

APENDIX “A”

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1622

JEFFREY W. SMILES,
Appellant

v.

COUNTY OF BERKS A Political Subdivision of the Commonwealth of
Pennsylvania also known as BERKS COUNTY;
BERKS COUNTY TAX CLAIM BUREAU
An Agency of the Treasurer's Office of Berks County;
BRENDA S. SHAW, in her Individual Capacity;
KATHIE E. STANISLAW, in her Individual and Official Capacity;
LILLIAN B. CRAMSEY, in her Individual and Official Capacity;
STACEY A. PHILE, in her Individual and Official Capacity

(E.D. Pa. No. 5-18-cv-03833)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY and PHIPPS, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

circuit in regular service not having voted for rehearing, the petition for rehearing en banc is denied.

BY THE COURT,

s/ David J. Porter
Circuit Judge

Dated: November 20, 2019
JK/cc: Jeffrey W. Smiles
All Counsel of Record

APENDIX “B”

BLD-278

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 19-1622

JEFFREY W. SMILES,
Appellant

v.

**COUNTY OF BERKS A Political Subdivision of the Commonwealth of
Pennsylvania also known as BERKS COUNTY;
BERKS COUNTY TAX CLAIM BUREAU
An Agency of the Treasurer's Office of Berks County;
BRENDA S. SHAW, in her Individual Capacity;
KATHIE E. STANISLAW, in her Individual and Official Capacity;
LILLIAN B. CRAMSEY, in her Individual and Official Capacity;
STACEY A. PHILE, in her Individual and Official Capacity**

**On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 18-cv-03833)
District Judge: Honorable Edward G. Smith**

**Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
September 12, 2019
Before: AMBRO, KRAUSE and PORTER, Circuit Judges**

(Opinion filed: October 2, 2019)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Jeffrey Smiles appeals from an order of the United States District Court for the Eastern District of Pennsylvania, which dismissed his complaint, granting the Defendants' motions under Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. As no substantial question is raised by this appeal, we will summarily affirm the District Court's judgment. See 3d Cir. I.O.P. 10.6.

Smiles's 87-page complaint (plus exhibits) was his third complaint raising nearly identical civil rights claims and claims under federal criminal statutes against individuals and entities that are or were involved in attempting to collect real property taxes from Smiles.¹ In these suits, Smiles claims that he does not need to pay taxes because he is a "non-taxpayer" and "one of the sovereign people of the Commonwealth of Pennsylvania." Dkt. #1, ¶¶ 18, 37-38, 40. The District Court properly dismissed the complaint for lack of subject matter jurisdiction.²

¹ Smiles v. Shaw, E.D. Pa. Civ. No. 17-cv-01355, was dismissed as frivolous and for failure to state a claim under 28 U.S.C. §§ 1915(e)(2)(B)(i) and (ii), and because it failed to comply with Rule 8(a) of the Federal Rules of Civil Procedure. Smiles did not file an amended complaint, despite being invited to do so. A few months later, however, he filed a nearly identical complaint, captioned Smiles v. County of Berks, and docketed at E.D. Pa. Civ. No. 17-cv-03543. That complaint was dismissed for the same reasons, and because Smiles "may not initiate duplicative cases against the same defendants in the same court." Smiles v. County of Berks, 2017 WL 3496486, at *2 (E.D. Pa. Aug. 14, 2017).

² We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's dismissal of Smiles's complaint for lack of subject matter jurisdiction. Nichole Med. Equip. & Supply, Inc. v. TriCenturion, Inc., 694 F.3d 340, 347 (3d Cir. 2012). The District Court properly dismissed the complaint without prejudice. See In re Orthopedic "Bone Screw" Prods. Liab. Litig., 132 F.3d 152,

The Tax Injunction Act prohibits a federal court from enjoining “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.” 28 U.S.C. § 1341. Additionally, the Supreme Court has held that “taxpayers are barred by the principle of comity from asserting § 1983 actions against the validity of state tax systems in federal courts” so long as “plain, adequate, and complete”³ remedies are available in state court. Fair Assessment in Real Estate Ass’n, Inc. v. McNary, 454 U.S. 100, 116 (1981). As we have explained, “[t]aken together, the Tax Injunction Act and the Supreme Court’s decision in McNary make it clear that a federal court cannot entertain a suit posing either an equitable or a legal challenge to state or local taxes . . . if a sufficient remedy . . . is available in state court.” Kerns v. Dukes, 153 F.3d 96, 101 (3d Cir. 1998).

