No. _____

In the Supreme Court of the United States

FRITZ KAEGI, IN HIS CAPACITY AS COOK COUNTY ASSESSOR,

Petitioners,

v.

A.F. MOORE & ASSOCIATES, INC., *ET AL.*

Respondents.

On Petition for 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

This Court previously examined Illinois' property tax objection system and declared it a plain, speedy, and efficient process for taxpayers to obtain tax relief. *Rosewell v. LaSalle Nat. Bank*, 450 U.S. 503 (1981). Since *Rosewell*, the Illinois General Assembly further streamlined that process, requiring taxpayers to demonstrate only that their property was overvalued—regardless of the reason—without the need for burdensome litigation.

Here, the Seventh Circuit upended that carefully considered statutory scheme, subverting the Illinois legislature's intent to reform the tax objection process. The court disregarded the Tax Injunction Act and unilaterally expanded federal jurisdiction by permitting ordinary property tax objections to be heard by federal district courts, despite Illinois' courts ability and obligation to hear such claims in the first instance. Accordingly, this case presents two questions:

1. Does the Seventh Circuit's opinion in *A.F. Moore v. Pappas* continue the movement, begun in *Hibbs v. Winn*, 542 U.S. 88 (2004), to erode the vitality of the Tax Injunction Act and undermine congressional intent by further narrowing the Act's once-broad jurisdictional bar to litigating state taxation matters in federal court when it concluded that Illinois trial courts, as courts of general jurisdiction with concurrent jurisdiction to hear federal constitutional claims, could not hear or adequately resolve property tax objections based on federal equal protection grounds?

2. Did the Seventh Circuit contravene the comity doctrine by improperly invading the province of the Illinois legislature and the Illinois courts when it determined the statutory property tax objection procedure was so deficient that it cannot adequately resolve garden-variety property tax objections brought on equal protection grounds, forcing such claims to be litigated in the federal courts?

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceeding below were:

Petitioner Fritz Kaegi, Assessor of Cook County;

Respondents A.F. Moore & Associates, Inc., J. Emil Anderson & Son, Inc., Prime Group Realty Trust, American Academy of Orthopedic Surgeons, Erling Eide, Fox Valley/River Oaks Partnership and Simon Property Group, Inc.; and

Respondents Maria Pappas, Treasurer and *ex-officio* Collector of Cook County, Illinois, and the County of Cook.[1]

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[1] Respondent Pappas and County of Cook filed a separate petition for a writ of certiorari on September 4, 2020 (no. 20-____).

RELATED PROCEEDINGS

Woodfield Realty Holding Co., LLC v. Pappas, 05 COTO 3938, Circuit Court of Cook County, Illinois. Case pending; no judgment has been entered.

In re Level of Assessment Litigation, 05 COTO 3938, Circuit Court of Cook County, Illinois. Case pending; no judgment has been entered.

A.F. Moore & Associates v. Pappas, 10 COTO 4715, Circuit Court of Cook County, Illinois. Case pending; no judgment has been entered.

J. Emil Anderson & Son, Inc. v. Pappas, 10 COTO 4665, Circuit Court of Cook County, Illinois. Case pending; no judgment has been entered.

Prime Group Realty Trust Mgmt. Agent v. Pappas, 05 COTO 4016, Circuit Court of Cook County, Illinois. Case pending; no judgment has been entered.

Am. Academy of Orthopedic Surgeons v. Pappas, 09 CO 6182, Circuit Court of Cook County, Illinois. Case pending; no judgment has been entered.

Eide v. Pappas, 05 COTO 3967, Circuit Court of Cook County, Illinois. Case pending; no judgment has been entered.

Property Tax Mgmt., LLC, Management For Owner v. Pappas, 08 COTO 3814, Circuit Court of Cook County, Illinois. Case pending; no judgment has been entered.

A.F. Moore v. Pappas et al., 18-cv-4888, U.S. District Court for the Northern District of Illinois. Judgment entered April 19, 2019.

