No. _____

In The
Supreme Court of the United States

ROBBIE J. PERRY, *et al.*, on behalf of themselves and others similarly situated as Mattoon Township (Coles County, Illinois) commercial and industrial property owners,

Petitioners,

v.

COLES COUNTY, ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Court has previously stated an exception to the comity doctrine: local taxpayers with Equal Protection Clause property tax claims are remitted to their state court remedies, but only "if their federal rights will not thereby be lost." *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 116 n.8 (1981). Comity applies when state court remedies are "plain, adequate, and complete." *Id*. at 116. Under 28 U.S.C. § 2201, petitioners have a federal right to claim prospective declaratory relief for Equal Protection Clause violations challenging Illinois property-tax assessments in future years. But, Illinois has a "well-established proposition that under Illinois law, equitable jurisdiction is not available for property tax relief when there is an adequate remedy of law." *Perry v. Coles County*, 906 F.3d 583, 589 (7th Cir. 2018). So, when the Seventh Circuit affirmed the district court's dismissal of petitioners' claims, petitioners lost their federal right to claim prospective declaratory relief under § 2201 because petitioners were unable to obtain that relief from either state or federal court. *See id*. at 589–90.

> Did the Seventh Circuit err under the exception to the comity doctrine by holding Illinois state court remedies "adequate" and "complete" even though Illinois courts bar the equitable jurisdiction legally required to consider claims for prospective declaratory relief under 28 U.S.C. § 2201?

LIST OF PARTIES

Petitioners are Robbie Perry and Rex Dukeman. The respondent is Coles County, Illinois.

CORPORATE DISCLOSURE STATEMENT

Petitioners Robbie Perry and Rex Dukeman are not non-governmental corporations and do not represent a non-governmental corporation.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Robbie Perry and Rex Dukeman respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at 906 F.3d 583 (Oct. 11, 2018) (App. 1–14). The decision of the district court is unpublished and is reported at 2017 WL 8791107 (Dec. 4, 2017) (App. 15–21).

JURISDICTION

The judgment of the court of appeals was entered on October 11, 2018. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL CLAUSE AND FEDERAL STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment's Equal Protection Clause forbids a state to

> "deny to any person within its jurisdiction the equal protection of the laws."

The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides:

> In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

The Tax Injunction Act, 28 U.S.C. § 1341, prohibits a federal district court from interfering in state tax collection matters, but only if state courts provide a "plain, speedy and efficient remedy":

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

The Civil Rights Act, 42 U.S.C. § 1983, provides a private cause of action to sue local governments and their officials for violating a person's federal rights under color of state law:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured

> by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

STATEMENT OF THE CASE

INTRODUCTION

This Petition principally seeks clarification from the Court on when and how the exception to the comity doctrine applies. The Court has stated that, under the comity doctrine, local property taxpayers seeking relief on Equal Protection Clause claims under 42 U.S.C. § 1983 should be remitted to their state court remedies only "if their federal rights will not thereby be lost." *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 116 n.8 (1981) (analyzing similarity of exceptions under the Tax Injunction Act, 28 U.S.C. § 1341, and the comity doctrine). However, beyond this statement, there is no U.S. Supreme Court holding applying the exception to the comity doctrine on the grounds that the state court remedies in a particular case are legally insufficient.

Prior to the petitioners filing their federal complaint seeking prospective declaratory relief under 28 U.S.C. § 2201 on their Equal Protection Clause claims, the petitioners recognized that Illinois has a "well-established proposition that under Illinois law, equitable jurisdiction is not available for property tax relief

when there is an adequate remedy of law." *Perry v. Coles County, Illinois*, 906 F.3d 583, 589 (7th Cir. 2018). App. 10. Recognizing this fact, petitioners filed their amended complaint seeking prospective declaratory relief in a U.S. District Court, not a state court. When the Seventh Circuit affirmed the district court's dismissal, petitioners lost their federal right to claim prospective declaratory relief under 28 U.S.C. § 2201 on Equal Protection Clause violations because Illinois state courts do not have equitable jurisdiction for such claims. *Id*. at 590.

So, the petitioners were left without a federal court, after they were left without a state court, to seek prospective declaratory relief on their Equal Protection Clause claims. The severe consequence of *Perry* is that all Illinois property taxpayers—millions of them—have lost their federal rights to claim prospective declaratory relief under 28 U.S.C. § 2201—an outcome that the Court said in *Fair Assessment* that the lower courts should avoid. *Fair Assessment*, 454 U.S. at 116 n.8.

A. Factual Background

1. Petitioners Robbie J. Perry and James Rex Dukeman ("Perry and Dukeman") are commercial and industrial real estate taxpayers in Mattoon Township, Coles County, Illinois. Amended Compl. in No. 17-CV-2133 (Distr. Ct.), Dckt. 9, pp. 1, 20, 23.

2. Their amended complaint, filed in United States District Court for the Central District of Illinois,

sought prospective declaratory relief under 28 U.S.C. § 2201(a):[1]

> a declaratory judgment declaring that Plaintiffs' constitutional rights under the Equal Protection Clause of the Fourteenth Amendment have been violated.

Id., p. 25.

The asserted Equal Protection Clause claims were based on Coles County's assessment and taxing procedural irregularities and errors for tax years payable in 2017, 2018, 2019, and 2020. Notably, the Amended Complaint did not include claims that the property tax is unauthorized by law or the property tax was levied on an exempt property—both of which act as triggering events for the limited equitable jurisdiction provided under Illinois state law.

