

Nos. 20-316, 20-357

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IN THE

Supreme Court of the United States

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MARIA PAPPAS, Cook County Treasurer, *et al.*,  
*Petitioners,*

—v.—

A.F. MOORE & ASSOCIATES, INC., *et al.*,  
*Respondents.*

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FRITZ KAEGI, in his Capacity as Cook County Assessor,  
*Petitioners,*

—v.—

A.F. MOORE & ASSOCIATES, INC., *et al.*,  
*Respondents.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND  
BRIEF OF *AMICI CURIAE* THE ILLINOIS ASSOCIATION OF  
SCHOOL BOARDS, THE ILLINOIS ASSOCIATION OF  
SCHOOL BUSINESS OFFICIALS, BOARDS OF EDUCATION  
OF CONSOLIDATED HIGH SCHOOL DISTRICT NO. 230,  
NORTH PALOS SCHOOL DISTRICT 117, LEYDEN  
COMMUNITY HIGH SCHOOL DISTRICT 212, TOWNSHIP  
HIGH SCHOOL DISTRICT 214, COMMUNITY  
CONSOLIDATED SCHOOL DISTRICT 59, HOOVER-SHRUM  
MEMORIAL SCHOOL DISTRICT 157, NILES ELEMENTARY  
SCHOOL DISTRICT 71, NILES TOWNSHIP HIGH SCHOOL  
DISTRICT 219, THORNTON FRACTIONAL HIGH SCHOOL  
DISTRICT 215 AND THE CITY OF CALUMET CITY IN  
SUPPORT OF PETITION FOR WRIT OF CERTIORARI**

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**MOTION FOR LEAVE  
TO FILE BRIEF OF *AMICI CURIAE***

Pursuant to Supreme Court Rule 37.2, the Illinois Association of School Boards, the Illinois Association of School Business Officials, nine Illinois Boards of Education, and one Illinois municipality respectfully move under Rule 37.2(b) for leave to file the attached *amici curiae* brief in support of Petitioners, Maria Pappas, Treasurer and ex-officio Collector of Cook County, Illinois, the County of Cook, and Fritz Kaegi, in his capacity as Cook County Assessor.

All parties were timely notified of *Amici's* intent to file an *amici curiae* brief. Petitioners have consented to the filing. Respondents have not consented to the filing. *Amici* thus file this motion seeking leave of Court to file the attached *amicus curiae* brief.

The Illinois Association of School Boards is a voluntary, private not-for-profit corporation under authority granted by Article 23 of the Illinois School Code comprised of 99.8% of the public school boards of education that educate approximately 1,978,970 students in Illinois, which advocates on behalf of public education to provide a strong collective voice on common interests and concerns, such as issues that affect the financial well-being of Illinois school districts. The Illinois Association of School Business Officials is an affiliate of ASBO International, an organization focused on the advancement of sound school business practices and school business management professionals. The Boards of Education of Consolidated High School District No. 230, North Palos School District 117, Leyden Community High School District 212, Township High School District 214, Community Consolidated School District 59, Hoover-Schrum Memorial School District 157, Niles Elementary School

District 71, Niles Township High School District 219, Thornton Fractional High School District 215, the City of Calumet City are each taxing districts in Cook County, Illinois for the properties at issue in this litigation for which Plaintiffs seek injunctive and declaratory relief and, ultimately, property tax refunds.

The Petition seeks review of the decision of the United States Court of Appeals for the Seventh Circuit holding that the Tax Injunction Act does not bar federal equal protection claims by certain Illinois property taxpayers because, according to the Seventh Circuit, the taxpayers do not have a “plain, speedy and efficient” remedy. Movants respectfully submit that the proffered brief will contribute to a fuller understanding of why this Court should grant certiorari in this case.

*Amici* have a unique and substantial interest in this litigation because the Petitioners ultimately have no financial or economic stake in the litigation, whereas *Amici* are the actual taxing bodies whose revenues will be substantially affected by the Seventh Circuit’s ruling.