A.F. Moore v. Pappas et al., Nos. 19-1971 and 19-1979 (cons.), U.S. Court of Appeals for the Seventh Circuit. Judgment entered January 29, 2020.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner Fritz Kaegi, Cook County Assessor, respectfully petitions 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 United States Court of Appeals for the Seventh Circuit is reported at 948 F.3d 889 and is reproduced in the Appendix accompanying the petition filed by Treasurer Pappas and the County of Cook on September 4, 2020 (No. 20-___), at 1a-15a. The district court's order dismissing the plaintiffs' complaint is reported at 385 F. Supp. 3d 591 and is reproduced at 16a-30a.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on January 29, 2020. (1a-15a). An order denying the County Defendants' joint petition for rehearing or rehearing *en banc* was entered on April 9, 2020. (31a-32a). Pursuant to the Court's March 19, 2020 order, this Petition was timely filed within 150 days of denial of the rehearing petition. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED[2]

U.S. Const., 14th am., §1 (33a):

No State shall make or enforce any law which shall …deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1341 (Tax Injunction Act) (33a):

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.

35 ILCS 200/23-15 (38a):

(a) A tax objection complaint under Section 23-10 [35 ILCS 200/23-10] shall be filed in the circuit court of the county in which the subject property is located.… [N]o complaint shall be filed as a class action. The complaint shall name the county collector as defendant and shall specify any objections that the plaintiff may have to the taxes in question. No appearance or answer by the county collector to the tax objection complaint, nor any further pleadings, need be filed. Amendments to the complaint may be made to the same extent

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[2] Complete copies of all relevant constitutional and statutory provisions are contained in the appendix submitted with the petition filed by Treasurer Pappas and the County of Cook, which was filed on September 4, 2020 (no. 20-____). 1a-263a. Key provisions are reproduced here for the Court's convenience.

which, by law, could be made in any personal action pending in the court.

* * *

(b) (2) The taxes, assessments, and levies that are the subject of the objection shall be presumed correct and legal, but the presumption is rebuttable. The plaintiff has the burden of proving any contested matter of fact by clear and convincing evidence.

(3) Objections to assessments shall be heard de novo by the court. The court shall grant relief in the cases in which the objector meets the burden of proof under this Section and shows an assessment to be incorrect or illegal. If an objection is made claiming incorrect valuation, the court shall consider the objection without regard to the correctness of any practice, procedure, or method of valuation followed by the assessor, board of appeals, or board of review in making or reviewing the assessment, and without regard to the intent or motivation of any assessing official. The doctrine known as constructive fraud is hereby abolished for purposes of all challenges to taxes, assessments, or levies.

35 ILCS 200/16-95 (33a)

35 ILCS 200/16-115 (35a)

35 ILCS 200/16-120 (35a)

35 ILCS 200/16-125 (36a)

35 ILCS 200/23-5 (37a)

INTRODUCTION

The Tax Injunction Act is a broad jurisdictional bar. It restricts the power of federal district courts to prevent the assessment, levy, or collection of state taxes so long as a plain, speedy, and efficient remedy is available in state court.

In 1995, as a matter of policy and expedience, the Illinois General Assembly amended the Illinois Property Tax Code to permit property owners to object to their property taxes on the ground that they are incorrect, but without regard to the intent, motivation, or methodology of any assessing official. The taxpayer need only show that the property tax is incorrect—whether fraudulently, inadvertently, or otherwise. Because the Code eliminated the need for taxpayers to prove constructive fraud in the assessment, the assessor need not be named as a party defendant and the only proper named defendant is the county collector.

The plaintiffs filed garden-variety property tax objections in state court under the Code and the federal equal protection clause, arguing that their property was improperly assessed relative to similar properties and they overpaid their taxes. Despite the legislature's abolishment of constructive fraud, the plaintiffs nevertheless chose to engage in extensive discovery, over the County defendants' objections, about the assessor's methodology and intent. As a result, this matter has continued for over a decade litigating an issue ultimately irrelevant to the plaintiffs' claims for relief.

Based largely on the length of this litigation, the plaintiffs then filed the same claims in federal court, again alleging that their treatment under the Property Tax Code violated their equal protection and due process rights under the federal equal protection clause and the uniformity clause of the Illinois constitution, the latter of which encompasses federal equal protection claims under Illinois law. *Marks v. Vanderventer*, 2015 IL 116226, ¶29. The district court dismissed the plaintiffs' complaint for lack of subject matter jurisdiction under the Tax Injunction Act and the comity doctrine.