As the Seventh Circuit stated, it is a "well-established proposition that under Illinois law, equitable jurisdiction is not available for property tax relief when there is an adequate remedy of law, unless the tax is unauthorized by law or the tax is levied on an exempt property." *Perry*, 906 F.3d at 589. App. 10. The Seventh Circuit dismissed petitioners' claims, acknowledging that Illinois courts only provided equitable jurisdiction for taxpayer claims that "the tax is unauthorized by law or the tax is levied on an exempt property," which meant that the state court did not have equitable

[1] Petitioners waived injunction remedy on appeal. *Perry*, 906 F.3d at 590 n.5.

jurisdiction for petitioners' claims for prospective declaratory relief under 28 U.S.C. § 2201 based on Equal Protection Clause violations.

The amended complaint further detailed the County's four-year resolution which caused the significant disparities:

> 114. Per the resolution establishing the division of Coles County into four assessment districts (Ex. 4), the other townships of the county will not be assessed until 2017, 2018 and 2019.
>
> 115. For example, Lafayette Township which is within the Mattoon School District will not be assessed until 2018.

Id., p. 24.

3. Under Illinois state law, general real estate assessments were to be completed by counties every fourth year after the initial general assessment in 1994 or 1995:

> General assessment years; counties of less than 3,000,000. Except as provided in Sections 9-220 and 9-225, in counties having the township form of government and with less than 3,000,000 inhabitants, the general assessment years shall be 1995 and every fourth year thereafter. In counties having the commission form of government and less than 3,000,000 inhabitants, the general assessment years shall be 1994 and every fourth year thereafter.

35 ILCS 200, § 9-215; *see also* Amended Compl. in No. 17-CV-2133 (Distr. Ct.), Dckt. 9, p. 6, ¶ 28.

But, Coles County failed to do any assessments as required by state law since 1998. *Id.*, p. 7, ¶ 30. Thus, for over 15 years, Coles County failed to generally assess commercial and industrial properties. *Id.*, ¶¶ 31–32.

4. When the County did finally re-assess for taxes in 2016, it made new assessments for only Mattoon Township's commercial and industrial properties. *Id.*, p. 11, ¶¶ 52–54; p. 16, 84. Otherwise, the County continued to use the 1990's assessments for commercial and industrial properties—plug numbers really—for the other townships' commercial and industrial properties. The other townships would be re-assessed by the County eventually on the County's four-year plan.

5. The County's resolution dated March 6, 2015 stated the following regarding the County's four-year plan to re-assess the commercial and industrial properties contained in the different townships:

> ASSESSMENT DISTRICT 1—to be assessed in 2016 and every 4th year thereafter
>
> Mattoon Township . . .
>
> ASSESSMENT DISTRICT 2—to be assessed in 2017 and every 4th year thereafter
>
> Charleston Township . . .

> ASSESSMENT DISTRICT 3—to be assessed in 2018 and every 4th year thereafter
>
> Lafayette Township
> North Okaw Township
> Humboldt Township
> Paradise Township . . .
>
> ASSESSMENT DISTRICT 4—to be assessed in 2019 and every 4th year thereafter
>
> Ashmore Township
> East Oakland Township
> Hutton Township
> Pleasant Grove Township
> Seven Hickory Township
> Morgan Township. . . .

Coles County, Ill., *Establishing the Division of Coles County Into Four Assessment Districts* (Mar. 6, 2015), Brief for Appellant in No. 17-3615 (CA7), App. pp. 35–36.

Under Coles County's four-year plan to re-assess townships, Coles County assessed or will be assessing different townships in 2017, 2018, and 2019 affecting real estate taxes payable in the following years of 2018, 2019, and 2020, respectively. For those not re-assessed yet under the four-year cycle, the 1990's plug numbers would be used for real estate taxes until their re-assessments were done later in the four-year cycle. The County's residual use of the 1990's plug numbers throughout the County's four-year plan causes tax disparity.

6. Specifically, the County's assessments for the 2016 tax year, taxes payable in 2017, completed only for Mattoon Township resulted in a disproportionate amount of taxes paid by Mattoon Township's commercial and industrial landowners:

Lafayette 2015 Total	**Lafayette 2016 Total**	**Difference Between Tax Year 2015 and Tax Year 2016**
$3,067,340.59	$3,082,067.77	$14,727.18
Mattoon 2015 Total	**Mattoon 2016 Total**	**Difference Between Tax Year 2015 and Tax Year 2016**
$4,035,118.61	$4,964,995.02	$929,876.41
North Okaw 2015 Total	**North Okaw 2016 Total**	**Difference Between Tax Year 2015 and Tax Year 2016**
$4,732.62	$31,159.32	$26,426.70
Paradise 2015 Total	**Paradise 2016 Total**	**Difference Between Tax Year 2015 and Tax Year 2016**
$248,761.39	$233,947.90	($14,813.49)

2015 Grand Total (whole dollars)	**2016 Grand Total**	**Difference Between Tax Year 2015 and Tax Year 2016**
$7,355,953.21	$8,312,170.02	$956,216.80

Id., pp. 16–17, ¶¶ 84–85.

Under the County's four-year plan, for taxes calculated for 2016, the County used the 2016 re-assessed values for Mattoon Township, but the 1990's plug numbers for the other townships. As a result, for taxes calculated for 2016 for commercial and industrial properties in the townships within the school district, Mattoon Township taxpayers paid $929,876.41 of the $956,216.80 tax increase from 2015—a disproportionate share. Taxes in the other townships remained steady while the taxes for Mattoon Township's commercial and industrial property taxpayers increased by $929,876.41 for taxes payable in 2017. The commercial and industrial properties outside of Mattoon Township enjoyed a tax benefit in the form of an absence of increased taxation on the same classification of property.

