its appellate brief is ridden with typographical errors and record citations mostly consist of citations to the district court's order and its own memoranda below, rather than the summary judgment record.

USA Inc., 3 F.4th 927, 934 (7th Cir. 2021). Summary judgment is proper when there is no genuine dispute of material fact, and the moving party is entitled to judgment as a matter of law. *Id.* A dispute of fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Dunn v. Menard, Inc.*, 880 F.3d 899, 905 (7th Cir. 2018) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A dispute of fact is material if the fact "might affect the outcome of the suit under the governing law." *Anderson*, 477 U.S. at 248. Thus, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Id.* at 247–48.

"In conducting our review, we 'may not make credibility determinations, weigh the evidence, or decide which inferences to draw from the facts; these are jobs for a factfinder.'" *Bishop v. Air Line Pilots Ass'n Int'l*, 5 F.4th 684, 693 (7th Cir. 2021) (quoting *Johnson v. Rimmer*, 936 F.3d 695, 705–06 (7th Cir. 2019)). While we consider reasonable inferences in favor of FKFJ, we need not draw "every conceivable inference," in its favor. *Id.* (quoting *United States v. Luce*, 873 F.3d 999, 1005 (7th Cir. 2017)). A party "must present more than mere speculation or conjecture to defeat a summary judgment motion." *Weaver*, 3 F.4th at 936 (quoting *Liu v. T&H Mach., Inc.*, 191 F.3d 790, 796 (7th Cir. 1999)). "When the non-moving party fails to establish 'the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial,' Rule 56(c) mandates entry of summary judgment against that party because 'a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.'" *Massey v.*

Johnson, 457 F.3d 711, 716 (7th Cir. 2006) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

B. First Amendment Claim

FKFJ first argues Werner and the Village retaliated against it for its political support of Keller, in violation of the First Amendment. In order to prevail on its First Amendment retaliation claim, FKFJ must show (1) it engaged in a protected First Amendment activity; (2) it "suffered a deprivation that would likely deter First Amendment activity in the future"; and (3) causation—specifically, "the First Amendment activity was 'at least a motivating factor' in the Defendants' decision to take the retaliatory action." *Douglas v. Reeves*, 964 F.3d 643, 646 (7th Cir. 2020) (quoting *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009)). The parties agree that FKFJ's hosting campaign events for Keller is a protected First Amendment activity. They dispute the second and third elements.

The second element, requiring a deprivation that would likely deter future First Amendment activity, is an objective test. We ask "whether the alleged conduct by the defendants would likely deter a person of ordinary firmness from continuing to engage in protected activity." *Douglas*, 964 F.3d at 646 (quoting *Surita v. Hyde*, 665 F.3d 860, 878 (7th Cir. 2011)). Generally, the severity of retaliatory conduct is a fact question, "but when the asserted injury is truly minimal, we can resolve the issue as a matter of law." *Id.* at 647.

The parties' briefing implies the deprivation must be an independent constitutional violation, but the law merely requires some negative consequence (deprivation) with a chilling effect on First Amendment activity. *See, e.g.*, *id.* at 647–48 (finding Douglas's alleged deprivations—refusal to return

him to his original prison cell, provision of an inadequate replacement position for his job as a wheelchairs pusher—were inadequate to deter a prisoner of ordinary firmness); *see also Massey*, 457 F.3d at 716 ("Government retaliation tends to chill an individual's exercise of his First Amendment rights ...."). In any event, we need not reach the second element because it is clear FKFJ failed to satisfy the third element—causation. *See Friend v. Valley View Cmty. Unit Sch. Dist. 365U*, 789 F.3d 707, 712 (7th Cir. 2015) (explaining each element must be satisfied to survive summary judgment); *see also Lavite v. Dunstan*, 932 F.3d 1020, 1031 (7th Cir. 2019) (refraining from deciding the first prong because "Lavite cannot satisfy the causation element of his First Amendment retaliation claim").

Causation may be proven through direct or circumstantial evidence. *Kidwell v. Eisenhauer*, 679 F.3d 957, 965 (7th Cir. 2012). FKFJ need not show but-for causation, but only that the protected activity is *a* motivating factor in the defendants' conduct. *Massey*, 457 F.3d at 717. However, the protected activity and adverse action cannot be completely unrelated. *Kidwell*, 679 F.3d at 966.