Movants respectfully submit that the proffered brief will bring to the Court’s attention several categories of relevant, additional information. The *Amici* are very familiar with the questions involved in this litigation and are uniquely qualified to provide the Court with a valuable perspective on the issues raised by this case that is distinct from the perspectives of the parties, particularly the significant consequences to the *Amici* and other Illinois taxing bodies.

Specific to the instant case, in the event Respondents prevail on their purported constitutional claims and are ultimately awarded the property tax

refunds sought, the *Amici* taxing districts will be responsible, in the aggregate, for approximately 70% of the approximately \$27 million dollars in refunds requested by Respondents.

More broadly and beyond the instant case, the consequences of the Seventh Circuit's decision are of even greater concern to the *Amici* because taxing districts depend on the predictable and orderly administration of property tax refunds afforded by the long-established system for property tax refund claims created by the Illinois Property Tax Code. The Seventh Circuit's ruling creates the possibility of significant federalization of tax refund claims which is likely to upend the existing predictable and orderly paradigm and create confusion, unpredictability, uncertainty and expense, thereby significantly impairing the taxing districts' ability to provide services to their respective communities.

### CONCLUSION

For the foregoing reasons, *Amici* hereby request the Court grant leave to file the attached brief in support of Petitioners.

Respectfully Submitted,

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**BRIEF OF *AMICI CURIAE***

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**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

The Illinois Association of School Boards (IASB) is a voluntary, private not-for-profit corporation under authority granted by Article 23 of the Illinois School Code (105 ILCS 5/23-1, *et al.*). IASB is comprised of 99.8% of the public-school boards of education that educate approximately 1,978,970 students in Illinois. IASB advocates on behalf of public education to provide strong collective voice on common interests and concerns, such as issues that affect the financial well-being of Illinois school districts. Like the nine school district *Amici*, IASB members rely on property tax revenue to provide public education in their communities and will be directly, negatively impacted by the Seventh Circuit's decision.

The Illinois Association of School Business Officials (IASBO) is devoted to the school business management profession. It provides members and stakeholders with a comprehensive range of professional development activities, services and advocacy through networking and participation focused on the business, finances, and operations of schools. IASBO's membership includes 1,427 Illinois public school employees ranging from superintendents to support staff. Like the nine school district *Amici*, IASBO members rely on property tax revenue to provide public education in their

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no person or entity, other than *amici curiae*, their members, and their counsel, made a monetary contribution to the preparation or submission of this brief.

Pursuant to Rule 37.3(a), Petitioners have granted permission for the filing of the instant *amicus curiae* brief. Respondents denied permission. Accordingly, *Amici* have moved for leave to file this brief.

communities and will be directly, negatively impacted by the Seventh Circuit's decision.

*Amici* also include nine Illinois school districts and a municipality within which Respondents' properties are located and which will be adversely affected by the property tax refunds sought by Respondents. Unlike the Petitioners, these taxing districts have a direct financial interest in the outcome of this litigation because they received the disputed property taxes. If Respondents ultimately prevail on their claims and are awarded the property tax refunds sought, these *Amici* would collectively be forced to finance from their current revenues the refund of approximately \$19.2 million, plus interest. This would have a crippling effect on the ability of these *Amici* to provide public education and municipal services to their communities. These taxing district *Amici* are: the Boards of Education of Consolidated High School District 230, North Palos School District 117, Niles Township High School District 219, Niles Elementary School District 71, Township High School District 214, Community Consolidated School District 59, Leyden Community High School District 212, Thornton Fractional Township High School District 215, Hoover-Schrum Memorial School District 157, and the City of Calumet City.

### **FACTUAL BACKGROUND**

Illinois school districts and municipalities overwhelmingly rely on real estate tax revenue to operate. According to the Illinois Department of Revenue, in 2018, Illinois school districts extended \$18.5 billion in real estate taxes while Illinois

municipalities extended \$6 billion.<sup>2</sup> Together, this amount is slightly over 77% of the \$31.8 billion total real estate taxes paid by Illinois taxpayers in 2018.<sup>3</sup>

