

No. 24-393

In the
Supreme Court of the United States

CHRYSOULA ARSENIS; SPYRIDON ARSENIS;
AND GEORGE ARSENIS,

Petitioners,

v.

BOROUGH OF BERNARDSVILLE;
EDWARD KERWIN, TAX ASSESSOR;
TOM CZERNIECKI, BOROUGH ADMINISTRATOR;
AND ANTHONY SURIANO, BOROUGH CLERK,

Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of New Jersey

REPLY BRIEF OF PETITIONERS

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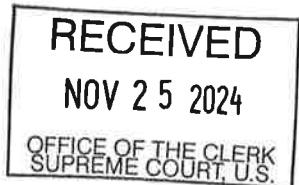


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REPLY BRIEF OF PETITIONERS

THE PETITION MEETS THE STANDARD FOR THIS COURT'S REVIEW

The Petitioners, Chryssoula Arsenis, Spyridon Arsenis, and George Arsenis, respectfully submit this Reply Brief to refute the Respondent's claim that the federal constitutional challenge in the Complaint is based on mere "passing references" to unconstitutionality and, therefore, insufficient to warrant this Court's review. In fact, the Complaint repeatedly and explicitly cites "spot assessing" practices of Mr. Kerwin, the assessor of the Borough of Bernardsville (reference to the complaint on the following page No. 3, 4, 6, 10, 13 including citing Van Decker on pages 3, 4, 10 and "unconstitutionality," invoking Equal Protection and Due Process Clauses of the Fourteenth Amendment, as well as the Supremacy Clause. These arguments align with federal precedents, meeting the threshold under 28 U.S.C. § 1257(a) for this Court's jurisdiction to address significant federal questions. This Writ of Certiorari is presented to seek review of the, Appellate Court of New Jersey decision raising significant questions of Federal jurisdiction and embedded Federal questions that warrant the attention of this Honorable Court. The purpose of this Writ is to address critical constitutional issues and conflicts with Federal law that arise from the lower court's rulings and the interpretation or application of Federal statutes.

I. A Large Body of Constitutional Case Law Supports This Court's Jurisdiction in This Matter.

A. Violation of the Equal Protection Clause (Fourteenth Amendment)

The selective reassessment disproportionately targets properties that have recently sold, creating inequities in property taxation that are not rationally related to a legitimate government interest. This discriminatory treatment violates the Equal Protection Clause, which guarantees uniform application of the law.

- *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County, W. Va.*, 488 U.S. 336 (1989): Unequal property assessments without rational basis violate Equal Protection.
- *Sioux City Bridge Co. v. Dakota County, Neb.*, 260 U.S. 441 (1923): Selective taxation violates Equal Protection when similar properties are treated differently without justification.

B. Violation of Procedural Due Process (Fourteenth Amendment)

The reassessment process, conducted without notice, justification, or an opportunity for affected property owners to challenge the reassessment, violates procedural due process under the Fourteenth Amendment. Property owners have a constitutional right to be heard.

- *Armstrong v. United States*, 364 U.S. 40 (1960): Government action affecting property rights must meet constitutional standards of fairness.
- *Goldberg v. Kelly*, 397 U.S. 254 (1970): Due process requires notice and a fair hearing.

C. Federal Preemption and Supremacy Clause (Article VI, Clause 2)

While property taxation is traditionally within state authority, Federal constitutional principles under the Fourteenth Amendment preempt state law when state action conflicts with rights guaranteed under the U.S. Constitution.

- *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945): Federal constitutional provisions preempt conflicting state actions.
- *Missouri v. Holland*, 252 U.S. 416 (1920): Federal supremacy applies when state laws violate Federal protections.

D. Federal Jurisdiction under 28 U.S.C. § 1257

The Supreme Court has jurisdiction to review final judgments from state courts where a Federal question is raised. The substantial Federal question here is whether the selective reassessment violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

- *Michigan v. Long*, 463 U.S. 1032 (1983): Federal jurisdiction exists when state court decisions implicate Federal constitutional issues.

- *Murdock v. City of Memphis*, 87 U.S. (20 Wall.) 590 (1874): Federal courts have jurisdiction when a case involves a Federal constitutional question.

II. This Court Should Grant Certiorari to Resolve a Important Federal Question with Conflicting Interpretation

A. Resolution of Conflicts Between Federal and State Law

The Petitioners challenges the application of N.J.S.A. 54:4-23, arguing that it has been applied in a way that creates unconstitutional disparities. The conflict between the state statute's application and Federal constitutional principles warrants resolution by the Supreme Court under 28 U.S.C. § 1257.