This Court has repeatedly held that the Pennsylvania state courts provide a “plain, speedy, and efficient” remedy for challenges to a county’s assessment of real property

155 (3d Cir. 1997). We generally have jurisdiction only when a dismissal is with prejudice, but a plaintiff can appeal from a dismissal without prejudice when, as here, “he cannot cure the defect in his complaint.” Booth v. Churner, 206 F.3d 289, 293 n.3 (3d Cir. 2000).

³ The McNary Court stated:

We discern no significant difference, for purposes of the principles recognized in this case, between remedies which are “plain, adequate, and complete,” as that phrase has been used in articulating the doctrine of equitable restraint, and those which are “plain, speedy and efficient,” within the meaning of § 1341.

454 U.S. at 116 n.8.

taxes. See, e.g., Gass v. County of Allegheny, Pa., 371 F.3d 134, 137-38 (3d Cir. 2004). Indeed, Smiles has not demonstrated that the state’s “fully-developed administrative and judicial apparatus” by which a taxpayer may challenge an assessment of his property, see id. at 140, has become inadequate or unavailable since Gass. Accordingly, Smiles’s challenge to Berks County’s actions, and that actions of the other individuals and entities involved, fails for want of subject matter jurisdiction.⁴ The District Court therefore did not err in dismissing Smiles’s complaint.⁵

For the foregoing reasons, we will affirm the District Court’s judgment.

⁴ To the extent Smiles sought to bring claims against the Defendants under federal criminal statutes, “a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.” See Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973). Thus, dismissal of the criminal claims for lack of jurisdiction was also proper. See Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 89 (1998) (“Dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper . . . when the claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy.” (internal quotation marks omitted)).

⁵ In an affidavit in support of his appeal, Smiles contends that he never received the motion to dismiss filed by Defendant Lillian B. Cramsey, and that it was unfair of the District Court to dismiss his case without allowing him to respond to that filing. However, even assuming that is true (we note that Cramsey’s motion includes an appropriate certificate of service), Smiles was not prejudiced by his inability to respond, as Cramsey’s motion simply “incorporate[d] by reference” the earlier motion to dismiss filed by the other Defendants. Dkt. #13. Thus, Smiles had an opportunity to respond to all of the arguments put forth by the Defendants.

BLD-278

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1622

JEFFREY W. SMILES,
Appellant

v.

COUNTY OF BERKS A Political Subdivision of the Commonwealth of
Pennsylvania also known as BERKS COUNTY;
BERKS COUNTY TAX CLAIM BUREAU
An Agency of the Treasurer's Office of Berks County;
BRENDA S. SHAW, in her Individual Capacity;
KATHIE E. STANISLAW, in her Individual and Official Capacity;
LILLIAN B. CRAMSEY, in her Individual and Official Capacity;
STACEY A. PHILE, in her Individual and Official Capacity

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 18-cv-03833)
District Judge: Honorable Edward G. Smith

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
September 12, 2019
Before: AMBRO, KRAUSE and PORTER, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District
Court for the Eastern District of Pennsylvania and was submitted for possible dismissal
pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third

8a

Circuit LAR 27.4 and I.O.P. 10.6 on September 12, 2019. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered February 21, 2019, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszeit
Clerk

DATED: October 2, 2019

APENDIX “C”

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 19-1622Smiles v. County of Berks
(E.D. Pa. No. 5-18-cv-03833)

-To: Clerk

- 1) Motion by Appellant for leave to appeal in forma pauperis

The foregoing motion to proceed in forma pauperis is granted. The appeal will be submitted to a panel of this court for determination under 28 U.S.C. § 1915(e)(2) as to whether the appeal will be dismissed as legally frivolous or whether summary affirmance under Third Circuit L.A.R. 27.4 and I.O.P. 10.6 is appropriate. In making this determination, the district court opinion and record will be examined. No briefing schedule will issue until this determination is made. Although not necessary at this time, appellant may submit argument, which should not exceed 5 pages, in support of the appeal. The document, with certificate of service, must be filed with the clerk within 21 days of the date of this order. Appellee need not file a response unless directed to do so or until a briefing schedule is issued. The Court may reconsider in forma pauperis status or request additional information at any time during the course of this appeal.

For the Court,s/ Patricia S. Dodszeit
ClerkDated: April 25, 2019
JK/cc: Jeffrey W. Smiles
Andrew B. Adair, Esq.
Christopher C. Negrete, Esq.