Since the record lacks direct evidence of causation, FKFJ seeks to establish the causation element through circumstantial evidence. To establish causation through circumstantial evidence, a plaintiff may present evidence of "suspicious timing, ambiguous oral or written statements, or behavior towards or comments directed at other [persons] in the protected group." *Id.* (quoting *Long v. Tchrs.' Ret. Sys. of Ill.*, 585 F.3d 344, 350 (7th Cir. 2009)).

When viewed in the light most favorable to FKFJ, there is evidence Werner had some sort of animus against Rizek and Samara. Based on that animus, a factfinder could infer Werner

also possessed ill-will toward their business. For example, Rizek described Werner as "[v]ery hostile" in January 2017. Zetterberg described Rizek and Werner not liking one another. Rizek and Samara both testified Werner's attitude toward them changed. However, the problem is not FKFJ's failure to adduce evidence of Werner's animus; it is the failure to provide any link between FKFJ's support of Keller and any adverse action taken by Werner. Instead, FKFJ fails to show Werner's animus is based on the protected activity and that Werner acted in retaliation based on that animus. The only genuine evidence FKFJ presents to show animus is based on the protected activity is suspicious timing. But that argument fails.

We have noted that "suspicious timing will 'rarely be sufficient in and of itself to create a triable issue.'" *Id.* (quoting *Culver v. Gorman & Co.*, 416 F.3d 540, 546 (7th Cir. 2005)). In order for suspicious timing to save a claim from summary judgment by raising an inference of causation, FKFJ must show the adverse action "follows close on the heels of protected expression" and "the person who decided to impose the adverse action knew of the protected conduct." *Id.* (quoting *Lalvani v. Cook Cnty.*, 269 F.3d 785, 790 (7th Cir. 2001)). "Close on the heels" is usually no more than a few days. *Id.* An inference of causation based on suspicious timing is inappropriate when there is a "significant intervening event" separating the protected activity and deprivation. *Id.* at 967.

Through testimony, FKFJ has shown that after it supported Keller, Werner's once friendly attitude changed. But notably, its brief is silent on whether Werner even knew FKFJ supported Keller. So, at oral argument, we asked the parties what the summary judgment record reflected regarding

Werner's knowledge of FKFJ's political support of Keller in the April 2017 election. Notably, neither party could answer the question. Without evidence Werner even knew about FKFJ's protected activity, how can a jury possibly find the activity was a motivating factor in her conduct? This lack of evidence is fatal to FKFJ's claim, regardless of the level of abstraction with which we view the case in its entirety.

But even if there were evidence Werner knew about FKFJ's support of Keller, the alleged retaliatory conduct did not occur "close on the heels" of FKFJ's protected activity.

FKFJ held campaign events at Saraya from October 2016 through March 2017. FKFJ argues in the fall of 2016, it had issues with Werner that slowed its ability to obtain a demolition permit. The record contains evidence FKFJ thought Werner was slowing down the process, despite the fact that the demolition permit had to be obtained from Cook County rather than the Village, but FKFJ does not provide any evidence on what Werner did to slow down the process. For example, Samara stated that in his opinion, Werner slowed down the process because she told Cook County about the water lines on state property that needed to be shut off. But FKFJ does not dispute that it needed a permit from IDOT to shut off the water and sewer connections before it could obtain a demolition permit from the county. Consequently, there is no evidence to support that Werner caused a delay during or shortly after FKFJ's protected activity. During the final month FKFJ supported Keller, March 2017, FKFJ obtained the necessary permit and was able to knock the house down.

Neither did the further alleged retaliatory conduct occur "close on the heels" of FKFJ's protected activity. FKFJ's last campaign events were held in March 2017. It is undisputed

that its application for a special use permit was not complete until June or July 2017 when it submitted a site plan. Thus any alleged delays Werner caused in FKFJ's obtaining a special use permit had to have occurred after June or July 2017. A delay of two or three months between any protected activity and adverse action is far from sufficient to raise an inference of retaliation. *Kidwell*, 679 F.3d at 966. Further, the record reflects, and FKFJ has not adduced any evidence to contradict, that Werner assisted with paperwork needed for FKFJ to request a variance. The variance issue needed to be handled before the REDB would hold a hearing on FKFJ's special use permit. So it appears Werner actually helped accelerate the process.