Those dissatisfied with their real estate tax bill in Illinois have multiple ways to obtain a reduction in the assessed value of their property and thereby obtain a refund of the excess property taxes they paid. A taxpayer can file a complaint in state circuit court under Article 23 of the Illinois Property Tax Code (35 ILCS 200/23-5, *et seq.*). These complaints, known variously as tax objection complaints, valuation objections, or specific objections (SPOs), are the subject of the underlying litigation in the present case. Alternatively, a taxpayer may file an appeal with the Illinois Property Tax Appeal Board (PTAB), an administrative agency of the State of Illinois with the sole mission of adjudicating real estate tax assessment disputes. A taxpayer may also file an application with a local assessing official for a certificate of error, which may result in an administrative correction made by the local assessing official. Once granted by the local assessing official, certificates of error must be approved by a circuit court pursuant to Section 14-15 of the Illinois Property Tax Code (35 ILCS 200/14-15).

The refunds granted through these means are paid to the taxpayer from the current collections of school districts and other units of local government that levy property taxes, which are often referred to as taxing districts. Section 23-20 of the Illinois Property Tax

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<sup>2</sup> Illinois Department of Revenue, *2018 Property Tax Statistics – Table D*, <https://www2.illinois.gov/rev/research/taxstats/PropertyTaxStatistics/SitePages/PropertyTaxYear.aspx?rptYear=2018> (accessed Oct. 2, 2020).

<sup>3</sup> *Id.*

Code (35 ILCS 200/23-20) provides not only that a county treasurer is to pay the property tax refunds ordered by a court or by the PTAB from the current collections of taxing districts, but also that the refunds must include interest that accumulates from the date the taxes were paid until the date of the refund. *Id.*

In response to a Freedom of Information Act request from the nine taxing district *Amici*, the Cook County Treasurer's Office provided information on the number of property tax refunds processed each year between 2015 and 2019. During that time, Cook County taxpayers received nearly 660,000 property tax refunds totaling \$1.6 billion dollars. The 74,823 refunds from tax objection complaints filed in circuit court resulted in \$562,870,044 in refunds. This is in addition to the 584,315 refunds from PTAB appeals and certificates of error totaling \$1,061,998,931.

### SUMMARY OF ARGUMENT

School districts and other units of local government rely heavily upon property tax revenue to provide public education and other vital services. The Seventh Circuit's decision in this case will have a vast and crippling effect on the finances of these public entities by allowing taxpayers to sidestep the existing remedies afforded by state law to bring tax objection cases in federal court. Allowing taxpayers to pursue tax objection complaints in federal and state courts will open a Pandora's box of issues. Additionally, the decision below was based on a misinterpretation of Illinois law. Such an important interpretation of Illinois law should have been entrusted to the Illinois Supreme Court and not undertaken by the Seventh Circuit.



First, allowing tax objection complaints to proceed in federal court as 42 U.S.C. § 1983 actions will create a multitude of practical problems for federal courts and litigants. In particular, the Seventh Circuit's decision will interfere with the ability of taxing districts, the parties financially impacted by tax objection complaints, to protect their interests in the proceedings. Although taxing districts have an established right to intervene in state court proceedings on tax objection complaints under the Illinois Supreme Court's decision in *Madison Two Associates v. Pappas*, 227 Ill. 2d 474, 884 N.E.2d 142 (2008), that right has never been established in federal court. Moreover, even if taxing districts are allowed to intervene in federal court, under Seventh Circuit precedent, they risk significant additional cost by doing so, as they may be subjected to paying a prevailing taxpayers' attorneys' fees under 42 U.S.C. § 1988(b). Federal litigation also creates the potential for tax objection complaints to be brought as class action lawsuits, an option specifically prohibited for good reason, by Illinois law. Additionally, federal court injunctions to issue refunds will severely limit a taxing district's ability to structure a large refund in a manner that will not bankrupt the taxing district. Finally, and perhaps most concerning, is the possibility of a federal court injunction preventing the collection of real estate taxes, something that is specifically prohibited by Illinois law. None of these potential problems exist if tax objection complaints continue to proceed in state court as the Tax Injunction Act intended.