APENDIX “D”

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1622

Smiles vs. County of Berks, et. al.
(E.D. Pa. 5-18-cv-03833)

AFFIDAVIT IN SUPPORT OF APPELLANT’S APPEAL

Appellant *Jeffrey Smiles* submits this affidavit in support of Appellant’s appeal filed with the 3rd circuit court of appeals on the 19th day of March 2019 and in accordance with the courts instructions of the 25th day of April 2019.

AS GOOD GROUNDS for the foregoing Affidavit, Appellant states the following:

THE FACTS OF APPELLANT’S APPEAL

1. On the 7th day of September 2018 Appellant/Plaintiff filed a civil rights complaint with the eastern district of Pennsylvania in accordance with title 42 U.S.C. § 1983 and pursuant to the Federal Rules of Civil Procedures Rule 3, Rule 8(a), (d)(1)(2), (e), Rule 9(c), Rule 10(a)(b)(c) and Rule 11(a)(b) (See: E.D. Pa. 5-18-cv-03833, Doc no. 1) clearly stating and **evidencing violations of substantive civil rights by the Appellee/ Defendant COUNTY OF BERKS aka BERKS COUNTY and all named individual Defendants acting in their official capacity under color of the Pennsylvania Tax Reform Code of 1971 in an effort to deprive Appellant of property.**
2. **It is a FACT that Appellant/Plaintiff’s civil rights complaint is clearly in compliance with the heightened pleading standard imposed by *Ashcroft vs. Iqbal*, 556 U.S. 662, 697 (2009) and *Bell Atlantic Corp. vs. Twombly*, 550 U.S. 544, 555 (2007) requiring that the Plaintiff provide sufficient factual matter in a simple, concise, and direct form based in law and fact with specificity stating a valid legal cause of action for the claimed violations that clearly evidences the unlawful conduct complained of within the meaning of title 42 U.S.C. § 1982, § 1983, § 1985, § 1986.**
3. On the 4th day of October 2018 Appellee’s/Defendant’s filed a “Motion to Dismiss” pursuant to Federal Rules of Civil Procedures Rule 12(b), (1) and (6). See E.D. Pa. 5-18-cv-03833, Doc no. 6.

4. On the 17th day of October 2018, Appellant/Plaintiff filed a written response and objections (Doc no. 7) to Appellee/Defendant's "Motion to Dismiss" pointing out the deficiencies of Appellee/Defendant's "Motion to Dismiss" **for their clear FAILURE to provide any evidence of a licensed business activity, corporate charter and/or tax returns filed and signed by Appellant/Plaintiff, with Appellee/Defendant COUNTY OF BERKS aka BERKS COUNTY that would clearly prove-up that Appellant/Plaintiff is a taxpayer by statutory definition conducting business and/or commerce producing activity receiving "taxable income" with land or income attributable to real property within the scope of article 8 of the Constitution of Pennsylvania and pursuant to the Pennsylvania Tax Reform Code of 1971 § 401(1) as defined by Pennsylvania Statute title 72 § 7401(3) (taxable income) and Pennsylvania Code § 153.24 (relating to business income and nonbusiness income) in accordance with Pennsylvania Statutes Title 53 (Municipal and Quasi-Municipal Corporations) and Pennsylvania Statutes Title 72 (Taxation and Fiscal Affairs) to set a taxable situs of Appellant/Plaintiff's property for a ad valorem tax.**

5. It is a FACT that Appellee/Defendant's purported "Motion to Dismiss" FAILED to provide any admissible evidence based in the clearly established laws of Pennsylvania of Appellant's/Plaintiff's **duly to pay a ad valorem property tax and Appellee's/Defendant's statutory authority to collect such a tax on Appellant's noncommercial land/property pursuant to the Pennsylvania Tax Reform Code of 1971.**

6. On the 20th day of February 2018 district Judge EDWARD G. SMITH, ordered dismissal of Appellant's/Plaintiff's civil rights complaint for lack of jurisdiction based on Defendant's purported "Motion to Dismiss" (Doc no. 17) filed pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

APPELLANT'S CASE IS A CIVIL RIGHTS ACTION, NOT A TAX CASE!

7. It is a FACT that all Defendants named in Appellant/Plaintiff's civil rights complaint (Doc no. 1) CLAIM to be acting under authority of the Pennsylvania Tax Reform Code of 1971 and **have created purported tax liens and tax deeds to Appellant/Plaintiff's noncommercial property WITHOUT right of title and adequate evidence of statutory authority while lacking all appearances of due process and the rule of law** pursuant to Constitutions of Pennsylvania and the United States of America. See E.D.Pa. 5-18-cv-03833, Doc no. 1.