The ticketing issue suffers from the same fatal delay. The parties do not dispute that before May 2017, when Micetich issued his memorandum directing officers to ticket Saraya for violations on the 7015 lot, FKFJ did not have any issues with the Village regarding parking tickets. The result is a delay of at least a month between the protected activity and deprivation. Delay aside, the record also lacks evidence Werner directed the ticketing. Without Werner's involvement, there is no evidence the ticketing resulted from FKFJ's political activity.

Rizek's arrest for the bounced check to Schroeder occurred on May 23, 2017, a delay of nearly two months. Besides the timeliness bar, the record reflects Werner did not even find out about the arrest until after it happened. Consequently, there is no evidence of a causal connection.

Finally, the business license renewal issue presents the greatest time-lapse between the protected activity and deprivation. Werner and Husam spoke about obtaining a new tenant for the 7011 lot where Saraya operated in September 2017.

That conversation occurred approximately six months after the protected conduct. FKFJ believes Werner tried to convince Husam to rent to another business to force the sale of its restaurant. While it is clear from Rizek's and Samara's testimony that they believe Werner is the reason they went out of business and she intentionally tried to drive them out of town, they have failed to present *evidence* to support their beliefs.[20]

Because FKFJ has failed to present evidence of causation, summary judgment was proper on its First Amendment claim.

C. Equal Protection Claim

FKFJ next argues it was irrationally singled out in violation of the Fourteenth Amendment's Equal Protection Clause. "The Equal Protection Clause of the Fourteenth Amendment, ratified to help protect the equality that had been won in the Civil War, is most familiar as a guard against state and local government discrimination on the basis of race, national origin, sex, and other class-based distinctions." *Geinosky v. City of Chicago*, 675 F.3d 743, 747 (7th Cir. 2012). The Equal Protection Clause requires a "rational reason" for disparate treatment of those who are similarly situated. *Engquist v. Oregon Dept. of Agric.*, 553 U.S. 591, 602 (2008). The clause also protects persons "against purely arbitrary government classifications, even when a classification consists of singling out just one person for different treatment for arbitrary and

[20] Also, Zaman Café, one of the two businesses FKFJ was formed to operate, reopened once the 7015 lot was completed. So, it appears perhaps FKFJ was not completely driven out of town.

irrational purposes." *Geinosky*, 675 F.3d at 747. This is a "class-of-one" claim.[21]

Class-of-one claimants carry a heavy burden. *See Woodruff v. Mason*, 542 F.3d 545, 554 (7th Cir. 2008). To support its class-of-one claim, FKFJ must show it was "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Geinosky*, 675 F.3d at 747 (quoting *Engquist*, 553 U.S. at 601); *see generally Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (seminal case).

To satisfy the "similarly situated" element, FKFJ and its comparators must be "*prima facie* identical in all relevant respects or directly comparable … in all material respects." *D.S. v. E. Porter Cnty. Sch. Corp.*, 799 F.3d 793, 799 (7th Cir. 2015) (alteration in original) (quoting *United States v. Moore*, 543 F.3d 891, 896 (7th Cir. 2008)). Whether entities are similarly situated is a factual question, but summary judgment is nonetheless proper when no reasonable factfinder could find the requirement is met. *Id.* at 799–80.

Under the rational basis standard, "a class-of-one plaintiff must, to prevail, negative any reasonably conceivable state of facts that could provide a rational basis for the classification." *Miller v. City of Monona*, 784 F.3d 1113, 1121 (7th Cir. 2015) (quoting *Scherr v. City of Chicago*, 757 F.3d 593, 598 (7th Cir. 2014)). Otherwise stated, we have held "[t]he rational-basis requirement sets the legal bar low and simply requires 'a rational relationship between the disparity of treatment and

[21] Rizek and Samara originally raised claims for discrimination based on race and religion, but they abandoned these arguments below and on appeal. Only the class-of-one claim persists.

some legitimate governmental purpose.'" *D.B. ex rel. Kurtis v. Kopp*, 725 F.3d 681, 686 (7th Cir. 2013) (quoting *Srail v. Village of Lisle*, 588 F.3d 940, 946 (7th Cir. 2009)).