On appeal, the Seventh Circuit reversed. Setting aside longstanding state and federal precedent interpreting the Tax Injunction Act and the comity doctrine, the panel ruled that the Illinois property tax framework does not provide a plain, speedy, and efficient remedy because it does not allow taxpayers to sufficiently prove their constitutional claims. Thus, it permitted the plaintiffs to seek an injunction ordering a property tax refund in federal district court—the precise relief they would have received under the Property Tax Code. In doing so, the Seventh Circuit curtailed the broad jurisdictional bar to state taxation issues in federal court, upended the Illinois property tax system in contravention of the Illinois' legislature's intent, and has now subjected taxing officials throughout the State of Illinois to federal civil rights litigation over ordinary property tax objections.

STATEMENT OF THE CASE

For decades, property tax objections in Illinois, and particularly in Cook County, proceeded under section

23-15 of the Illinois Property Tax Code. Originally, to establish a claim, a taxpayer had to prove that assessing officials engaged in constructive fraud in arriving at the assessed value of the property, such that they engaged in misconduct or dishonesty. (151a-152a).

Over time, the constructive fraud standard had become unworkable. In 1994, in response to a recent state high court decision, the Illinois General Assembly convened the Civic Federation Task Force, a panel representing taxpayers, the organized bar, taxpayer watchdog organizations, taxing officials, and state legislators, to conduct a thoughtful examination of these procedures. (151a-154a). The Task Force issued a lengthy report containing proposed amendments to the Code. In 1995, the Illinois General Assembly enacted the amendments and adopted the Report itself as the legislative history of the amendments. *People ex rel. Devine v. Murphy*, 181 Ill. 2d 522, 534 n.1 (1998).

The 1995 Amendments streamlined the tax objection procedure, clarified the hearing process, and amended the standard of review in assessment challenges. (154a). A taxpayer may file its complaint in the trial court, and the court reviews any objections to the taxes, assessments, or levies *de novo*. (38a-39a). The most consequential feature of the amendments abolished the doctrine of constructive fraud, no longer requiring taxpayers to prove that their assessment resulted from misconduct or improper practices by assessing officials. Instead, taxpayers must only show that the assessment was incorrect, regardless of the reason. (155a). Without the need to prove intent or

illegality, the assessor was no longer required to be a named defendant. Only the county collector must be named. (155a-156a).

The broad scope of the remedy was otherwise unchanged. As always, taxpayers could still challenge "incorrect assessments, … statutory misclassification, *constitutional violations*, illegal levies or tax rates, and any other legal or factual claims." (Emphasis added). (155a). These amendments reflected a careful balancing of pertinent policies: to restore clarity, simplicity, and efficiency to the process and to ensure stability of property tax revenues for local government operations. (154a).

A. The State Court Litigation

The plaintiffs here own industrial buildings, multi-tenant office buildings, and retail properties in Cook County, Illinois. (17a-18a). They filed tax objection lawsuits in state court for the tax years 2004 through 2007, asserting tax objections under section 23-15 of the Illinois Property Tax Code and the federal equal protection clause under 42 U.S.C. § 1983. (61a-63a). They alleged that properties similar to theirs were underassessed relative to theirs and, as a result, they overpaid their taxes. Under the section 23-15, the suit was filed against Cook County Treasurer Maria Pappas.

Their complaints have been litigated in Cook County for more than a decade, and remain pending. Although constructive fraud was long ago abolished under the 1995 Amendments, removing the need to establish the assessor's methodology or intent, the plaintiffs have spent much of this time engaged in

extensive oral and written discovery on the acts and practices of the Cook County Assessor's Office, over the Treasurer's and the Assessor's objections. The plaintiffs subpoenaed documents from the Assessor's Office, which were produced if available, and deposed former employees of the office.

After a thorough analysis of the Treasurer's motion to dismiss the section 1983 claim, the trial court found that it had subject matter jurisdiction to hear that claim, but ultimately dismissed it on the ground that as pled, the plaintiffs' section 23-15 claim provided them all of the relief they sought in the section 1983 claim. (119a-148a).

B. The Federal District Court Litigation

In 2018, the plaintiffs filed a complaint in the United States District Court for the Northern District of Illinois against Treasurer Pappas, the County of Cook, and Joseph Berrios, in his capacity as then-Cook County Assessor (collectively, the County defendants).[3] The complaint again alleged violations of the equal protection and due process clauses of the U.S. constitution, brought under section 1983; violations of Illinois constitutional provisions; and state law claims under the Illinois Property Tax Code. (21a). The plaintiffs alleged that they were denied their right to a plain, speedy, and efficient remedy

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[3] After the filing of this lawsuit, Fritz Kaegi replaced Joseph Berrios as the Cook County Assessor. Under Federal Rule of Civil Procedure 25(d), Kaegi automatically replaced Berrios as a defendant in this lawsuit. *Vasquez v. Foxx*, 895 F.3d 515, 518 n.1 (7th Cir. 2018).

based largely on their inability to obtain certain discovery and how long the state court proceedings had lasted.