Second, there is substantial legal authority to support the conclusion that the Illinois Property Tax Code in no way prevents a taxpayer from raising a § 1983 claim in state court. Before the 1995

amendments that rewrote the Property Tax Code and created the statutory provisions now at issue, Illinois case law recognized that constitutional claims could be brought as part of a tax objection complaint. The ability to bring constitutional claims in a tax objection complaint was then specifically recognized in the official legislative history of the 1995 amendments to the Property Tax Code. Since the 1995 amendments, Illinois courts have continued to recognize that tax objection complaints can include alleged violations of constitutional rights. Given all this, the Seventh Circuit overstepped the proper boundaries between federal and state courts in interpreting Section 23-15 of the Illinois Property Tax Code (35 ILCS 200/23-15). Whether taxpayers can bring a § 1983 claim in state court as part of a tax objection complaint is a question that should have been presented to the Illinois Supreme Court for its interpretation of state law. For all these reasons, *Amici* respectfully urge the Court to grant the petitions and review the Seventh Circuit's decision.

## ARGUMENT

### **I. Federalizing State Law Property Tax Objections Will Cripple School Districts and Units of Local Government.**

If the decision below stands, it will have a vast and crippling impact on the finances of Illinois school districts, municipalities, and other taxing districts. Federalizing property tax objection complaints under § 1983 creates uncertainty about taxing districts' ability to intervene in the proceedings, opens taxing districts to potential liability for attorneys' fees, and allows for possible class action certification and injunctive relief. For all these reasons, Illinois state

courts are best suited to resolve these cases in a timely and efficient manner.

**A. Federalizing Property Tax Objection Proceedings Creates Uncertainty Over Intervention and Opens Taxing Districts to Liability for Attorneys' Fees.**

Illinois taxing districts can and do intervene in State court property tax litigation to protect their significant revenue interests in those cases. By allowing tax objection complaints to be heard in federal courts, the Seventh Circuit's decision exposes taxing districts to uncertainty and potentially significant litigation costs.

In *Madison Two Associates*, the Illinois Supreme Court recognized that taxing districts have a legally cognizable interest in the outcome of tax objection proceedings and therefore a right to intervene in the proceedings pursuant to the Illinois Code of Civil Procedure. Since that decision, Illinois taxing districts have regularly intervened in state court proceedings to defend their revenue interest and negotiate settlements on terms that protect their financial well-being. It is uncertain whether taxing districts would be allowed to intervene in federal court proceedings to protect their interests because there is no similar precedent on which to rely. Intervention in federal court would have to be pursued under Federal Rule of Civil Procedure 24. However, because no taxing district in Illinois has previously attempted to intervene in federal court proceedings concerning property tax assessments, the issue would likely be litigated. Because it is not clear how a court would rule on the issue, the decision below creates the possibility that taxing districts will be forced to watch from the sidelines as other parties

decide the distribution of millions of dollars the taxing districts need to provide public services in their communities.

Section 23-15 of the Illinois Property Tax Code does not provide for an award of attorney's fees to the prevailing party in tax objection complaints. The inability to obtain an attorney's fee award does not deprive a taxpayer of a plain, speedy, and efficient remedy for purposes of the exception to the Tax Injunction Act, 28 U.S.C. § 1341. *Hyatt v. Yee*, 871 F.3d 1067, 1075 (9th Cir. 2017). However, if tax objection complaints are allowed to proceed in federal court via § 1983 and are successful, the taxpayers would ostensibly be "prevailing parties" under 42 U.S.C. § 1988(b) and entitled to reasonable attorney's fees. Therefore, if a taxing district intervenes to protect its revenue interests under this scenario, which is common, the taxing district would risk being held responsible for a share of any attorney's fees awarded. *See e.g. Charles v. Daley*, 846 F.2d 1057 (7th Cir. 1988). Indeed, even if the parties were to settle the underlying claim, the taxpayer could petition the district court for its attorney's fees. *See e.g. Maher v. Gagne*, 446 U.S. 122, 129 (1980) ("The fact that respondent prevailed though a settlement rather than through litigation does not weaken her claim to fees.") This extra layer of fiscal burden on Illinois taxing districts would exacerbate the already severe hardship and public harm posed by the loss of revenue.