Due to the County's resolution to do the re-assessments over a four-year period the same claim exists for Perry and Dukeman for taxes payable in 2018, 2019, and 2020. Accordingly, Perry and Dukeman, in their amended complaint, seek prospective declaratory relief under 28 U.S.C. § 2201 to resolve the legal issues for the disputed future years.

B. Procedural History

1. Shortly after Perry and Dukeman filed their amended complaint, the Respondent Coles County moved to dismiss for lack of subject matter jurisdiction. Or. in No. 17-CV-2133 (Distr. Ct.), Dckt. 15, App. 16. Coles County asserted that the principle of comity barred Perry and Dukeman from raising state property tax law claims in federal court. *Id.*; Coles Cty. Memo. in Support of Mot. to Dismiss in No. 17-CV-2133 (Distr. Ct.), Dckt. 12, pp. 2–4. In opposition to the motion, Perry and Dukeman argued that the comity doctrine did not apply to bar federal jurisdiction over their claim for § 2201 declaratory relief based on Equal Protection Clause violations because the Illinois state court remedies were insufficiently "adequate" and "complete"—lacking equitable jurisdiction except for specific claims, not brought by Perry and Dukeman. Perry Memo. in Opp. to Mot. to Dismiss in No. 17-CV-2133 (Distr. Ct.), Dckt. 14, pp. 2–5. Perry and Dukeman argued that if federal courts dismissed their claims under the comity doctrine the result would mean that their "federal rights"—their claim to § 2201 declaratory relief based on Equal Protection Clause violations—would "thereby be lost." *Id.*, citing and quoting *Fair Assessment*, 454 U.S. at 116 n.8.

Perry and Dukeman argued that Illinois state court precedent barred equitable jurisdiction to assert alleged violations of the Equal Protection Clause, citing *Millennium Park Joint Venture, LLC v. Houlihan*, 948 N.E.2d 1 (Ill. 2010); *Lackey v. Pulaski Drainage Dist.*, 122 N.E.2d 257, 258 (Ill. 1954); and *Wood River*

Township v. Wood River Tp. Hosp., 772 N.E.2d 308, 311 (Ill. App. Ct. 2002). *Id.* Perry and Dukeman argued that if declaratory relief is unavailable in state court, then the comity doctrine does not apply in federal court because the state court remedies are insufficiently "adequate" and "complete." *Id.*

In other words, a federal complaint can be properly brought for federal declaratory relief in certain Illinois property tax cases because the Illinois state courts lack an "adequate" and "complete" remedy due to Illinois state courts only providing equitable jurisdiction in cases where the taxpayer claims the tax is unauthorized by law or the tax is levied on an exempt property. Perry Memo. in Opp. to Mot. to Dismiss in No. 17-CV-2133 (Distr. Ct.), Dckt. 14, pp. 2–5.

The district court agreed with Coles County by dismissing the amended complaint. Or. in No. 17-CV-2133 (Distr. Ct.), Dckt. 15, App. 16. The district court acknowledged that the case involves "the constitutionality of Coles County's taxation of commercial and industrial properties." *Id.*, App. 17. However, the court concluded the comity doctrine applied relying on the Court's 1981 decision in *Fair Assessment* ruling that § 1983 actions are barred: "Such taxpayers must seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate, and complete. . . ." *Id.*, App. 18, quoting *Fair Assessment*, 454 U.S. at 116.

2. On appeal, Perry and Dukeman argued that the comity doctrine does not bar federal jurisdiction in

Illinois when a complaint is brought for declaratory relief under § 2201 based on Equal Protection Clause violations, without claims that the property tax is unauthorized or is levied on an exempt property, because the Illinois state courts do not have equitable jurisdiction over such claims. Brief of the Appellant in *Perry v. Coles County, Illinois*, No. 17-CV-2133, pp. 8–16.

3. The Seventh Circuit rejected the petitioners' appeal by affirming the district court dismissal under the comity doctrine based on the Seventh Circuit's previous decisions in *Cosgriff v. County of Winnebago*, 876 F.3d 912, 915 (7th Cir. 2017) and *Capra v. Cook Cty. Bd. of Review*, 733 F.3d 705, 713 (7th Cir. 2013) stating that the Illinois state court remedies for taxpayers in petitioners' position, for all intents and purposes, are "adequate" and "complete." *Perry*, 906 F.3d at 588–89; App. 7–10.

4. The Seventh Circuit did state that Perry's and Dukeman's federal claims based on Coles County's failure to properly assess and calculate real estate taxes in 2016 and in future years did fall under the "well-established proposition that under Illinois law, equitable jurisdiction is not available for property tax relief when there is an adequate remedy of law, unless the tax is unauthorized by law or the tax is levied on an exempt property." *Perry*, 906 F.3d at 589, App. 10. Basically, the Seventh Circuit held that Illinois state court remedies were "adequate" and "complete" despite Illinois courts lacking equitable jurisdiction for declaratory relief under 28 U.S.C. § 2201 for such Equal Protection Clause violations.

In this way, the petitioners' Equal Protection Clause claims for declaratory relief under § 2201 were lost; neither federal courts nor state courts are willing to adjudicate them.

REASONS FOR GRANTING THE PETITION

The severe consequence of the Seventh Circuit's affirmance of the district court's dismissal is that virtually all Illinois property taxpayers' federal claims for declaratory relief based on Equal Protection Clause violations are barred in both the state and federal courts in Illinois. The Illinois state courts do not provide equitable jurisdiction in these cases. Meanwhile, the Illinois federal courts under the Seventh Circuit's decisions apply the comity doctrine remitting the Illinois taxpayers to state courts. *Perry*, 906 F.3d at 589; App. 12.