8. It is a FACT that all Defendants named in Appellant/Plaintiff's complaint (Doc no. 1) are **threatening to sell a counterfeit tax deed WITHOUT ownership interest or title to Appellant/Plaintiff's property while lacking all appearances of due process and the rule of law.** This misconduct is a clear conflict to the Constitution of Pennsylvania and the Pennsylvania Tax Reform Code of 1971. (See Pennsylvania Statutes Title 72 Taxation and Fiscal Affairs § 7243. Suit for taxes).

9. It is a **FACT** that Appellee/Defendant COUNTY OF BERKS aka BERKS COUNTY, all clearly named individual Defendants acting in their official capacity and their Attorneys ANDREW B. ADAIR, ESQ. (#70756) and CHRISTOPHER C. NEGREE, ESQ. (#86152) appear unable to analyze and comprehend what they're reading and therefore **believe that the taking of a man's home/property/land under color of a tax code/statutes without due process of law is frivolous and not a claim upon which relief can be granted demonstrating a severe mental impairment of cognitive abilities to interpret and apply the law and the constitution as it is written in plain English** without regard to whether Appellee/Defendant COUNTY OF BERKS aka BERKS COUNTY and their purported Attorneys approves or disapproves of the law or the subject matter of Appellant's 42 U.S.C. § 1983 civil rights action.

DISTRICT JUDGE EDWARD G. SMITH'S ORDER OF DISMISSAL IS VOID ON IT'S FACE FOR LACK OF "NO EVIDENCE" TO SUPPORT SUCH A RULING!

10. It is a **FACT** that Appellee/Defendant's purported "Motion to Dismiss" (Doc no. 6) filed pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) on the 4th day of October 2018 **failed to state any legal deficiencies within the four corners of Appellant/Plaintiff's civil rights complaint.** Appellee/Defendant's purported "Motion to Dismiss" was clearly nothing more than **regurgitated propaganda unsupported by the Constitution** of Pennsylvania, the Pennsylvania Tax Reform Code of 1971 and the rule of law.

11. It is a **FACT** that Purported District Judge EDWARD G. SMITH has order that the district court lacks jurisdiction of the subject matter WITHOUT an answer filed by Appellee/Defendants in accordance with Federal Rules of Civil Procedures Rule 8 while providing no evidence of Constitution, statutes or case law **on point to support a dismissal** of Appellant/Plaintiff's 42 U.S.C. § 1983 civil rights complaint. *All deprivations of an individual's substantive property rights carried out without due process of law are actionable under 42 U.S.C. § 1983. See Halverson vs. Skagit Cnty., 42 F.3d 1257, 1260 (9th Cir 1994).*

12. District Judge EDWARD G. SMITH has "FAILED in his fiduciary duty to protect Appellant/Plaintiff's rights to substantive due process, equal protection of the law, access to the courts and the right to correct the wrongs inflicted upon Appellant/Plaintiff by the Appellee/Defendants named in Appellant's complaint. See E.D.Pa. 5-18-cv-03833, Doc no. 1.

13. It is a **FACT** that such misconduct of District Judge EDWARD G. SMITH is not a function of the constitutional government of the people, for the people and by the people pursuant to the Pennsylvania Constitution and Laws of the United States of America and of the several states of the America Union in which District Judge EDWARD G. SMITH has taken oath to uphold and protect Appellant/Plaintiff's substantive rights.


14. It is a FACT that Appellee/Defendants have clouded Appellant/Plaintiff's property by way of an unconstitutional application of the tax statutes causing multiple constitutional deprivations of Appellant/Plaintiff's property rights and oppressing Appellant/Plaintiff's substantive right to acquire, possess, own, protect, inherit, purchase, lease, sell, hold, and enjoy real and personal property free of governmental interference as a matter of right. Appellee/Defendants have clearly violated Appellant/Plaintiff's constitutional rights secured by the Constitution of Pennsylvania Article I §1, §9, §10 and §11 and the Fifth and Fourteenth Amendments of the United States Constitution under color of law. See E.D.Pa. 5-18-cv-03833, Doc no. 1.

15. It is a FACT that Defendant the BERKS COUNTY TAX CLAIM BUREAU are perverting the Pennsylvania Tax Reform Code of 1971 to take money, homes and land from the people of Berks County, Pennsylvania without any certified tax returns filed pursuant to Pennsylvania Statutes Title 72 § 7215 (Persons required to make returns), § 4843.1(2)(c)(d) ("Return by taxpayer") and § 214 ("Failure to file") and NO assessments as mandated by Pennsylvania Statutes Title 72 § 5341.13 and Title 53 § 8811(a) (Subjects of local taxation) while lacking all appearances of due process of law. (See Pennsylvania Statutes Title 72 Taxation and Fiscal Affairs § 7243. Suit for taxes).