The County and the Treasurer moved to dismiss the complaint under Rules 12(b)(1) and 12(b)(6), arguing the district court lacked jurisdiction to hear the case under the Tax Injunction Act. The Assessor joined that motion and separately moved to dismiss under Rule 12(b)(6) on statute of limitations grounds. (21a).

The district court granted the County's motion to dismiss, holding that the Tax Injunction Act and principles of comity barred federal jurisdiction over the matter. (28a-29a). First, under the TIA analysis, it noted that for "over two decades, the Seventh Circuit has upheld the Illinois tax objection procedures as a 'plain, speedy and efficient' remedy under the TIA." (25a). The court also determined that under state and federal precedents, the Illinois Property Tax Code could accommodate federal constitutional objections. (27a-28a).

While the plaintiffs argued that the length of the state court litigation deprived them of a speedy or adequate remedy, the district court found that "[d]ecade-long litigation is not a feature of the tax-objection procedures, but rather an unfortunate product of the tactics employed in this case." It found the typical length of a tax objection in state court was two to three years, which was sufficiently speedy. (26a). Thus, because the state tax objection procedures provided the plaintiffs an adequate

remedy, the district court held that it lacked jurisdiction under the TIA. (28a).

The court also concluded that because the state court procedures were adequate under a TIA analysis, they would be adequate under comity principles. Thus, it declined jurisdiction on comity grounds as well. (29a). The plaintiffs appealed.

C. The Seventh Circuit's Decision

The Seventh Circuit reversed. (1a-15a). The court acknowledged the 1995 Amendments to the Property Tax Code streamlined the tax objection process for claims brought under section 23-15. However, it concluded, in order to for the plaintiffs to establish their section 1983 claim, they must be able to conduct discovery about the Assessor's methods and intent, which is no longer available under the revised statutory regime. (12a). The panel also found that the Property Tax Code did not otherwise permit equal protection claims to be filed in state court proceedings along with a section 23-15 tax objection complaint. It appeared to believe (mistakenly) that the County defendants "conceded" there that no such procedural vehicle exists. (12a-13a). Accordingly, the court found the TIA did not bar the plaintiffs' claims because, in its view, the plaintiffs had no other plain, speedy, and efficient remedy for their federal equal protection claims. For similar reasons, the panel also determined that the district court erred in declining jurisdiction on comity grounds. (13a-14a).

The County defendants sought a rehearing or a rehearing *en banc*, listing a host of Illinois cases recognizing that federal equal protection claims may

be brought in Illinois courts. (App. Dkt. 40). The Seventh Circuit denied that motion. (31a-32a).

REASONS FOR GRANTING THE PETITION

The Seventh Circuit's decision improperly extends federal jurisdiction to hear garden-variety state property tax objections, such as those at issue here, in contravention of the plain language of the TIA and Congress' express intent to remove federal courts from the uniquely localized state taxation process. In *Hibbs v. Winn*, Justice Kennedy cautioned that courts must respect the states' rights to manage their tax operations and respect Congress' directive that federal courts refrain from disrupting those operations. 542 U.S. 88, 126 (2004) (Kennedy, J., dissenting). Justice Thomas later echoed that concern in *Levin v. Commerce Energy, Inc*., cautioning federal courts against "retain[ing] jurisdiction over constitutional claims that the Court simply does not believe Congress should have entrusted to state judges under the TIA." 560 U.S. 413, 436 (2010) (Thomas, J., concurring).

The effect of this decision is not confined to these parties or even this specific type of claim, but has wide reaching implications across the State of Illinois and beyond. Indeed, because the Seventh Circuit held that there was no mechanism to present federal constitutional claims in tax proceedings filed in state court, it effectively invalidated the bedrock of the Illinois Property Tax Code. The practical result of its decision is that taxing authorities in all 102 counties across the state are now subject to federal civil rights lawsuits based on otherwise ordinary property tax

objections alleging lack of uniformity of assessments and taxation.