While the two main prongs of a class-of-one claim are clearly established, it is worth noting that much ink has been spilled over the multiplicity of tests in this Circuit for the requirements of a class-of-one claim. *See Brunson v. Murray*, 843 F.3d 698, 706 (7th Cir. 2016) (explaining the Circuit's three possible tests for a class-of-one claim); *D.B. ex rel. Kurtis*, 725 F.3d at 685; *Del Marcelle v. Brown Cnty. Corp.*, 680 F.3d 887 (7th Cir. 2012) (en banc) (per curiam); *Srail*, 588 F.3d at 944; *Smith v. City of Chicago*, 457 F.3d 643, 652 (7th Cir. 2006) (recognizing the uncertain role of subjective motivation); *RJB Props., Inc. v. Bd. of Educ.*, 468 F.3d 1005, 1009 n.2 (7th Cir. 2006) ("The Court has noted that a 'class of one' equal protection claim may also require a plaintiff to prove one additional element: that the State acted with an illegitimate animus."); *Racine Charter One, Inc. v. Racine Unified Sch. Dist.*, 424 F.3d 677, 683–84 (7th Cir. 2005) (explaining two lines of cases). The disagreement centers on the role of animus in class-of-one-claims. We need not resolve this conflict since FKFJ cannot satisfy the other elements of its claim. *See Chicago Studio Rental, Inc., v. Ill. Dept. of Com.*, 940 F.3d 971, 980 (7th Cir. 2019).

On appeal, FKFJ has failed to present any meaningful argument on the first prong of the test. Regarding the ticketing issue, FKFJ merely states, "There was evidence in the record of multiple similarly situated businesses with gravel lots never being cited." Appellant's Br. at 14. FKFJ fails to state what entities were similarly situated or how they were

similarly situated.[22] Similarly, a page later it addresses Micetich's memorandum on ticketing, arguing "no such memo exists for any of the number of other lots that violate the same municipal code, and in fact, no other citations have been given to owners of such lots." Appellant's Br. at 15. But "evidence of similarity requires specificity." *Srail*, 588 F.3d at 946. This argument is insufficient. *See Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012).

Generally, we have required class-of-one claimants to strictly comply with presenting evidence of a similarly situated entity at the summary judgment stage. *Monarch Beverage Co., Inc. v. Cook*, 861 F.3d 678, 682 (7th Cir. 2017) ("In litigation of that type [class-of-one claims], if the plaintiff can't identify a similarly situated person or group for comparison purposes, it's normally unnecessary to take the analysis any further; the claim simply fails."); *e.g. Paramount Media Grp., Inc. v. Village of Bellwood*, 929 F.3d 914, 920 (7th Cir. 2019) (disposing of a class-of-one claim on the sole basis the entities were not similarly situated). However, as FKFJ points out, we have overlooked failure to strictly comply with the similarly situated element in a very limited number of class-of-one cases where animus is readily apparent. *See Swanson v. City of Chetek*, 719 F.3d 780, 784 (7th Cir. 2013). But none of the cases FKFJ cites is applicable here.

For example, in *Geinosky v. City of Chicago*, we found Geinosky properly pled a class-of-one claim when he generally asserted he was intentionally treated differently than others who were similarly situated, without identifying or

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[22] Nor does it cite the record after making these assertions. *See generally* Fed. R. App. P. 28(a)(8)(A).

describing any such persons. 675 F.3d at 748. In that case, Geinosky received twenty-four parking tickets over a fourteen-month period. *Id.* at 745. The tickets were clearly "bogus," since some were inconsistent with others he received simultaneously by mail. Some tickets implied that Geinosky's vehicle was in two places at once or committed two separate violations that would be impossible to commit simultaneously. The tickets against him were eventually dismissed, but not before Geinosky complained to the police unit's supervisors, complained to the police department's Internal Affairs Division, spoke with the Chicago Tribune, and appeared in court seven times. *Id.*

We found that "requiring Geinosky to name a similarly situated person who did not receive twenty-four bogus parking tickets in 2007 and 2008 would not help distinguish between ordinary wrongful acts and deliberately discriminatory denials of equal protection." *Id.* at 748. We also noted that the requirement would be simple to satisfy in that case, anyway. *Id.* There was no "rational and proper purpose" for Geinosky to have been ticketed. *Id.* at 749. We described the case as "unusual" and reversed dismissal of the claim. *Id.*

This case is not like *Geinosky*. In the first place, that case occurred at a distinguishable procedural stage—the pleadings. In this case, FKFJ's claim was dismissed at summary judgment. Unlike summary judgment, we have consistently held a plaintiff need not identify a similarly situated entity in its complaint. *Id.* at 748 n.3; *Miller*, 784 F.3d at 1120; *Capra v. Cook County Bd. of Rev.*, 733 F.3d 705, 717 (7th Cir. 2013). Further, *Geinosky* was not a typical case. Geinosky was targeted out of hostility and for no other reason. But here, there is undisputed evidence of a rational basis for each action the

Village took (this same analysis explains why FKFJ cannot satisfy the second element of its class-of-one claim, but we address that issue momentarily).