- *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117 (1978): The Court resolves conflicts between Federal constitutional principles and state regulatory actions.
- *Cooper v. Aaron*, 358 U.S. 1 (1958): State officials are bound by Federal constitutional principles, even when enforcing state law.

B. Substantial Federal Question Embedded in State Law Interpretation

While the reassessment is conducted under New Jersey law (N.J.S.A. 54:4-23), the central question involves the application of state law in a manner that conflicts with Federal constitutional guarantees, particularly the Equal Protection Clause.

- *Gonzales v. Raich*, 545 U.S. 1 (2005): Federal courts have jurisdiction over cases where

state actions implicate Federal constitutional principles.

- *Moore v. City of East Cleveland*, 431 U.S. 494 (1977): Federal constitutional challenges arising from state law are reviewable under Federal jurisdiction 28 U.S.C § 1257.

C. Uniformity in Property Taxation and Rational Basis Review

The selective reassessment fails rational basis review under the Equal Protection Clause because it lacks a legitimate government interest and disproportionately impacts certain property owners based on recent sales.

- *Nordlinger v. Hahn*, 505 U.S. 1 (1992): The Court upheld a property tax scheme with rational basis but emphasized that discriminatory schemes lacking justification violate Equal Protection.
- *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591 (2008): Arbitrary discrimination in government action violates Equal Protection principles. These embedded Federal questions are central to the resolution of the issues at hand and implicate rights and protections afforded under the Constitution and Federal law.

D. Federal Question Arising from the Equal Protection Clause

The Petitioners' claim is not confined to a statutory interpretation of New Jersey law but fundamentally asserts that the selective reassessment of 380

Claremont Road violates the Equal Protection Clause of the Fourteenth Amendment, a Federal constitutional question. The Equal Protection Clause requires uniformity and fairness in the application of property taxation.

This presents a substantial Federal question because the application of state law has resulted in unconstitutional conduct, as established in *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County, W. Va.*, 488 U.S. 336 (1989), where the Supreme Court held that disparate property assessments violated the Equal Protection Clause.

E. Selective Reassessment Conflicts with Uniform Taxation Requirements

The Petitioners' argument involves more than interpreting New Jersey's statutory framework under N.J.S.A. 54:4-23. While the statute mandates uniform property assessments, the Petitioners allege that the state law, as applied by Mr. Kerwin the Town Assessor, has violated Federal constitutional principles of equal protection.

The U.S. Supreme Court has consistently recognized its jurisdiction under 28 U.S.C. § 1257 when state action conflicts with Federal constitutional rights. This is evident in cases like:

F. State Law as the Context for a Federal Question

The respondent's argument mischaracterizes the issue as purely a matter of New Jersey statutory interpretation. The application of N.J.S.A. 54:4-23 is not contested in isolation but in its failure to prevent

discriminatory practices that violate Federal constitutional rights. This Court has jurisdiction to review state court decisions under § 1257 when:

G. Federal constitutional provision is implicated

State law is applied in a way that conflicts with Federal protections.

The Petitioners raise a Federal question about whether the state law, as applied, permits conduct that violates the Equal Protection Clause. This question is distinct from routine statutory interpretation and directly implicates the supremacy of Federal constitutional principles.

H. Jurisdictional Precedent under 28 U.S.C. § 1257

The Supreme Court's jurisdiction under 28 U.S.C. § 1257 extends to cases where state courts have rendered final judgments that raise Federal constitutional questions. The Petitioners' claims align with established precedent:

**REFUTING OTHER
RESPONDENT ARGUMENTS**

I. Refuting the “Strictly State Law” Argument

The respondent's argument fails because:

The Petitioners' claims arise from the application of state law in a manner that violates Federal constitutional protections, which is sufficient to invoke § 1257 jurisdiction. This Court has consistently reviewed cases where state law is implicated but the underlying issue

raises a substantial Federal question (e.g., conflicts with the Equal Protection Clause) The Petitioners' claims raise a substantial Federal question concerning the violation of the Equal Protection Clause of the Fourteenth Amendment, not merely an issue of New Jersey statutory interpretation. As such, this Court has jurisdiction under 28 U.S.C. § 1257 to review the final judgment of the state court. The respondent's argument fails to account for the Federal constitutional implications of the selective reassessment in this case.