In doing so, the Seventh Circuit decision ignored the Illinois General Assembly's considered judgment in creating an efficient and workable process by which taxpayers may seek a tax refund without unnecessary and burdensome litigation, in violation of basic principles of comity. Furthermore, the panel usurped the role of the Illinois courts to determine in the first instance whether their state statutes satisfy federal constitutional standards.

Here, the Seventh Circuit did precisely what Justice Kennedy warned against in his *Hibbs* dissent, and what Justice Thomas feared in his *Levin* concurrence. The panel's decision continues the progressive erosion of the TIA's once-robust prohibition against federal courts' interference with state systems of tax collection, throwing Illinois' taxation framework into disarray. This Court should grant certiorari to restore the robustness of the TIA and the comity doctrine in the context of state property tax matters.

I. The Seventh Circuit's Decision Expands Federal Jurisdiction, Subjecting All 102 County Taxing Authorities in Illinois To Federal Civil Rights Lawsuits For Garden-Variety Tax Objections, Contrary To The Plain Language Of The Tax Injunction Act And Congressional Intent.

The Tax Injunction Act restricts the power of federal district courts to prevent collection or

enforcement of state taxes. *Arkansas v. Farm Credit Servs.*, 520 U.S. 821, 823 (1997). It states: "[t]he 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 court of such State." *Id.*, 28 U.S.C. § 1341.

The TIA is a "broad jurisdictional barrier" intended to protect against federal interference with "so important a local concern as the collection of taxes." *California v. Grace Brethren Church*, 457 U.S. 393, 408-09 (1982), quoting *Rosewell v. LaSalle Nat. Bank*, 450 U.S. 503, 522 (1981). The Act serves three primary purposes, all of which are based in traditional notions of federalism. *First*, it protects " 'the imperative need of a [s]tate to administer its own fiscal operations,' " free from meddling by federal courts. *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 110 (1981), quoting *Rosewell*, 450 U.S. at 522. See also *Arkansas*, 520 U.S. at 832.

Second, the TIA protects the state's tax administration system from being "thrown into disarray." *Grace Brethren Church*, 457 U.S. at 410. "The States' interest in the integrity of their own processes is of particular moment respecting questions of state taxation." *Arkansas*, 520 U.S. at 826. To be sure, the Act protects the "operation of the whole tax collection system and the implementation of entire tax policy, not just a part of it." *Hibbs*, 542 U.S. at 124 (Kennedy, J., dissenting). Indeed, in passing the TIA, Congress was more concerned about "divesting the federal courts of jurisdiction to interfere with state administration" than it was about "the form

of relief available in the federal courts." *Id*., quoting *Grace Brethren Church*, 457 U.S. at 409 n.22.

Third, the Act "is designed to respect…state court authority to say what the law means." *Id*. at 125. "[F]ederal constitutional issues are likely to turn on questions of state tax law, which…are more properly heard in the state courts." *Id*., quoting *Grace Brethren Church*, 457 U.S. at 410. The Act protects the "responsibility of the [s]tates and their courts" to manage their considered systems of taxation "and to be accountable to the citizens of the [s]tate for their policies and decisions." *Id*.

A. The legislative history of the Illinois Property Tax Code and Illinois case law recognize that state court proceedings provide a plain, speedy, and efficient remedy for property tax objections.

To further these important principles, the TIA deprives federal courts of jurisdiction to hear any challenges regarding the assessment, levy, or collection of a state tax so long as state law provides taxpayers with a plain, speedy, and efficient process to obtain relief on such a claim. Such a process exists under Illinois' tax system.

Before 1995, Illinois taxpayers bringing a specific objection to the valuation of real estate and seeking a refund for overpayment of taxes had to "prove actual or constructive fraud by clear and convincing evidence." *In re Application of Rosewell*, 106 Ill. 2d 311, 318-19 (1985). The Illinois Supreme Court explained that an overvaluation in tax assessment by itself could not establish fraud. *Cnty. Collector v. Ford*

Motor Co., 131 Ill. 2d 541, 553 (1989). And it recognized that, under this rubric, a taxpayer "may be required in some cases to call the assessor to testify as to the manner in which the assessment was made." *Id.* It concluded that "[w]e do not believe requiring the taxpayer to offer evidence of the circumstances surrounding the assessment imposes an undue burden." *Id.* at 554.