So, Illinois taxpayers' federal claims are lost in violation of at least the principle espoused in *Fair Assessment*, 454 U.S. at 116 n.8, that the comity doctrine should not cause any property taxpayer a loss of federal rights. Specifically, the Seventh Circuit's application of the comity doctrine contravenes the Court's dictum in *Fair Assessment* that property taxpayers "should be remitted to their state remedies," but only if "their federal rights will not thereby be lost." *Id.*

Ultimately, the Seventh Circuit's decision precludes all Illinois taxpayers from accessing any judicial forum—state or federal—to adjudicate their Equal

Protection Clause claims for declaratory relief under § 2201.

Perry and Dukeman respectfully submit that the Court should grant their petition for a writ of certiorari to clarify when and how the federal district courts should apply the exception to the comity doctrine when inadequate or incomplete state court remedies exist.

I. Illinois state courts' bar to equitable jurisdiction for petitioners' and all other Illinois property owners' Equal Protection Clause claims to prospective declaratory relief under 28 U.S.C. § 2201 fails to provide an "adequate" and "complete" remedy for the purposes of the comity doctrine.

The Court should grant this petition to develop the comity doctrine's exception that state court remedies at the beginning of a case must be "adequate" and "complete" as required by *Fair Assessment*, 454 U.S. at 116 and *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 422 (2010). Granting the petition will allow the Court to elaborate and clarify what the Court meant in *Fair Assessment* and *Levin* by stating that remitting the state taxpayers' claims to state court can only be done if the state court remedies are "plain, adequate, and complete." *Id.*

The Court in *Fair Assessment* stated that, under the comity doctrine, local property taxpayers seeking relief on Equal Protection Clause claims should be remitted to their state court remedies only "if their

federal rights will not thereby be lost." *Fair Assessment*, 454 U.S. at 116 n.8. Long before *Fair Assessment*, the Court had said that so long as the state remedy was "plain, adequate, and complete," the "scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it." *Matthews v. Rodgers*, 284 U.S. 521, 525–26 (1932). The Court in *Levin* cited *Matthews* and *Fair Assessment* on this point that the comity doctrine applies only if state court remedies are "plain, adequate and complete." *Levin*, 560 U.S. at 422.

The Seventh Circuit's decision to remit Perry's and Dukeman's federal claims to Illinois state courts—where state case law provides no state court equitable jurisdiction for their 28 U.S.C. § 2201 claims for prospective declaratory relief based on Equal Protection Clause violations—has caused Perry's and Dukeman's "federal rights" to "be lost" in contradiction of *Fair Assessment*. 454 U.S. at 116 n.8. The Court stated in *Fair Assessment* that the comity doctrine applies to a local property taxpayer's claims only if the federal court's remission of the claims to state court will not result in the loss of any of the taxpayer's federal rights. *Id.*

Yet, the Seventh Circuit relied on *Fair Assessment* to remit Perry's and Dukeman's claims to Illinois state courts, which have a "well-established proposition" that they do not provide equitable jurisdiction over

such claims for declaratory relief under 28 U.S.C. § 2201 or otherwise. *Perry*, 906 F.3d at 589–90. App. 10-13. The Seventh Circuit determined under the comity doctrine that Perry and Dukeman were not entitled to a judicial forum for their declaratory relief claims under 28 U.S.C. § 2201 at all because state law provided an adequate remedy at law—annual administrative appeals or annual lawsuits seeking property tax reductions or refunds.

But, the Declaratory Judgment Act's plain language does not support the Seventh Circuit's decision. Federal law does not make a citizen's § 2201 right to a judicial forum to adjudicate prospective declaratory claims contingent on the judicial forum not providing legal remedies such as money judgments. To the contrary, § 2201 provides the citizen a federal right to a judicial forum to litigate claims for prospective declaratory relief "whether or not further relief is or could be sought":

> In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, *whether or not further relief is or could be sought*. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a) (emphasis added).

Accordingly, the Seventh Circuit obliterated Perry's and Dukeman's federal rights to a judicial forum to litigate their § 2201 declaratory claims based on the non sequitur that Illinois state courts already provide for administrative appeals or court jurisdiction to seek property tax reductions or refunds. The Seventh Circuit's misapplication of the comity doctrine denied a judicial forum for Perry and Dukeman to adjudicate their claims under § 2201 for prospective declaratory relief.

Further, the Declaratory Judgment Act's legislative purpose contradicts the Seventh Circuit's reasoning. In enacting § 2201, Congress recognized the substantial effect declaratory relief would have on legal disputes. Congress recognized that declaratory relief would "settle controversies," S. Rep. No. 1005, 73d Cong., 2d Sess., p. 2 (1934), and permit the federal courts "the power to exercise in some instances preventive relief." H.R. Rep. No. 1264, 73d Cong., 2d Sess., p. 2 (1934). Accordingly, Perry and Dukeman should have, under 28 U.S.C. § 2201, access to a judicial forum to adjudicate their prospective declaratory relief claims. The Seventh Circuit obliterated petitioners' federal rights under 28 U.S.C. § 2201 by remitting petitioners' claims to Illinois state courts, which have "a well-established proposition" of no equitable jurisdiction for such claims.

The Seventh Circuit stated that it is a "well-established proposition that under Illinois law, equitable jurisdiction is not available for property tax relief when there is an adequate remedy of law, unless the

tax is unauthorized by law or the tax is levied on an exempt property." *Perry*, 906 F.3d at 590. App. 10. Since Perry's and Dukeman's amended complaint does not include claims that the tax is unauthorized nor the tax is levied on an exempt property, Illinois courts are barred from providing prospective declaratory relief to the petitioners. Nonetheless, the Seventh Circuit applied the comity doctrine while acknowledging that Illinois state courts do not offer equitable jurisdiction to award declaratory relief on Perry's and Dukeman's Equal Protection Clause claims.