III. Federal Question Arising from the Equal Protection Clause

The Petitioners' claim is not confined to a statutory interpretation of New Jersey law but fundamentally asserts that the selective reassessment of 380 Claremont Road in Bernardsville N.J. violates the Equal Protection Clause of the Fourteenth Amendment, a Federal constitutional question. The Equal Protection Clause requires uniformity and fairness in the application of property taxation. Selective reassessment: Creates unconstitutional disparities in taxation among similarly situated property owners. Accordingly, this Writ seeks this Court's intervention to ensure that Federal constitutional principles, statutory protections, and jurisdictional boundaries are upheld. This case presents a compelling need for review to correct the New Jersey Somerset Superior Court error, safeguard Federal rights, and ensure consistency in the application of the law. In response to the Respondent's argument that a statutory interpretation of state law provides "adequate and independent nonfederal grounds" and therefore should preclude federal review, it is essential to emphasize that this presumption

misunderstands the scope of federal oversight, particularly when state actions or interpretations violate federally protected constitutional rights. Moreover, case law affirms that adequate state grounds do not shield decisions from federal review if those grounds impact or involve federal constitutional questions. In cases such as *NAACP v. Alabama*, 357 U.S. 449 (1958), the U.S. Supreme Court asserted jurisdiction to review a state court's decision even though it was rooted in state law, as it implicated significant constitutional rights under the Fourteenth Amendment. Similarly, federal review is warranted here to evaluate whether the statutory interpretation aligns with procedural and substantive due process standards, which are central to federal constitutional law. While state law forms the basis of the decision, it cannot operate independently of federal constitutional protections. The Court's review is essential to safeguard against interpretations that might facilitate practices in violation of federal rights, ensuring that state actions are aligned with the broader mandates of the Constitution. The Respondent's assertion of "adequate and independent nonfederal grounds" thus fails to account for the need for federal oversight when state actions threaten federally protected interests.

A. Nature of the Claim Beyond a Tax Appeal

The Respondent's assertion oversimplifies the claim as merely a tax dispute disguised as a tort action. However, the Petitioners' claim is grounded in tort principles because it challenges not just the tax assessment itself, but the methods and motives behind that assessment—specifically alleging that the assessment practices were arbitrary, discriminatory, and in

violation of due process. These tort-based allegations concern the municipality's conduct in assessing the property, which arguably falls within the realm of tort law rather than purely tax law. When assessment practices go beyond fair valuation and venture into arbitrary or retaliatory action, the claims implicate state and federal constitutional protections. Thus, this case is not a "thinly veiled" tax appeal; rather, it is a legitimate tort claim addressing procedural fairness and equal protection issues.

B. Legitimate Tort Action Under the Law

The claim falls properly within the Law Division because it raises tort issues unrelated to tax assessments *per se* but rooted in how the assessments were conducted. In *West Milford Tp. v. Van Decker*, 120 N.J. 354 (1990), the New Jersey Supreme Court held that discriminatory or targeted assessment practices constitute an abuse of power. This precedent shows that tort law can address governmental conduct in property assessments if that conduct violates standards of fairness, rather than being a mere dispute over tax amounts. Therefore, the Law Division is the appropriate forum, as the focus is on Mr. Kerwin, the Assessor municipality's conduct, not on the tax assessment's value alone.

C. Broader Legal and Constitutional Issues Warranting Review

This case raises significant due process and equal protection concerns that warrant federal oversight, particularly given the discriminatory and retaliatory elements alleged. Arbitrary assessments can infringe upon property rights, a matter of federal constitu-

tional concern under the Fourteenth Amendment. When assessments are allegedly used to target individuals without basis or to retaliate, they violate substantive due process and equal protection guarantees, which protect citizens against arbitrary and discriminatory government actions. Additionally, procedural due process is implicated if the Petitioners do not have a fair and reasonable opportunity to challenge the assessment's validity, particularly if assessment practices were misused for purposes outside the statutory framework. Such issues require federal review to ensure that the state action is in line with federal constitutional standards.

D. Mischaracterization of Procedural Strategy

The Respondent's implication that filing in the Law Division was a strategic attempt to evade statutory deadlines is unfounded. The choice to file in the Law Division reflects the distinct legal nature of the claim rather than an intent to bypass procedural requirements. Tort claims operate independently of tax appeal deadlines because they address conduct, not merely valuation or timing issues within the tax assessment framework. Filing as a tort action does not nullify the procedural fairness or substance of the claim, nor does it invalidate the serious constitutional issues at stake. Additionally, New Jersey law recognizes that claims regarding governmental abuse in property assessment can appropriately be pursued through tort law when they involve allegations of arbitrary or discriminatory treatment, as here.