**B. State Property Tax Objection Claims  
Brought as Class Actions Under § 1983  
Would Devastate the Finances of School  
Districts and Local Governments.**

Section 23-15(a) of the Illinois Property Tax Code allows joinder of plaintiffs but specifically precludes property tax objection complaints from being brought as class action lawsuits. *See* 35 ILCS 200.23-15(a) (“Joinder of plaintiffs shall be permitted to the same extent permitted by law in any personal action pending in the court and shall be in accordance with Section 2-404 of the Code of Civil Procedure; provided, however, that no complaint shall be filed as a class action.”); *Fakhoury v. Pappas*, 395 Ill. App. 3d 302, 307, 916 N.E.2d 1161, 1167 (1st Dist. 2009). The administrative and financial reasons behind this policy decision of the Illinois General Assembly are manifest given the amount of public funds at stake. Moreover, the absence of a class action procedure in a state remedy for litigating tax matters does not render those procedures inadequate within the meaning of the Tax Injunction Act, 28 U.S.C. § 1341. *Lowe v. Washoe County*, 627 F.3d 1151, 1156 (9th Cir. 2010); *Waldron v. Collins*, 788 F.2d 736, 1075 (11th Cir. 1986). However, if tax objection complaints are permitted in federal courts, a court could certify nearly every Illinois property-taxpayer as a class member under Federal Rule of Civil Procedure 23. This would mark a dramatic change from current Illinois law, upending the General Assembly’s determination that tax objection cases should be decided on their individual merits.

Further, because of the “opt-out” notice procedures under Fed. R. Civ. P. 23, the ability to bring tax objection complaints in federal court under § 1983 would dramatically increase the number of plaintiffs

challenging assessments, which in turn would expose taxing districts to potentially devastating revenue losses. The huge financial risks of such claims may force settlements even in non-meritorious cases. Ignoring the Illinois General Assembly's express decision to disallow class action property tax actions runs directly counter to the principle of comity long recognized by the federal courts. *Fair Assessment in Real Estate Assn, Inc. v. McNary*, 454 U.S. 100, 102 (1981) ("This Court, even before the enactment of § 1983, recognized the important and sensitive nature of state tax systems and the need for federal-court restraint when deciding cases that affect such systems.").

**C. Injunctive Relief Would Harm Taxing Bodies' Ability to Manage Refunds and Collect Revenue.**

In the same vein, injunctive relief, the relief expressly requested by Respondents, has also been prohibited by the Illinois General Assembly as it applies to property tax objection complaints and would completely disrupt Illinois taxing districts' revenue streams. *See* 35 ILCS 200/23-20 ("No protest shall prevent or be a cause of delay in the distribution of tax collections to the taxing districts of any taxes collected which were not paid under protest."). A federal injunction (along with declaratory relief) directing County Treasurers to immediately issue refunds would prevent scenarios in which taxing districts, through their representatives, agree with taxpayers to have refunds issued over time, which is common and necessary so that revenue streams are not completely decimated in one year.

For example, if a federal court orders a \$10,000,000.00 refund to a large commercial property

owner, a taxing district's share of that refund (based on their tax rate for the applicable year) would be taken out of the taxing districts' subsequent tax collections by the County Treasurer the next year. 35 ILCS 200/23-20. For some taxing districts, that share could be nearly 100% of their annual revenue from property tax collections. Budgeting for these shortfalls would be nearly impossible and would inevitably lead to the disruption of essential government services.

Even more concerning would be an injunction against the collection of property taxes issued by a federal court. Section 23-20 of the Illinois Property Tax Code prohibits tax objection complaints from delaying the collection and distribution of property taxes. This prohibition on injunctive relief is supported by longstanding Illinois Supreme Court precedent. In *Lakefront Realty Corp. v. Lorenz*, 19 Ill. 2d 415, 167 N.E.2d 236 (1960), the Illinois Supreme Court held that unless a tax is unauthorized by law or levied against an exempt property, the collection of property taxes will not be enjoined unless the plaintiff does not have an adequate remedy at law. Consequently, the Illinois Supreme Court has denied a request for injunctive relief restraining the collection of taxes where a plaintiff alleged that, *inter alia*, the assessments at issue were "disproportionately higher than those of other similar property[.]" *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 105, 306 N.E.2d 299, 301 (1973).