The consequence of the Seventh Circuit decision in this case is that Illinois taxpayers with Equal Protection Clause property claims seeking declaratory relief have no federal court and no state court to adjudicate their claims. This result contradicts the comity doctrine's deference, not surrender, to local governments. The Seventh Circuit's surrender to local governments means the federal rights of Illinois' property taxpayers are lost.

The Seventh Circuit is incorrect that the Court's decision in *Fair Assessment* mandates that state court remedies are "adequate" and "complete" when state courts provide no equitable jurisdiction over Equal Protection Clause property tax claims for federal declaratory relief under § 2201. Instead, the Court in *Fair Assessment* stated that the exception to the Tax Injunction Act, 28 U.S.C. § 1341, and the exception to the comity doctrine based on legally insufficient state court remedies have "no significant difference" and that "plaintiffs seeking protection of federal rights in

federal courts should be remitted to their state remedies if their federal rights will not thereby be lost":

> We discern no significant difference, for purposes of the principles recognized in this case, between remedies which are "plain, adequate, and complete," as that phrase has been used in articulating the doctrine of equitable restraint, and those which are "plain, speedy and efficient," within the meaning of § 1341. [citations omitted] Both phrases refer to the obvious precept that plaintiffs seeking protection of federal rights in federal courts should be remitted to their state remedies *if their federal rights will not thereby be lost*.

Fair Assessment, 454 U.S. at 116 n.8 (emphasis added); *see also Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010).

First, as to § 1341, the Tax Injunction Act, it contains a limitation on federal jurisdiction regarding claims based on state law taxes. In cases where the Tax Injunction Act applies, no federal injunctions nor federal declaratory judgments are allowed. *See Levin v. Commerce Energy, Inc*., 560 U.S. 413, 422 (2010); *California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982). The Tax Injunction Act has an exception similar to the non-jurisdictional comity doctrine:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law *where a plain,*

> *speedy and efficient remedy may be had in the courts of such State*.

Law of June 25, 1948, ch. 646, 62 Stat. 932 (emphasis added). If the condition of "a state court providing a plain, speedy and efficient remedy" under § 1341 is not satisfied, then federal jurisdiction exists under § 1341. Similarly, the comity doctrine bars jurisdiction if the state court remedies are not "plain, speedy and efficient." Since the Court has stated there is no "significant difference" between the two exceptions, if § 1341 does not apply, the comity doctrine does not apply as well.

The Seventh Circuit's findings, not the holding, makes it clear that the Tax Injunction Act and comity doctrine do not apply in Perry's and Dukeman's case because Illinois courts do not have equitable jurisdiction for their claims. The Seventh Circuit's findings acknowledge that Illinois courts offer no equitable jurisdiction to petitioners and similarly-situated Illinois property taxpayers who have such federal claims for prospective declaratory relief. Consequently, the Illinois state court remedies are not "adequate" and not "complete" because petitioners and similarly-situated Illinois property taxpayers cannot access Illinois state courts on such federal claims for prospective declaratory relief.

Second, neither § 1341 nor the comity doctrine require the federal district court to remit the taxpayers to state court "if their federal rights would thereby be lost." *Fair Assessment*, 454 U.S. at 116 n.8. In this case,

the Seventh Circuit's affirmance of the district court's decision means that petitioners' federal claims will not be heard in either state or federal court.

The Seventh Circuit's affirmance of the district court's remittance of the taxpayers to state court violates the Court's dictum that "their federal rights . . . not be lost." *Id.* The decision means that Perry's and Dukeman's federal rights to declaratory relief are lost in federal court and in state court on comity grounds. The appellate court also acknowledged that the Illinois state courts do not provide equity jurisdiction for Perry's and Dukeman's federal claims for prospective declaratory relief. Thus, their federal claims for prospective declaratory relief have been impermissibly lost according to the Court's dictum in *Fair Assessment*.

Third, it has been stated in the Court that although "equity jurisdiction does not lie where there exists an adequate legal remedy[,] . . . the 'adequate legal remedy' must be one cognizable *in federal court*." *Fair Assessment*, 454 U.S. at 129 n.15 (Brennan, J., concurring in the judgment) (emphasis in original). Illinois' state court legal remedies are not cognizable in federal court as legally adequate substitutes for petitioners' federal claims for declaratory relief under § 2201. The Seventh Circuit affirmed the district court's dismissal under the comity doctrine, but acknowledged that Illinois courts provided no equity jurisdiction for petitioners' claims for prospective declaratory relief.

The Seventh Circuit relied heavily on its own previous decisions to justify what is an "adequate" and "complete" remedy. *Perry*, 906 F.3d at 588–89, citing *Cosgriff*, 876 F.3d at 915 and *Capra*, 733 F.3d at 713. There, the court identified two methods for which tax assessment complaints could be adjudicated. The first, by taking a county assessment decision to a property tax appeal board or, second, by filing a tax objection complaint with a county circuit court. *Id.* Because no state law provision directly precluded the consideration of other claims beyond assessment values, it is presumed constitutional challenges could likewise be made—and if so—would fall within the rubric of actions "unauthorized by law." *Id.*

However, the Seventh Circuit failed to address the legal consequence that neither the board of review nor the circuit court, according to Illinois appellate case law, has the equity jurisdiction legally necessary to adjudicate Perry's and Dukeman's federal claims for prospective declaratory relief under § 2201. Their amended complaint does not contend the assessments were unauthorized by law, nor fraudulent, but that the County's actions violated the Equal Protection Clause.[2] In fact, the result of Illinois state court legal

[2] The appellate decision also claims that Perry and Dukeman's argument that they "do not wish to stop the assessment, levying, or collection of taxes" as "disingenuous." *Perry*, 906 F.3d at 590. App. 12–13. This is because in their prayer for relief they asserted damages in the same amount as their respective assessments. However, the amount sought is irrelevant. It could have been for nominal damages as well. Plaintiffs are "masters of their complaint," and as such may seek the type of relief or amounts

remedies is that Perry and Dukeman lost their federal claims for prospective declaratory relief under § 2201 because state courts do not provide equity jurisdiction to adjudicate them.