But the Illinois General Assembly believed it was unduly burdensome for the parties to litigate the question of the assessor's intent. (172a). It also departed from a tax objection proceeding's intended purpose of reviewing the correctness of the assessment. In response to *Ford Motor Co.*, the legislature convened the Civic Federation Task Force on Reform of the Cook County Property Tax Appeals Process, which included interested members of the property tax community, to evaluate the efficiency of the tax objection process. (151a).

The Task Force issued a lengthy report containing proposed amendments to the Code, which was adopted by the Illinois legislature and incorporated as the legislative history to the 1995 Amendments to the Property Tax Code. *Murphy*, 181 Ill. 2d at 534 n.1. The 1995 Amendments reflected a careful balancing of legislative priorities to simplify the tax objection process while providing stability in taxing and collection efforts. (154a). They streamlined the tax objection procedure, clarified the hearing process, and amended the standard of review in assessment challenges. (154a). Most importantly, the legislature abolished the doctrine of constructive fraud, no longer requiring taxpayers to prove that their assessment

was the product of assessor misconduct or dishonesty. Instead, taxpayers only had to show that the assessment was incorrect, intentionally or otherwise. (155a).

Importantly, the broad scope of the property tax objection framework remained intact, accommodating claims based on "incorrect assessments, … statutory misclassifications, *constitutional violations*, illegal levies or tax rates, and any other legal or factual claims." (Emphasis added). (155a). Illinois courts are well suited to hear federal equal protection claims brought under section 1983. First, as a general matter, Illinois trial courts are courts of general jurisdiction with concurrent jurisdiction to hear federal constitutional issues. *Haywood v. Drown*, 556 U.S. 729, 735 (2009) (state courts and federal courts are "entrusted with providing a forum for the vindication of federal rights" under section 1983); *Blount v. Stroud*, 232 Ill. 2d 302, 328 (2009) (same).

More specifically, Illinois courts have determined that constitutional equal protection claims may be raised in property tax objection proceedings in a variety of contexts. *Reno v. Newport Township*, 2018 IL App (2d) 170967, ¶26 ("[I]t is well established that property owners may use the statutory tax-objection procedures to raise constitutional questions arising from alleged improper assessments"); *Brazas v. Property Tax Appeal Board*, 339 Ill. App. 3d 978, 984-85 (2d Dist. 2003) (adjudicating federal equal protection claims made before the Property Tax Appeal Board). *Walsh v. Property Tax Appeal Board*, 181 Ill. 2d 228, 234 (1998) (adjudicating uniformity claim under Illinois constitution raised before the

Property Tax Appeal Board); *Marks*, 2015 IL 116226, ¶29 (holding that if a tax is constitutional under Illinois' "stringent" uniformity clause, it is constitutional under the equal protection clause).

Indeed, in this very case, the state trial court found that it had jurisdiction to hear the plaintiffs' federal equal protection and due process claims brought under section 1983. (144a). But it dismissed the claims because, based on the plaintiffs' articulation of their claims, section 23-15 provided the plaintiffs an adequate remedy. (148a).

Thus, the Seventh Circuit's conclusion that the Property Tax Code "provide[s] no forum for the taxpayers to raise their constitutional claims" is simply wrong. (13a). Whether it is *necessary* to assert such claims given that section 23-15 provides complete relief is another matter, as the state trial court found in this case. (144a). The County defendants' counsel made the same point at oral argument, which the Seventh Circuit mistook for a "concession" that such claims *cannot* be raised in property tax objection proceedings. (12a-13a).

Forty years ago, this Court upheld Illinois' property tax objection procedures as plain, speedy, and efficient in *Rosewell*. 450 U.S. at 522. Taxpayers were entitled to a full hearing and were free to raise federal constitutional objections under the equal protection and due process clauses in the state trial courts, and thus, federal courts lacked jurisdiction to hear them under the TIA. *Id*. at 515. Since then, the process has only become more plain, speedy, and efficient, eliminating cumbersome and unnecessary

litigation but leaving intact the ability to raise all constitutional claims.

B. The Seventh Circuit's decision to allow ordinary property tax objections to proceed in federal district court upends the existing property tax system in Illinois.

The effect of the Seventh Circuit's opinion—setting aside the TIA's jurisdictional bar and allowing ordinary tax objections to be litigated in federal courts—cannot be overstated. It has led to the precise consequences that Congress intended to prevent in enacting the TIA and the precise outcome that Justice Kennedy warned against in *Hibbs*.