16. It is a FACT that Appellee/Defendants are engaging in a simulated legal process by perverting the Pennsylvania Tax Reform Code of 1971 in an attempt to commit a theft of property not taxable by law, without due process of law and just compensation and are doing so under color of statute, regulation, custom, policy and usage of state revenue codes used beyond the limitations of taxation set forth in Article I, § 8 clause 1 of the United States Constitution and the Constitution of Pennsylvania within the meaning of title 42 U.S.C. § 1982, § 1983, § 1985 and § 1986.

Submitted this 14th day of May 2019.

I, Jeffrey W. Smiles, being duly sworn, do state and affirm according to law, that I have first hand knowledge of the undisputed material facts and competent to testify in theses matters, and swears under penalty of perjury that these facts are true and correct. (See U.S.C. 28, 1746(1)).


Jeffrey W. Smiles, Appellant

SWORN BEFORE ME, the undersigned notary for the State of Pennsylvania, on this day personally appeared Jeffrey W. Smiles, who affixed his signature to the above Affidavit.

STATE OF PENNSYLVANIA)
COUNTY OF BERKS)
Sworn to and signed before me on this 14th day of May 2019.


NOTARY PUBLIC

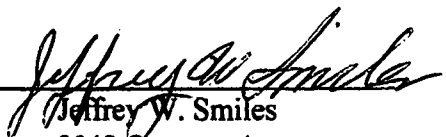
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COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Suzanne M Myers, Notary Public
City of Reading Berks County

Certificate of Service

I, Jeffrey W. Smiles, certify that on the 14th day of May, 2019, a true and correct copy of the above was U.S. mailed to:

Andrew B. Adair
Christopher C. Negrete
103 Chesley Drive, Suite 101
Media, Pa. 19063
Attorneys for Defendants

By: 
Jeffrey W. Smiles
3049 Octagon Avenue.
Sinking Spring, Pa. 19608

APENDIX “E”

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEFFREY SMILES,

Plaintiff,

v.

COUNTY OF BERKS, BERKS COUNTY
TAX CLAIM BUREAU, BRENDA S.
SHAW, in her individual capacity, KATHIE
E. STANISLAW, in her individual and
official capacity, LILLIAN B. CRAMSEY,
in her individual and official capacity, and
STACEY A. PHILE, in her individual and
official capacity,

Defendants.

CIVIL ACTION NO. 18-3833

ORDER

AND NOW, this 9th day of April, 2019, after reviewing the motion to proceed *in forma pauperis* on appeal filed by the *pro se* plaintiff (Doc. No. 19), it is hereby **ORDERED** that the motion (Doc. No. 19) is **DENIED**.¹

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.

¹ If the analysis governing pauper status on appeal was confined solely to investigating the plaintiff's financial status, the court would grant the instant motion without hesitation as it appears that he cannot pay the required fees and costs at this time. The analysis requires more, however, because the controlling statute states that "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3) (emphasis added). "The good faith standard is an objective one, not a determination of a litigant's subjective state of mind[.]" *Crisdon v. N.J. Victim of Crime Compensation Office*, Civ. No. 11-4980 (NLH/KMW), 2012 WL 1495539, at *1 (D.N.J. Apr. 26, 2012) (citations and internal quotation marks omitted). As any claims the plaintiff could make would be frivolous on their face for the reasons articulated in the court's prior order, *see* Doc. No. 17, the court cannot certify that the appeal is taken in good faith. *See Scarnati v. Social Sec.*, No. 13-575, 2013 WL 2253159, at *1 (W.D. Pa. May 22, 2013) (denying motion for reconsideration where court determined that any appeal taken would be frivolous under 28 U.S.C. § 1915(a)(3)); *see also Ball v. Famiglio*, 726 F.3d 448, 462 n.19 ("A district court may certify that an appeal would not be taken in good faith, even if it dismissed the action on grounds other than frivolousness"), *abrogated in part by Coleman v. Tollefson*, 135 S.Ct. 1759, 1763 (2015).

APENDIX “F”

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEFFREY SMILES,

Plaintiff,

v.