The Seventh Circuit's decision contradicts what the Court said in *Fair Assessment*: the Seventh Circuit's decision remitting Perry and Dukeman to Illinois state court caused their federal right to claim declaratory relief under § 2201 to be impermissibly lost.

Because of the Seventh Circuit's decision, the same would be true for all Illinois property taxpayers—millions of them; millions of Illinois property taxpayers have no federal nor state court to adjudicate their Equal Protection Clause claims to declaratory relief under § 2201.

II. The Court's 2010 *Levin* decision left in place the exception to the comity doctrine for instances where state court remedies for local taxpayers are not "plain, adequate and complete."

The Court's 2010 decision in *Levin v. Commerce Energy, Inc.* left in place the exception to the comity

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believed to be justified for government misconduct. *Garbie v. DaimlerChrysler Corp.*, 211 F.3d 407 (7th Cir. 2000) ("Plaintiffs as master of their complaint may include (or omit) claims or parties in order to determine the forum."). To claim the petitioners as disingenuous distracts from the underlying issue at hand—their genuine belief that Illinois state courts bar equitable jurisdiction and, hence, the loss of their ability to protect their federal rights.

doctrine for instances where state court remedies for local taxpayers are not "plain, adequate, and complete." 560 U.S. 413, 422 (2010). The Court held in *Levin* that the comity doctrine, independently from § 1341, precludes federal courts from considering a taxpayer's challenge to another taxpayer's alleged unconstitutionally favorable tax treatment. Although the facts are distinguishable from this case involving Illinois' well-established proposition that equitable jurisdiction is virtually never offered to local property taxpayers, the Court's decision in *Levin* left the exception to the comity doctrine for when the state courts do not provide "plain, adequate, and complete" remedies in place. *Levin* is also significant for showing how important the Court is in balancing considerations of the interests of states under the constitutional scheme and the interests of local property taxpayers who have federal rights.

As the Court stated in *Fair Assessment*, federal-court jurisdiction in state-tax cases may still be upheld where the remedies provided by state courts is not "plain, adequate, and complete." Consistently, the Court in *Levin* acknowledged that comity may be inappropriate where such a state court remedy does not exist and the Tax Injunction Act would not serve as a bar to federal jurisdiction if the state court remedy is not "plain, speedy, and efficient." *Levin*, 560 U.S. at 422 (citing *Matthews v. Rodgers*, 284 U.S. 521, 525–26 (1932)).

There has been some litigation on the adequacy of state court remedies in federal courts. In 1981, the Court held in *Rosewell v. LaSalle Nat'l Bank* that a 2-year delay in obtaining a refund through a state

court procedure did not "[fall] outside the boundary of a 'speedy' " remedy. 450 U.S. 503, 521 (1981). In 1993, the Sixth Circuit held that the lack of de novo factual review of a state agency's decision coupled with unrelated litigation that could influence the agency's factual findings did not constitute a "plain, speedy, and efficient" remedy. *Northwest Airlines, Inc. v. Tennessee State Bd. of Equalization*, 11 F.3d 70 (6th Cir. 1993). But, more than thirty years after *Fair Assessment*, what constitutes an "adequate" or "complete" remedy under comity principles still remains a question for the Court to resolve.

The Court's federal standards for adequacy and completeness of state court remedies under the comity doctrine are raised by the question presented by this petition. The petitioners request the Court to develop and clarify such federal standards and apply them to Illinois case law providing Illinois courts no equitable jurisdiction for local property taxpayers' Equal Protection Clause claims for declaratory relief under § 2201.

III. The Court should grant the petition to consider whether the Court's legal analysis of adequacy of state court remedies in the context of eminent domain claimants and in the context of local property taxpayers should be the same—as opposed to the inconsistencies of *Fair Assessment*, *Williamson*, *San Remo Hotel*, *Levin* and *Knick*.

The Court should grant the petition to consider whether the Court's legal analysis of adequacy of state

court remedies in the context of eminent domain claimants and in the context of local property taxpayers should be the same.

As the Court knows, multiple cases may be required to resolve vexing legal issues. The Court has recognized in *Williamson County Regional Planning Commission v. Hamilton Bank* and its progeny that cases affecting local eminent domain claimants have similarities to the comity doctrine being applied to local property taxpayers. 473 U.S. 172 (1985). The Court's recent actions in *Knick v. Township of Scott* also show that the Court has again engaged in these difficult legal issues determining adequacy of state court remedies to balance the interests of the states against preserving citizens' federal rights. 138 S.Ct. 1262 (2018).

The Court in *Knick* re-affirms its constitutional role ensuring that federal rights are not lost in the shuffle between federal courts and state courts. Experience shows multiple cases before the Court are sometimes required to resolve a vexing question of procedure between federal courts and state courts. It often takes more than one case for the Court even to state a procedural rule's contours. For example, the *Rooker–Feldman* doctrine is a jurisdictional rule enunciated by the Court over the course of two cases: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

A similar situation has arisen here with the related procedural subject areas of local property taxpayers and local eminent domain claimants. Multiple cases such as *Fair Assessment, Williamson, San Remo Hotel, Levin* and *Knick* have been heard by the Court over the decades to determine the boundary line between the federal courts and the state courts and to balance the interests of the states and to preserve federal rights in these related subject areas of local eminent domain claimants and local property taxpayers.