The panel's decision "throws into disarray" the administration of the tax collection system in Illinois and the policies it aims to achieve. *Hibbs*, 542 U.S. at 123-24 (Kennedy, J., dissenting), quoting *Grace Brethren Church*, 457 U.S. at 410. *First*, it raises confusion as to how these claims would be adjudicated in federal court. Under section 23-15(a) of the Property Tax Code, tax objections may not be brought as class actions, but they are allowed under Federal Rule of Civil Procedure 23. Tax objection claims may not be brought as declaratory actions in state court, but without the protection of the TIA, there is no apparent restriction to plaintiffs seeking declaratory relief in federal court. See *Jorgensen v. Pappas*, 2020 IL App (1st) 191133, ¶23. There is no provision for the payment of attorney fees under the Property Tax Code, but presumably, any taxpayer who successfully

challenges his assessment would be entitled to such fees under 42 U.S.C. § 1988(b).

Perhaps most critically, under section 23-5 of the Property Tax Code, an objector must pay his taxes in protest and seek a refund following adjudication of that objection. If proceeding under section 1983, there is no requirement that an objector first pay his taxes under protest before filing suit.

The ability to prevent pre-collection injunctions is one of the primary objectives of the TIA. Indeed, this Court recognized that prohibiting actions to enjoin the collection of state taxes "makes it possible for the [s]tates and their various agencies to survive while long-drawn-out tax litigation is in process." *Id.* at 523 (citing S. Rep. No. 1035, 75th Cong., 1st Sess., 1 (1937)). Disrupting revenue collection during the pendency of a federal lawsuit would have a crippling effect on the state's budget. *Rosewell*, 450 U.S. at 527 (quoting *Perez v. Ledesma*, 401 U.S. 82, 128 n.17 (1971) (Brennan, J., concurring in part and dissenting in part)). As the *amici* taxing districts explained in the court below, nearly $32 billion in property taxes was extended to Illinois taxpayers in 2018, nearly half of which is extended to Cook County taxpayers. (App. Dkt. 48, p. 25). Any disruption in the collection of that money would have dire consequences for county and state government operations, and state tax administration surely would be "thrown into disarray." *Id.* (noting that property taxes are "by far" the most important source of city and county tax revenue).

Second, the Seventh Circuit's decision obstructs the General Assembly's ability to exercise its legislative prerogative. After extensive analysis of the existing property tax system, and with the benefit of input from the Civic Federation Task Force, the General Assembly overhauled the tax objection procedure in Illinois to make it simpler, faster, and fairer. Eliminating the need to prove constructive fraud and the extensive discovery it entailed was one of the primary goals of those amendments. But with one stroke of the pen, the Seventh Circuit discarded those amendments and revived the costly and cumbersome process the legislature abandoned. In doing so, the Seventh Circuit expanded the reach of its opinion to all taxing authorities in all 102 counties in Illinois, subjecting each of them to protracted federal court litigation which will undoubtedly strain their financial operations. And ultimately, it is unnecessary. Regardless of whether the equal protection claims are framed as objections under section 23-15 or section 1983, the only relief available for an overpayment of taxes is a refund. Thus, litigating these federal civil rights claims will not result in a greater reward to taxpayers, but it will almost certainly result in additional expense to the taxing authorities in the form of additional defense costs and attorney fees payable under section 1988(b).

Finally, the Seventh Circuit's decision deprives the Illinois courts of their obligation to interpret Illinois law. Given this Court's recognition that federal constitutional issues almost invariably turn on issues of state law in this context, Illinois courts must decide whether its statutes are constitutional in the first instance. *Grace Brethren Church*, 457 U.S. at 410. As

Congress recognized in passing the TIA, state courts are "qualified constitutional arbiters" and their decisions on constitutional matters are entitled to respect. *Hibbs*, 542 U.S. at 113-14 (Kennedy, J., dissenting). The TIA protects the "responsibility of the [s]tates and their courts" to manage their considered systems of taxation "and to be accountable to the citizens of the [s]tate for their policies and decisions." *Id*. While federal courts may be "anxious…to vindicate and protect federal rights and interests," they must do so in ways that do not " 'unduly interfere with the legitimate activities of the [s]tates.' " *Levin*, 560 U.S. at 431, quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971) (discussing in terms of comity).