In fact, the presence of a rational basis in this case is what distinguishes it from all the cases FKFJ cites for the proposition it does not need to show evidence of a similarly situated entity. *See Miller*, 784 F.3d at 1120 (explaining the lack of comparator is not fatal "when plaintiffs were able to exclude rational explanations for why local officials targeted them"). But because of the presence of a rational basis for the Village's actions, this is a classic case in which evidence of a similarly situated entity is needed "[t]o achieve clarity." *Swanson*, 719 F.3d at 784. That brings us to the final issue on FKFJ's equal protection claim: FKFJ cannot survive summary judgment because the Village had a rational basis for its actions.

FKFJ focuses the brunt of its argument on the ticketing issue. But it is undisputed the gravel lot did not comply with the Worth ordinance on parking-lot construction. FKFJ may have a valid point regarding ticketing for use of gravel: a jury could believe Rizek's testimony the Village told FKFJ to use gravel. If this were the only evidence, perhaps it could show there was a lack of a rational basis for the ticketing because the Village told FKFJ to use that type of material and then punished it for doing so.[23] However, FKFJ did not start receiving tickets until May 2017 by which point it is clear FKFJ knew the lot was non-compliant, since it blocked off the parking lot in April 2017. Further, gravel issue aside, there was a rational

[23] Even if this were the case, though, the record lacks evidence Werner directed the ticketing, so she cannot be responsible for it under § 1983. FKFJ only sued Werner, not Micetich, on this claim.

basis to issue tickets considering FKFJ had still not obtained a special use permit for the lot, and apparently had not obtained the proper license for maintaining and operating a parking lot pursuant to § 3-17-2 of the Village Code. (Indeed, it presents no evidence or argument to the contrary.) Because the parking lot was not completed until July or August 2018, and cars were parked in the lot before then, there was a rational basis for the ticketing.[24]

FKFJ focuses on the fact it did not own the 7015 lot and the tickets issued to it were ultimately dismissed for that reason. But these facts do not alter the outcome. It is clear FKFJ was at the forefront of converting the lot into a parking lot, including the fact it paid for construction of the lot. FKFJ, rather than the property owner International, was to use the lot in service of its restaurant. Perhaps dismissal of the tickets shows the Village did not act perfectly. But considering FKFJ's day-to-day control over the lot and intended use of the lot for its restaurant, we can hardly say the ticketing was irrational.

Next, FKFJ raises passing arguments in its brief, stating Rizek's arrest and the failure to renew its business licenses are also equal protection violations.[25] Regarding the former, it was rational for Village police to arrest Rizek because police had reason to believe, whether properly or improperly, he

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[24] FKFJ also claims some tickets were issued to it for vehicles in the vicinity of the restaurant, not just on the 7015 lot. The evidence was introduced in the form of a few cursory remarks in FKFJ's depositions. The record lacks sufficient detail about any such tickets for a jury to find for FKFJ on the issue. At most, it is a mere scintilla of evidence.

[25] In its complaint, FKFJ also raised the delay of the special use permit as an equal protection violation, but it did not make that argument to the district court.

engaged in deceptive practices.[26] Considering the check bounced at the end of March and beginning of April 2017, and Schroeder still had not been paid by the end of May 2017, the arrest was rational. Regarding the latter argument, it was rational not to renew Saraya's business license because it could not operate at the location stated in the application, since

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[26] The relevant Illinois statute on deceptive practices pertaining to bad checks states:

> A person commits a deceptive practice when:
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> (1) With intent to obtain control over property or to pay for property, labor or services of another, … he or she issues or delivers a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository. The trier of fact may infer that the defendant knows that the check or other order will not be paid by the depository and that the defendant has acted with intent to defraud when the defendant fails to have sufficient funds or credit with the depository when the check or other order is issued or delivered, or when such check or other order is presented for payment and dishonored on each of 2 occasions at least 7 days apart. … .
>
> (2) He or she issues or delivers a check or other order upon a real or fictitious depository in an amount exceeding $150 in payment of an amount owed on any credit transaction for property, labor or services, or in payment of the entire amount owed on any credit transaction for property, labor or services, knowing that it will not be paid by the depository, and thereafter fails to provide funds or credit with the depository in the face amount of the check or order within 7 days of receiving actual notice from the depository or payee of the dishonor of the check or order.