COUNTY OF BERKS, BERKS COUNTY
TAX CLAIM BUREAU, BRENDA S.
SHAW, in her individual capacity, KATHIE
E. STANISLAW, in her individual and
official capacity, LILLIAN B. CRAMSEY,
in her individual and official capacity, and
STACEY A. PHILE, in her individual and
official capacity,

Defendants.

CIVIL ACTION NO. 18-3833

ORDER

AND NOW, this 20th day of February, 2019, after considering the motion to dismiss for lack of jurisdiction and failure to state a claim filed by Berks County Tax Claim Bureau ("Bureau"), County of Berks, Stacey A. Phile ("Phile"), Brenda S. Shaw ("Shaw"), and Kathie E. Stanislaw ("Stanislaw") (Doc. No. 6); the response in opposition filed by the plaintiff (Doc. No. 7); the motion to dismiss filed by Lillian B. Cramsey ("Cramsey") (Doc. No. 13);¹ and the complaint (Doc. No. 1), it is hereby **ORDERED** as follows:

1. The motions to dismiss (Doc. Nos. 6, 13) are **GRANTED**;²
2. The complaint is **DISMISSED WITHOUT PREJUDICE**;³ and

3. The clerk of court is **DIRECTED** to mark this case as **CLOSED**.

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.

¹ The court recognizes that Cramsey's motion to dismiss was untimely under Federal Rule of Civil Procedure 12(a). See Fed. R. Civ. P. 12(a)(1) (setting forth time to serve responsive pleading); Fed. R. Civ. P. 12(b) (stating that defendant choosing to present defense under Rule 12(b) by motion must do so before filing answer to complaint). However, the plaintiff did not properly move for entry of default against Cramsey when he improperly moved for a default judgment without first requesting that the clerk of court enter default against any defendant presently in default see Order, Doc. No. 10, and he did not do so even after the court explained to him what he first needed to do when seeking a default judgment against a non-responding defendant, see *id.* at 1, n.1. In addition, the court sees no prejudice from the delay, especially because Cramsey's motion relied entirely on the arguments already presented in the other defendants' timely motion to dismiss. See Def. Cramsey's Mot. to Dismiss, Doc. No. 13; *Fake v. Commonwealth of Pa.*, No. 1:17-cv-2242, 2018 WL 2228676, at 1 n.6 (M.D. Pa. May 16, 2018) ("To the extent Plaintiffs argue that the motion to dismiss should be denied as untimely by virtue of Defendants having filed their motion on January 17, 2018, twenty-two days from the date Plaintiffs filed their amended complaint on December 26, 2017, the Court can discern no prejudice to Plaintiffs resulting from Defendant's technical noncompliance with Rule 12(a)."); *Doty v. United States*, Civ. No. 15-3016 (NLH), 2016 WL 3398579, at *2 (D.N.J. June 15, 2016) ("Therefore, the Court will excuse the inadvertent untimeliness of Defendants' motion [to dismiss] and consider it on the merits."); *Bright v. Giordano's Restaurant*, Civ. A. No. 89-2209, 1989 WL 104820, at 1 (E.D. Pa. Sept. 8, 1989) ("Then, too, if defendant's motion to dismiss is indeed untimely, the fact remains that it was filed before plaintiff had sought or obtained a default judgment, plaintiff has sustained no prejudice from the brief delay, and it would likely amount to an abuse of discretion to deny permission to file the motion late.").

The plaintiff never filed a response to Cramsey's motion to dismiss, and he did not move to strike it by claiming that it was untimely filed.

² The defendants argue the court should dismiss the complaint for lack of subject-matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure and *res judicata* under Rule 12(b)(6). See Defs.' Mem. of Law in Supp. of Mot. to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) ("Mot. to Dismiss") at 7, Doc. No. 6-1; Mot. of Def., Lillian B. Cramsey, to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), Doc. No. 13. The court agrees that both of those grounds warrant dismissal.