Along with the principled reasons for federal courts to abstain from deciding state tax objection matters, controlling the federal dockets in Illinois is an equally important consideration. Nearly 100,000 tax objections are filed annually in Illinois. Ten percent of those are filed in Cook County, where a dedicated team of judges is assigned to handle the high volume of these specialized cases. If the Seventh Circuit's decision stands, federal dockets will be flooded with what will be complex and time consuming matters. The ability to file property tax objections as class action lawsuits under section 1983 with the potential for attorney fee awards will prove irresistible for attorneys practicing in this area. This creates the perfect storm of inefficiency, costliness, and instability that the Illinois General Assembly intended to curtail when it passed the 1995 Amendments.

II. The Seventh Circuit's Decision Subverts The Illinois General Assembly's Intent To Simplify The Property Tax Objection System, Reinstating The Complex And Inefficient System That Existed Before The 1995 Amendments.

Restoring the vitality of the closely related comity doctrine also warrants the Court's intervention here. While the TIA addresses a court's jurisdiction to hear a case, comity is a prudential principal that restrains federal courts from entertaining claims for relief that risk disrupting state tax administration. *Levin v. Commerce Energy*, Inc., 560 U.S. 413, 417 (2010). The analysis under each approach is similar and both seek to achieve the same ends of protecting the balance between state and federal functions. *Id*. Federal courts must show "scrupulous regard for the rightful independence of state governments…and a proper reluctance to interfere by injunction with their fiscal operations," denying relief "where the asserted federal right may be preserved without it." *Id*. at 422, quoting *Matthews v. Rodgers*, 284 U.S. 521, 525-26 (1932).

Given that the plaintiffs can raise all claims concerning property taxes, including constitutional claims, in state court, the Seventh Circuit should have declined jurisdiction on comity grounds. Courts generally view constitutional challenges to economic legislation with skepticism, respecting the policy choices underlying that legislation. *Levin*, 560 U.S. at 426. Particularly as to remedies, comity counsels against federal courts' interference in deciding remedial effects, and leaves the solution in state-court hands. That is particularly true in matters of taxation.

Id. The constitution only requires equal treatment under the laws, and courts can determine whether individuals are treated equally under a given law. But how any unequal treatment is remedied is overwhelmingly a legislative function. *Id*. at 428. Because of the deference afforded to legislative prerogative, even this Court's remedy on review of state high court decisions is limited to remand for further remedial action by state authorities. *Id*.

In this context, where the Seventh Circuit would have federal district courts address the merits of suits alleging uneven state tax burdens in the first instance, district courts would be unable to impose an appropriate remedy. They are unable to remand matters to the state courts for remedial determinations about the discriminatory effect of a statute in the way that this Court may do upon review of a state high court decision. *Id*. at 428. Because of these limitations on the type of remedy provided, federal district courts should abstain from hearing tax objection cases when the states can fairly adjudicate them, and the federal courts cannot. *Id*.

III. This Is The Ideal Vehicle For The Court To Prevent Further Erosion Of Congress' Intent To Restrict Federal Jurisdiction In State Tax Objection Cases That Began With *Hibbs v. Winn*.

This case provides an ideal vehicle for the Court to restore Congress' intent in enacting the TIA and reinforce longstanding principles of comity that counsel against federal courts' involvement in matters of state taxation. In *Levin*, Justice Thomas echoed

Justice Kennedy's concern in *Hibbs* that these principles were slowly being eroded, with this Court "leaving the door open" to opportunities to "retain federal jurisdiction over constitutional claims that the Court simply does not believe Congress should have entrusted to state judges under the Act." *Levin*, 560 U.S. at 436 (Thomas, J., concurring), quoting *Hibbs*, 542 U.S. at 113-28 (Kennedy, J., dissenting).

Here, Illinois' system of taxation provides a plain, speedy, and efficient remedy to resolve property tax objections. If any doubt remains about that, the proper entity to resolve that doubt is the Illinois Supreme Court, not the several Illinois federal district courts. Indeed, at oral argument, the Seventh Circuit panel raised the question of whether this case should be certified to the Illinois Supreme Court, to which no party objected. Yet it chose instead to hold tightly to an improper and unwarranted exercise of jurisdiction over a matter squarely within the province of the Illinois legislature and courts. The Seventh Circuit's opinion must be reversed.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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