In the *Williamson* doctrine cases, the Court has recognized, including recent actions in *Knick*, similarities to the comity doctrine being applied to local property taxpayers. In *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 347 (2005), the Court recognized the similarities in federal jurisdictional rules on local eminent domain claimants and federal rules on local property taxpayers. In *San Remo Hotel*, a local eminent domain case, the Court quoted *Fair Assessment* for the holding that taxpayers are "'barred by the principle of comity from asserting § 1983 actions against the validity of state tax systems in federal courts.'" *San Remo Hotel*, 545 U.S. at 347 (quoting *Fair Assessment*, 454 U.S. at 116). The Court then stated, "State courts are fully competent to adjudicate constitutional challenges to local land-use decisions. Indeed, state courts undoubtedly have more experience than federal courts do in resolving the complex factual, technical, and legal questions related to zoning and land-use regulations." *Id*. Of course, it would also be true that state courts undoubtedly have

more experience than federal courts in resolving the complex factual, technical, and legal questions related to local property taxation.

Additionally, petitioners recognize that there is an administrative fact here that cannot be overlooked. The federal district courts cannot be overburdened. There are many more state court judges than there are federal judges; one report states that there are approximately 30,000 state judges and 1,700 federal judges.[3] Eminent domain claims and property tax claims tend to be complex, fact-intensive cases requiring substantial judicial resources to adjudicate. Thus, the federal courthouse door cannot be thrown wide open to local eminent domain claimants and local property taxpayers, as a substitute for the state courts' general jurisdiction, without risking federal district court case overload—and administrative mutiny.

But, even with these caveats, federal rights of local eminent domain claimants and local property taxpayers must be preserved. So, the "adequacy" and "completeness" of state court remedies must be determined prior to the federal district court remitting the case to state court. The Court in dicta has stated as much; the Court does not want federal district courts to remit local claimants to state court "if their federal rights would thereby be lost." *Fair Assessment*, 454 U.S. at 116 n.8. But, the Court articulating when and how the

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[3] *See* "Judges in the United States", p. 3, University of Denver, https://iaals.du.edu/sites/default/files/documents/publications/judge_faq.pdf (January 7, 2019).

federal district court should determine the "adequacy" and "completeness" of state court remedies has proven to be a vexing legal problem in both subject areas of local eminent domain claimants and local property taxpayers.

In this context, the Court in *Knick v. Township of Scott*, 138 S.Ct. 1262 (2018) once again addresses federal jurisdictional limitations based on inadequacy and incompleteness of state court remedies. The question presented in *Knick* involves the Court reconsidering the *Williamson* doctrine which requires property owners to exhaust state court remedies to ripen federal takings claims. Thus, in *Knick*, the Court is directly weighing how the federal courts are to determine the "adequacy" of state court remedies to satisfy the federal rights of local eminent domain claimants.

Similarly, in this case, the petitioners are requesting the Court to weigh in on when and how the federal courts are to determine the "adequacy" of state court remedies to satisfy the federal rights of not local eminent domain claimants, but of local property taxpayers.

Although local eminent domain claimants and local property taxpayers may have different constitutional sources of rights, Just Compensation Clause versus the Equal Protection Clause, those differences do not necessarily affect the legal analysis.

First, the same state interests are to be considered. Local eminent domain policy and local tax policy are both inherently local and complex affairs. Federal

courts under the *Williamson* doctrine and the comity doctrine, respectively, have deferred to state courts because the state courts have more judges and more experience in the subject areas and, also, because of principles of federalism.

Second, similar federal rights are at stake. A local eminent domain claimant seeks a monetary award under the Just Compensation Clause; a local property taxpayer seeks a monetary award under the Equal Protection Clause. Both seek similar federally-guaranteed remedies which the federal court can award.

Third, the Court has already assumed the responsibilities of delineating the jurisdictional boundaries of the federal courts and state courts in this regard—with both the *Williamson* and comity doctrines applied in their respective subject areas.

Finally, the Court by granting the petition in *Knick* has recognized that the *Williamson* doctrine needs to be re-visited to ensure a proper jurisdictional boundary between federal courts and state courts. Similarly, the Seventh Circuit's comity doctrine is not working effectively because the exception to the comity doctrine for inadequate and incomplete state court remedies is not well-defined. The Court's analysis of the legal boundaries between federal courts and state courts is aided by thinking of local eminent domain claimants and local property taxpayers as subject areas which are related and overlapping.

Because of the similarities between the vexing legal issues presented here, the Court should grant the

petition to consider whether the court's legal analysis of adequacy of state court remedies in the context of eminent domain claimants and in the context of local property taxpayers should be the same. *Fair Assessment* and *Williamson*, decided in 1981 and 1985, respectively, are both very important cases, but they have never been reconsidered together. They should be here.[4]

IV. The Court should also clarify if the adequacy and completeness of state court remedies is determined by the federal district court at the beginning of the case.

It is important for the Court to clarify if the adequacy and completeness of state court remedies is determined by the federal district court at the beginning of the case. Petitioners argued below that the local property taxpayer, at the beginning of the case, must discharge the burden of showing that state court procedures or remedies are inadequate or incomplete to invoke the exception to the comity doctrine. However, there is no federal case supporting the proposition.

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[4] If this petition is granted, petitioners move for this case to be administratively consolidated with *Knick.* There is no reason not to apply the same non-jurisdictional comity doctrine, with a robust exception where there are inadequate state court remedies (as currently in Illinois for local property taxpayers seeking declaratory relief), to apply in federal cases brought by local property taxpayers *and* to apply in federal cases brought by local eminent domain claimants.