First, the Tax Injunction Act ("TIA") forecloses the court from exercising jurisdiction to "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." 28 U.S.C. § 1341. The purpose of the TIA is to prevent federal courts from hearing cases that would "interfere with so important a local concern as the collection of taxes . . ." *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 504 (1981). This includes federal civil rights cases. See *id.* (holding TIA foreclosed taxpayer suit under 42 U.S.C. § 1983 alleging Fourteenth Amendment equal protection and due process violations). The Third Circuit has explicitly held that Pennsylvania law provides a "plain, speedy and efficient remedy" sufficient to foreclose taxpayer suits under the TIA. See *Gass v. Cty. of Allegheny, Pa.*, 371 F.3d 134, 138 (3d Cir. 2004) (describing Third Circuit decisions upholding validity of Pennsylvania's remedy for tax claims under TIA). Even where the TIA does not apply, such as in cases involving monetary damages, the principle of comity insulates states from taxpayer suits. See *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 107 (1981) ("Because we decide today that the principle of comity bars federal courts from granting damages relief in such cases, we do not decide whether [the TIA], standing alone, would require such a result."); *Hardwick v. Cuomo*, 891 F.2d 1097, 1104 (3d Cir. 1989) ("The overarching importance of the [TIA] is underscored by the fact that, though by its terms it seems to apply only to injunctive actions, it is construed to prohibit the district courts from granting declaratory relief in cases involving constitutional challenges to state tax acts. The same result is reached as a matter of comity, which supplements the [TIA], when only money damages are sought." (internal citations omitted)).

The relief requested here—removal of the subject property from the Berks County tax rolls and an injunction preventing the defendants from implementing and enforcing their tax laws as to the plaintiff, *see* Compl. at ¶¶ 267–68—would undoubtedly interfere with the defendants’ administration of their tax system, and the plaintiff “point[s] to no subsequent case law or legislation that suggests that Pennsylvania has made it more difficult to bring an action challenging tax assessment schemes in state court.” *Gass*, 371 F.3d at 138. Thus, the TIA deprives the court of jurisdiction to hear the plaintiff’s claims. To the extent the plaintiff seeks relief outside the bounds of the TIA—namely his demand for money damages—the principle of comity forecloses those claims.

Second, even if the court had subject-matter jurisdiction over this action, the doctrine of *res judicata* warrants dismissal because another court has already ruled on the merits of what were, essentially, two identical cases. *Res judicata* consists of the related doctrines of claim and issue preclusion. *See United States v. Athlone Indus., Inc.*, 746 F.2d 977, 983 n.4 (3d Cir. 1984) (“[T]he term ‘claim preclusion’ [] refer[s] to the preclusive effect of a judgment in foreclosing relitigation of the same causes of action. Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided.”) (citations omitted)). For claim preclusion to apply, the defendants must establish three elements: “(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same causes of action.” *Id.* (citations omitted). “[A] Rule 12(b)(6) motion raises matters in bar and results in a judgment on the merits.” *Hubicki v. ACF Indus. Inc.*, 484 F.2d 519, 523 (3d Cir. 1973) (citations omitted). Where the complaint in the new action includes parties not named in the prior action, the parties who were defendants in both actions may still assert a claim preclusion defense. *Teri Woods Pub., LLC v. Williams*, Civ. A. No. 12-4854, 2013 WL 5777151, at *4 (E.D. Pa. Oct. 25, 2013) (“[T]his prong is satisfied where the party asserting the *res judicata* defense was a defendant in both lawsuits.”) (citations omitted)). Courts have “a predisposition towards taking a broad view of what constitutes identity of causes of action—an essential similarity of the underlying events giving rise to the various legal claims.” *Athlone Indus., Inc.*, 746 F.2d at 984 (quotation marks omitted).

For a defendant not named in the original action, issue preclusion denies the plaintiff “another bite at the apple” where: “(1) the issue sought to be precluded [is] the same as that involved in the prior action; (2) the issue [was] actually litigated; (3) it [was] determined by a final and valid judgment; and (4) the determination [was] essential to the prior judgment.” *Peloro v. United States*, 488 F.3d 163, 175 (3d Cir. 2007) (alterations in original) (quotation marks and citations omitted). Defensive non-mutual issue preclusion applies where the plaintiff “had a full and fair opportunity to litigate the issue in the first action.” *Id.* (quotation marks and citations omitted). A ruling on a motion to dismiss can satisfy the elements of collateral estoppel. *See Cramer v. Gen. Tel. & Elecs. Corp.*, 582 F.2d 259, 267–68 (3d Cir. 1978) (holding that plaintiff “had a full and fair opportunity to litigate [his claims] in th[e] other forum” where another district court had previously dismissed complaint for failure to state claim); *Farmer v. Pottetiger*, Civ. No. 3:12-808, 2012 WL 5398626, at *6 (M.D. Pa. Sept. 28, 2012) (“Not only did [the plaintiff] bring virtually identical substantive allegations in his earlier lawsuit, but the merits of those identical issues were fully litigated, and adjudicated, in the earlier case” when magistrate judge issued two reports and recommendations recommending that district court dismiss complaint, and district court adopted reports and recommendations), *adopted in relevant part* 2012 WL 5398627, at *4 (M.D. Pa. Nov. 5, 2012); *Nash v. Jilles*, Civ. A. No. 7-3985, 2007 WL 2844823, at *4 (E.D. Pa. Sept. 28, 2007) (“Plaintiff was accorded a full and fair opportunity to respond to the motion to dismiss and litigate the issue.”).