720 Ill. Comp. Stat. 5/17-1. It is also worth noting that the district court found there was probable cause for the arrest when considering Rizek's Fourth Amendment claim. The Fourth Amendment claim is not at issue on appeal. But to act based on probable cause certainly is rational.

Husam decided to lease the premises to Jbara. Jbara already had been issued a retail tobacco license for the building in which Saraya sought to operate, starting after the expiration of Saraya's license. Likewise, it was rational for the Village not to renew Zaman Café's business license since it did not have sufficient parking.

In sum, since FKFJ has not presented sufficient appellate argument about any similarly situated entities and cannot satisfy the rational basis prong of a class-of-one equal protection claim, summary judgment for the Village was proper.

D. Due Process Claim

As a preliminary matter, FKFJ's brief makes both substantive and procedural due process arguments. However, substantive due process was never raised below, so we address only the procedural due process claim. *Russian Media Grp., LLC v. Cable Am., Inc.*, 598 F.3d 302, 308 (7th Cir. 2010) ("In civil litigation, issues not presented to the district court are normally forfeited on appeal.").

The Fourteenth Amendment disallows "any State [from] depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Due Process Clause provides for procedural protections, such as notice and an opportunity to be heard, when the government deprives citizens of life, liberty, or property. *Lavite*, 932 F.3d at 1032. In order to make out a due process violation, FKFJ must first show it has a protected liberty or property interest with which the government has interfered. *Ky. Dept. of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). Once established, we consider whether the procedures utilized satisfy the Constitution. *Id.*

The precise contours of FKFJ's procedural due process argument are obscure. The district court found FKFJ had not established a protected property interest in the renewal of its business licenses. We agree FKFJ cannot satisfy the preliminary requirement of a protected property interest. "'To have a property interest in a benefit, a person clearly must have more than an abstract need or desire' and 'more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.'" *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005) (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)). Entitlements are created by an independent source, not the Constitution. *Id.*

Assuming FKFJ is arguing the failure to renew its business license is a denial of due process, it is clear from the Village Code's chapter on business licenses and permits that FKFJ did not have a protected entitlement. The Supreme Court has recognized "that a benefit is not a protected entitlement if government officials may grant or deny it in their discretion." *Id.* The code grants such discretion here.

The code only allows licenses to be granted for a period of up to a year, with every license expiring on December 31 after the date it was issued. Village of Worth Code § 3-1-6(A). The relevant provision on renewal provides that "each license *may be renewed* upon proper application and payment of the required fee … . The Clerk *is authorized* to approve and execute license renewals upon determining that this chapter's standards and criteria have been met." § 3-1-6(C) (emphasis added).

While FKFJ is correct that government licenses can be a form of property entitlement in some cases, it has not shown that it had a protected entitlement to *renewal* of its license here. The code leaves the Village discretion to renew licenses by

providing they "may" be renewed upon proper application and payment of the requisite fee. The code gives the clerk authority to approve applications for renewals, rather than mandating that the clerk approve and execute renewals when the requisite criteria is met. Thus, FKFJ had a mere unilateral expectation its license would be renewed, and we need not consider what process is due.

To the extent FKFJ alleges it was deprived of the process of applying for renewal, since the Village refused to even accept its application, its claim nonetheless fails. Process alone is not a protected interest subject to due process protections. *See Lavite*, 932 F.3d at 1033 ("Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement." (quoting *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983))). Accordingly, summary judgment was proper.

E. Municipal Liability

FKFJ raises each of its three § 1983 claims against the Village in addition to Werner in her individual capacity. But since we find there is a failure of evidence on each of its three constitutional claims, its claim of municipal liability necessarily fails. *D.S.*, 799 F.3d at 800.

III. Conclusion

While this case is a tapestry of colorful factual threads, "[s]heer complexity is not enough to stave off summary judgment." *Barbera v. Pearson Educ., Inc.*, 906 F.3d 621, 631 (7th Cir. 2018). Whatever occurred between FKFJ and the Village, FKFJ has failed to present sufficient evidence from which a jury could find the disputes are of constitutional import. Accordingly, we AFFIRM.