II. The Complaint Explicitly Raises a Federal Question of Equal Protection and Due Process Violations

Contrary to the Respondent's assertion, the Complaint does not contain mere "passing references" but clearly challenges Mr. Kerwin the assessor of Bernardsville's spot assessment practices on federal constitutional grounds. The Complaint refers to "spot assessing" and "unconstitutionality" multiple times, highlighting that Bernardsville's arbitrary and discriminatory assessment practices violate the Equal Protection Clause by selectively targeting certain properties. This is not a vague claim; it directly contests the lack of rational basis in the assessment process, a recognized constitutional issue warranting federal review.

III. Precedent Demonstrates that Arbitrary Spot Assessments Violate the Equal Protection Clause

Federal courts have repeatedly held that arbitrary and discriminatory tax assessments infringe upon the Equal Protection Clause, especially where assessments lack a rational basis and unfairly impact specific taxpayers.

Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County, 488 U.S. 336 (1989) – In *Allegheny Pittsburgh*, the Supreme Court ruled that significant disparities in property tax assessments, based solely on arbitrary practices, violated the Equal Protection Clause. The Court's decision emphasized that tax assessments must bear a rational relation to fair market values if similarly situated properties are to be treated equitably. Bernardsville's spot assessments, if similarly arbitrary and inconsistent, constitute a

violation of the Equal Protection Clause by imposing unequal tax burdens on similarly situated properties without a legitimate government purpose. The Complaint's emphasis on "spot assessing" underscores this unequal treatment and firmly grounds it in federal constitutional principles.

IV. The Complaint Meets Federal Jurisdiction Standards Under Howell and Adams

The Respondent relies on *Howell v. Mississippi*, 543 U.S. 440 (2005), and *Adams v. Robertson*, 520 U.S. 83 (1997), to argue that federal claims must be adequately presented to the state court. However, the Petitioners' Complaint fulfills this standard, with specific, repeated references to unconstitutionality in connection with Mr. Kerwin the assessor spot assessment practices, thus providing sufficient clarity for federal claims under both *Howell* and *Adams*. Distinguishing from *Howell* and *Adams*: In *Howell*, the Petitioners' claim was unclear and disconnected from a constitutional issue, while in *Adams*, the federal issue was unaddressed. In contrast, the Petitioners' Complaint explicitly connects "spot assessing" to unconstitutional conduct, challenging Bernardsville's practices under the Equal Protection and Due Process Clauses, which meet the threshold for adequate presentation of a federal claim.

V. *West Milford Tp. v. Van Decker* Reinforces the Constitutional Grounds of the Complaint

The Complaint's citation of *West Milford Tp. v. Van Decker* establishes a clear precedent for constitutional principles opposing selective property tax assessments. In *Van Decker*, the New Jersey Supreme Court addressed the illegality of discriminatory tax

practices, providing strong support for the federal equal protection and due process concerns central to this case. This aligns with *Allegheny Pittsburgh Coal Co. v. County Comm'n*, where spot assessments were deemed unconstitutional under federal standards when applied unequally. *Van Decker* confirms that New Jersey law mirrors federal equal protection principles, bolstering the Petitioners' claims that Bernardsville's spot assessments raise substantial constitutional issues that require federal oversight.

VI. Supremacy Clause Requires Federal Protections Over State Practices

The Supremacy Clause (U.S. Const. Art. VI, Cl. 2) ensures federal constitutional protections supersede conflicting state practices. In *Cooper v. Aaron*, 358 U.S. 1 (1958), Segregation principles apply; discriminatory taxation violates equal protection rights.

VII. Federal Interest in Uniform Taxpayer Rights Justifies Certiorari

Uniform taxpayer rights across states demand review. Arbitrary tax assessments undermine federal equal protection standards and create harmful precedents.

- In *Central Machinery Co. v. Arizona Tax Comm'n*, 448 U.S. 160 (1980), Federal oversight ensures fairness, preventing inequity from discriminatory assessments.

VII. Federal Jurisdiction Under 28 U.S.C. § 1257 Is Proper for Substantial Federal Issues

Jurisdiction exists under § 1257 for equal protection challenges.

- *Michigan v. Long*, 463 U.S. 1032 (1983), affirmed jurisdiction where state decisions ambiguously rely on federal law. The constitutional implications of discriminatory tax assessments warrant review under *Long*.

IX. Compelling Grounds for Review Under Sup. Ct. Rule 10

Supreme Court Rule 10 Certiorari ensures federal oversight, preventing discrimination and protecting taxpayer rights.



CONCLUSION

This case transcends a tax appeal, raising substantial federal constitutional issues under the Supremacy Clause and 28 U.S.C. § 1257. Bernardsville's discriminatory spot assessments violate equal protection and due process, as established in *Van Decker*, *Allegheny Pittsburgh*, and *Cooper*. Certiorari is essential to address these violations and protect federally guaranteed rights.

I, certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted,

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