All three elements of claim preclusion are met here for all but one of the defendants. First, there are two final judgments: Judge Stengel’s dismissals of the plaintiff’s prior suits for, among other grounds, failure to state a claim under Rule 12(b)(6). *See* Order at ECF p. 1, *Smiles v. Shaw, et al.*, Civ. A. No. 17-1355 (E.D. Pa.), Doc. No. 2; *Smiles v. Cty. of Berks, et al.*, Civ. A. No. 17-3543, 2017 WL 3496486, at 2 (E.D. Pa. Aug. 14, 2017) (concluding that complaint asserted against Bureau, Berks County, Phile, Shaw, and Cramsey “fail[ed] for the same reasons as the complaint in Civil Action Number 17-1355” and improperly asserted “duplicative cases against the same defendants in the same court”). Second, the parties, except for Stanislaw, are identical in all three actions. Third, all three actions are based on the same “underlying events” and corresponding meritless legal theories, namely that the plaintiff is not obligated to pay property taxes because he is a “non tax payer” and a “sovereign citizen,” is an individual rather than a corporation, and does not operate his home as a commercial property. *Compare* Compl., *Smiles v. Shaw, et al.*, Civ. A. No. 17-1355, Doc. No. 3, *with* Compl., *Smiles v. Cty. of Berks, et al.*, No. 17-3543, Doc. No. 4, *and* Compl., *Smiles v. Cty. of Berks, et al.*, No. 18-3833, Doc. No. 1.

As to defendant Stanislaw, issue preclusion forecloses the plaintiff from relitigating the same issues underlying his earlier actions, and his claims against her also therefore fail. The plaintiff had the opportunity before Judge Stengel to argue why his claims were not meritless or, alternatively, to amend the original complaint to adequately state a claim. *See* Order at ECF p. 3, *Smiles v. Shaw, et al.*, No. 17-1355 (E.D. Pa.), Doc. No. 2 (“In an abundance of caution, the Court will give plaintiff leave to file an amended complaint within thirty (30) days of this

order in the event he can clearly articulate a non-frivolous basis for a claim within the Court's jurisdiction."); Order, *Smiles v. Shaw, et al.*, Civ. A. No. 17-1355 (E.D. Pa.), Doc. No. 5 (considering the plaintiff's "Objections and Recommendations" as a motion for reconsideration to the court's order dismissing the complaint); Order, *Smiles v. Shaw, et al.*, Civ. A. No. 17-1355, Doc. No. 6 (dismissing case for failure to prosecute because plaintiff "failed to file an amended complaint in accordance with" prior order); *Smiles*, Civ. A. No. 17-3543, 2017 WL 3496486, at *2 ("Plaintiff was given an opportunity to file an amended complaint in his previously-filed case but failed to do so. Instead, it appears he prefers to proceed on his initial complaint in a new civil action."). The plaintiff did not use the opportunity Judge Stengel provided him to amend his original complaint to correct its deficiencies, nor did he appeal either of Judge Stengel's decisions dismissing either complaint to the Third Circuit. The plaintiff's failure to use the opportunity to fully litigate the original complaint may not be held against defendant Stanislaw for issue preclusion purposes.

³ As plaintiff cannot plead facts that would correct these deficiencies, it would be futile to allow him to amend his complaint. See *Grayson v. Mayview St. Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002) (directing that district court should generally provide *pro se* plaintiff with leave to amend unless amending would be inequitable or futile); see also *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 252 (3d Cir. 2007) ("[I]n civil rights cases district courts must offer amendment—irrespective of whether it is requested—when dismissing a case for failure to state a claim unless doing so would be inequitable or futile."). This is especially true as this complaint is, in the defendants' words, "Plaintiff's third bite at the proverbial apple." See Mot. to Dismiss at 6.

Although the court is not providing the plaintiff with leave to file an amended complaint and the court has provided multiple reasons for dismissing the complaint, the court must dismiss this action without prejudice because the primary basis for the dismissal is a lack of subject-matter jurisdiction. See *In re Orthopedic "Bone Screw" Prods. Liab. Litig.*, 132 F.3d 152, 155 (3d Cir. 1997) (explaining that dismissal of action for lack of subject-matter jurisdiction must be without prejudice).