Underlying the statutory and judicial prohibitions against injunctive relief in property tax objection cases is the understanding that taxing districts rely on timely and consistent revenue streams. *Finn v. Tucker*, 81 Ill. App. 3d 1038, 1040, 402 N.E.2d 358, 360 (2d Dist. 1980). If plaintiffs are permitted to

circumvent state statutorily prescribed remedies and pursue injunctive relief in federal court, taxing district revenue streams (and consequently taxing district services) will be severely disrupted.

#### **D. State Courts Are Better Positioned to Adjudicate Tax Objection Complaints**

The principle of comity “serves to ensure that ‘the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.’” *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 431 (2010) (quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971)). One factor in deciding whether the comity doctrine precludes federal courts from hearing State tax-related claims is whether State courts are “better positioned than their federal counterparts to correct any [constitutional] violation because they are more familiar with state legislative preferences and because the [Tax Injunction Act] does not constrain their remedial options.” *Levin*, 560 U.S. at 431-32. This is true with respect to adjudication of property tax matters in Cook County. Cook County has its own division (County Division) and a select few judges who are routinely assigned property tax objection complaints<sup>4</sup>. These judges are knowledgeable about and familiar with the procedural and substantive law governing property tax objection complaints and are sensitive to both taxpayer and taxing district interests. The assigned judges are also

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<sup>4</sup> State of Illinois First Judicial District, Clerk of the Circuit Court of Cook County, *County Division* <http://www.cookcountyclerkofcourt.org/NewWebsite/Departments/County-Division.aspx> (accessed Oct. 2, 2020).



knowledgeable about how Illinois property taxes are levied, collected, and refunded.

Moreover, state court proceedings provide taxing districts the ability to protect their revenue interests in tax objection complaints better than the state's attorney's offices that are otherwise statutorily charged with defending these cases. Once they learn of the existence of a tax objection complaint, taxing districts have a clear right to intervene under the *Madison Two* decision. Once in the case, taxing districts approach the litigation like a party with a financial stake in the outcome. While the state's attorney's office is statutorily charged with defending the case, the sheer volume of cases and lack of available resources can result in tax objection complaints being resolved based more on administrative concerns than the financial concerns of the taxing districts. Once a taxing district becomes involved in the state court litigation, that taxing district can influence the outcome of the litigation in a manner that places the financial interests of the taxing district at the forefront.

Taken together, Cook County's legitimate system of adjudicating State property tax matters should not be disturbed because the state courts are equipped to adjudicate them fairly and efficiently.

## **II. Illinois Courts are the Proper Forum for Reconciling Constitutional Protections with State Tax Objection Procedures.**

In light of these potentially crippling effects on the administration of the state's property tax system and the resulting financial crisis that could be created for school districts and units of local government, the principles of comity mandate that the question of whether Respondents can pursue their constitutional

claims through an action under Section 23-15 of the Illinois Property Tax Code in state court should be decided in the first instance by the Illinois Supreme Court.

The Seventh Circuit ruled that Respondents' constitutional equal protection claims brought under § 1983 could be maintained in federal court because Section 23-15 did not provide Respondents' with an adequate remedy for the alleged equal protection violations. *Amici* concur with Petitioners that Illinois law already affords Respondents with a "plain, speedy, and efficient remedy" for adjudicating Respondents' claims. *Amici* further agree with Petitioners that the Seventh Circuit's conclusion is contrary to this Court's precedent and fundamental principles of comity which hold that state courts are the exclusive forum for reconciling tax objection procedures with federal constitutional protections. For these reasons, *Amici* urge the Court to grant the petitions and either reverse the Seventh Circuit's decision or reverse and remand the case with instructions to certify the question to the Illinois Supreme Court.

**A. Section 23-15 Does Not Foreclose or Limit Constitutional Remedies.**

The Seventh Circuit concluded that the tax objection procedures of Section 23-15 foreclosed the availability of an alternative constitutional remedy in state court. Illinois case law and legislative history contradict this conclusion.

