In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1660

CRAIG BILLIE, *et al.*,

Plaintiffs-Appellants,

v.

VILLAGE OF CHANNAHON, ILLINOIS, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 20-cv-3294 — **Mary M. Rowland**, *Judge*.

ARGUED NOVEMBER 7, 2022 — DECIDED JANUARY 24, 2023

Before FLAUM, EASTERBROOK, and ST. EVE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. In 1993 the Village of Channahon, Illinois, approved the plat of a residential subdivision lying within the DuPage River Special Flood Hazard Area. By August 1994 the Village had issued permits for the construction of seven houses in this subdivision. All seven experience flooded basements when the DuPage River is at high water. Plaintiffs, the current owners of these houses, contend that the Village violated the Constitution either by granting the

permits to build (without ensuring that the basements would remain dry) or by failing to construct dykes to keep water away. But plaintiffs do not contend that the Village required them to build where they did, or to dig basements to the depth they did, or took any steps after the houses' construction that made flooding worse. The district court dismissed the complaint for failure to state a claim. 2022 U.S. Dist. LEXIS 50348 (N.D. Ill. Mar. 22, 2022). (Claims based on state law were dismissed without prejudice, and we do not mention them again.)

This suit is barred by the principle that the Constitution establishes rights to be free of governmental interference but does not compel governmental intervention to assist persons in distress. In other words, the Constitution establishes negative rather than positive liberties. See, e.g., *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989); *Castle Rock v. Gonzales*, 545 U.S. 748 (2005). Homeowners are responsible for their own decisions. No one forced plaintiffs or their predecessors in interest to build houses in a floodplain. (At oral argument counsel for the plaintiffs asserted that the Village may have demanded deeper basements than the developer wanted to dig but conceded that the evidence at his disposal does not support that proposition, which does not appear in the complaint.)

We may assume, as plaintiffs assert, that the Village violated both a local ordinance and a federal regulation, 44 C.F.R. §60.3(c)(7), by granting the developer's applications without insisting that the houses be built a few feet higher above the DuPage River, but this just puts the *DeShaney* problem in focus: the Constitution does not entitle private parties to accurate enforcement of local, state, or federal law. See, e.g.,

Snowden v. Hughes, 321 U.S. 1, 11 (1944); *Davis v. Scherer*, 468 U.S. 183, 192–96 (1984); *Nordlinger v. Hahn*, 505 U.S. 1, 16 n.8 (1992); *Wilson v. Corcoran*, 562 U.S. 1, 5 (2010); *Archie v. Racine*, 847 F.2d 1211, 1215–18 (7th Cir. 1988) (en banc).

If the builders or original owners concealed flood risks from their purchasers, that might create a tort claim against the wrongdoers, but it does not create any constitutional claim against the government. All the Village did was grant applications made to it. That is to say, the Village did not get in the way of private choices. As the Constitution does not require governments to prevent private actors from making mistakes, plaintiffs lack a good claim.

Plaintiffs' argument under the Takings Clause fails because the Village did not take anyone's property, either by physical invasion or by regulation that prevented the land's use. The DuPage River, which did invade plaintiffs' basements, is not a governmental body. Plaintiffs have not cited, and we did not find, any decision deeming a flood a "taking" unless governmental action caused or magnified the loss. Yet the Village did not create the rain, the river, or the floodplain. It did no more than allow people to act on their own choices.

Arkansas Game & Fish Commission v. United States, 568 U.S. 23, 31–34 (2012), recaps the sorts of situations in which flood waters have been classified as takings. In all of them the government caused or contributed to the inundation. The Court summarized: "government-induced flooding can constitute a taking of property, and because a taking need not be permanent to be compensable, our precedent indicates that government-induced flooding of limited duration may be compensable." *Id*. at 34. Plaintiffs have not plausibly alleged, however,

that the water in their basements is "government-induced", so the complaint was properly dismissed.

AFFIRMED