Even in the related subject area of local eminent domain claimants, where there has been more federal court litigation, the Court has not opined on this important issue—although the U.S. Court of Appeals for the Ninth Circuit has. After *Williamson*, but before *San Remo Hotel*, the Ninth Circuit stated that a finding that federal jurisdiction exists because of a lack of an "adequate state remedy" requires, at the beginning of the case, that state case law either does not recognize an inverse-condemnation remedy for regulatory taking or rejects inverse condemnation as a remedy for regulatory taking:

> A landowner who seeks to sue in federal court before seeking compensation from the state "bears the burden of establishing that state remedies are inadequate." . . . A landowner fails to discharge this burden by showing that state procedures are untested or uncertain.

Del Monte Dunes at Monterey, Ltd. v. City of Monterey, 920 F.2d 1496, 1506–07 (9th Cir. 1990).

The Court should grant the petition so that it can clarify that the adequacy of state court remedies must be determined at the beginning of the case by the local claimant attempting to discharge the burden of proving that the state procedures are inadequate or incomplete.

V. The Seventh Circuit's decision has circuit-wide and nationwide effects on local property taxpayers' rights to a judicial forum to seek prospective declaratory relief under § 2201 based on Equal Protection Clause claims.

Notwithstanding the Seventh Circuit's acknowledgement that Illinois courts offer no equitable jurisdiction to Perry and Dukeman and similarly-situated Illinois property taxpayers who have federal claims for declaratory relief under 28 U.S.C. § 2201 based on Equal Protection Clause violations, the Seventh Circuit held that the comity doctrine bars access to federal court for Equal Protection Clause state property tax claims because state court remedies in Illinois are "adequate" and "complete."

The Seventh Circuit's decision means that Illinois property taxpayers' federal claims for declaratory relief under § 2201 are barred from federal court and from state court. In other words, Illinois property taxpayers have no judicial forum for these claims, even though federal law affords them the right to prospective declaratory relief under § 2201.

Whether the comity doctrine is to be applied to deny local property taxpayers access to all courts on their Equal Protection Clause claims for § 2201 declaratory relief is an important federal issue with circuit-wide and nationwide impact. The Court, not the Seventh Circuit, should have the final word on these important questions of federal-court jurisdiction.

First, the Seventh Circuit's decision has severe consequences for Perry and Dukeman and all Illinois property taxpayers. The decision leaves the petitioners and all Illinois property taxpayers with no judicial forum for which to pursue declaratory relief under § 2201. The Seventh Circuit's misapplication of the comity doctrine bars federal-court jurisdiction even when a state does not provide equitable jurisdiction for property taxpayers' claims for declaratory relief. Illinois appellate court decisions bar state court equitable jurisdiction for property taxpayers' claims for prospective declaratory relief—something that the Seventh Circuit acknowledged.

Accordingly, if the *Perry* decision is allowed to stand, then Illinois property taxpayers who have Equal Protection Clause claims for declaratory relief under § 2201 will not have access to any federal or state court to adjudicate their claims. The Seventh Circuit's decision affects not only Perry and Dukeman, but also all Illinois property taxpayers. Those taxpayers are currently denied access to both federal and state courts on these Equal Protection Clause property tax claims for declaratory relief under § 2201.

At the very least, the result of the Seventh Circuit decision in this case, interpreting the Court's comity decisions, is an Illinois local property taxpayer has neither a federal court, nor a state court, to adjudicate claims for prospective declaratory relief under § 2201 based on Equal Protection Clause violations. Since Illinois has over twelve million residents, that means

millions of Illinois' property taxpayers have lost their federal rights.

Second, the application of the comity doctrine in this case is an important federal issue of circuit-wide importance. Wisconsin and Indiana, for example, can now deny equity jurisdiction for their property tax litigants in state court without fear that a federal court will exercise jurisdiction over Equal Protection Clause claims seeking declaratory relief under § 2201.

Third, not all property owners in Illinois reside in Illinois. Illinois is a large, significant state with properties with high value—in Chicago, its suburbs and downstate. The Seventh Circuit deprives these property taxpayers outside of Illinois of their federal rights under § 2201 too.

Fourth, the Seventh Circuit's decision may encourage other states, inside and outside the Seventh Circuit, to limit equitable jurisdiction to prevent local property taxpayers from having a judicial forum for their claims for prospective declaratory relief under § 2201 based on Equal Protection Clause violations. In this way, property taxpayers in other states who pay property taxes in those respective states may have their federal rights adversely affected too.

It is because of these severe nationwide consequences that the Court, not the Seventh Circuit, should determine the important federal question of whether the remedies offered by the Illinois courts for Illinois property taxpayers are "adequate" and "complete" for comity-doctrine purposes.

In summary, this petition arising from the Seventh Circuit's decision seeks clarification from the Court on when and how the exception to the comity doctrine for inadequate and incomplete state court remedies applies. The Court has stated that, under the comity doctrine, local taxpayers seeking relief on Equal Protection Clause property tax claims under 42 U.S.C. § 1983 should be remitted to their state court remedies only "if their federal rights will not thereby be lost." *Fair Assessment*, 454 U.S. at 116 n.8. However, beyond this statement, there is no U.S. Supreme Court holding applying the exception to the comity doctrine on the grounds that the state court remedies in a particular case are legally insufficient.

The Court should clarify when and how the exception to the comity doctrine for inadequate and incomplete state court remedies is applied in a particular case. Additionally, there is an opportunity for the Court, in light of the pending *Knick* case, to reconsider whether the rules delineating the boundaries between the federal courts and the state courts should be the same for local eminent domain claimants as for local property taxpayers. The petitioners believe they should be.

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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