Before Section 23-15's enactment in 1995, Illinois courts held that equal protection claims under § 1983 could be brought in state court. *Beverly Bank v. Bd. of Review of Will County*, 117 Ill. App. 3d 656, 453 N.E.2d 96 (3d Dist. 1983) (reversing the dismissal of

a § 1983 complaint alleging violation of the equal protection clause in the assessment of real property). The legislative history to the 1995 amendments of the Property Tax Code confirms that these amendments merely expanded the remedies available to taxpayers and did not foreclose previously available constitutional remedies. The Report of the Task Force on Reform of the Cook County Property Tax Appeals Process<sup>5</sup> was incorporated as a key component of the legislative history of Section 23-15. *People ex rel. Devine v. Murphy*, 181 Ill. 2d 522, 535 fn. 1, 693 N.E.2d 349, 355 fn. 1 (1998); 89th Ill. Gen. Assem., Senate Proceedings, May 23, 1995, at 111 (statements of Senator O'Malley). The Civic Federation Report states that:

The reformed tax objection procedure will preserve the broad scope of the remedy under existing law. Thus, not only incorrect assessments, but also statutory misclassifications, constitutional violations, . . . and any other legal or factual claims not exclusively provided for in other parts of the Property Tax Code, will fall within the ambit of a tax objection complaint.

The Civic Federation, February 22, 1995, pg. 4. Since the 1995 amendments, Illinois courts have continued to address constitutional claims in property tax objection cases. *See e.g. Golf Trust of America, L.P. v. Soat*, 355 Ill. App. 3d 333, 341, 822 N.E.2d 562, 569 (2d Dist. 2005) (addressing the merits of a taxpayer's equal protection and due process claims). The Seventh Circuit failed to give proper weight to this precedent.

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<sup>5</sup> <https://www.civicfed.org/Task-Force-Reform-Cook-County-Property-Tax-Appeals> (visited Oc. 2, 2020)

Finally, the question of whether Section 23-15 affords a remedy for alleged constitutional violations and whether Respondents may pursue claims under § 1983 in lieu of or in addition to this remedy is an issue that should be decided by Illinois state courts, subject to review by this Court. The Illinois Supreme Court has made clear that “[c]ircuit courts are courts of general jurisdiction, and are presumptively competent to adjudicate claims under the laws of the United States.” *Blount v. Stroud*, 232 Ill. 2d 302, 328, 904 N.E.2d 1, 17 (2009) (internal citations omitted). This includes claims under § 1983. *Seibring v. Parcell's Inc.*, 159 Ill. App. 3d 676, 682, 512 N.E.2d 394, 398 (4th Dist. 1987). In *McNary*, this Court held that where state courts have jurisdiction to hear tax cases under § 1983, such claims must be brought in state court under principles of comity. The Seventh Circuit’s acceptance of federal jurisdiction over Respondents’ § 1983 claim violates *McNary* and should be reversed.

**B. Any Doubts as to Whether State Law  
Affords A Remedy for Plaintiffs’  
Constitutional Claims Should Be  
Resolved in State Court**

In its decision, the Seventh Circuit acknowledged that no prior court, either state or federal, had analyzed the availability of constitutional remedies in Illinois courts since the passage of Section 23-15. As noted above, this Court’s precedent holds that the determination of the constitutionality of a state tax regime should be decided in the first instance by a state court. *McNary*, 454 U.S. at 116.

Accordingly, at a minimum the Seventh Circuit’s decision should be reversed, and the Seventh Circuit should be instructed to certify the question of

whether Plaintiffs can pursue their equal protection claim in Illinois state courts to the Illinois Supreme Court. *See e.g. Expressions Hair Design v. Schneiderman*, 581 U.S. \_\_\_\_ (2017); *Chicago Teachers Union v. Bd. of Ed. of the City of Chicago*, 662 F.3d 761 (7th Cir. 2011) (certifying questions of state law “of substantial and ongoing importance” to the Illinois Supreme Court in response to a petition for rehearing).

### CONCLUSION

For the foregoing reasons, *Amici* respectfully urge this Court to grant the petition.

Respectfully Submitted,

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