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IN THE SUPREME COURT OF THE UNITED STATES

EDWARD J. ROSEWELL, ETC.,  
ET AL.,

Petitioners,

v.

La SALLE NATIONAL BANK,  
TRUSTEE, ETC.,

Respondent.

No. 79-1157

Washington, D. C.

Monday, November 10, 1980

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 1:56 o'clock p.m.

APPEARANCES:

HENRY A. HAUSER, ESQ., Deputy Chief, Civil Actions Bureau, Office of State's Attorney of Cook County, Illinois, 500 Richard J. Daley Center, Chicago, Illinois 60602; on behalf of the Petitioners.

JAMES L. FOX, Abramson & Fox, One East Wacker Drive, Chicago, Illinois 60601; on behalf of the Respondent.

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C O N T E N T S

ORAL ARGUMENT OF

PAGE

HENRY A. HAUSER, ESQ.,  
on behalf of the Petitioners

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JAMES L. FOX, ESQ.,  
on behalf of the Respondent

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MILLERS FALLS  
ERASE  
COTTON CONTENT



1 other things on the federal anti-tax injunction statute.  
2 The motion to dismiss which is set out at Appendix, page 11,  
3 also sets out grounds that there was not a claim stated, and  
4 that there was available to the taxpayer, again, a plain,  
5 speedy, and efficient remedy in the state courts, and also a  
6 remedy available pursuant to the state statutory tax system.

7 Secondly, it was contended in that motion that the  
8 state taxpayer had available to her in this case a 1983 action  
9 in which she could have raised all of the claims which she de-  
10 sired to raise in the federal court injunctive action.

11 QUESTION: A 1983 action in the state court, are you  
12 referring to, now?

13 MR. HAUSER: Yes. Our contention is, Your Honor,  
14 that the taxpayer had available to her a remedy under 1983  
15 which could have been filed in the state court under the  
16 Illinois case of *Alberty v. Daniel*.

17 QUESTION: Any other remedies besides 1983 in the  
18 state court?

19 MR. HAUSER: She certainly did. She had -- one of  
20 the facts which needs to be made clear in this case is that  
21 the taxpayer alleges in her complaint that she had the funds  
22 to pay the tax in this case. Therefore, because the taxpayer  
23 had the funds available to her to pay the tax in this case and  
24 sue for a refund, there is no threatened loss of the property  
25 and there is also available to her the possibility of filing

1 a specific objection in the Collector's annual application for  
2 the sale of delinquent tax property. So that she clearly had  
3 available to her the statutory Illinois proceeding.

4 QUESTION: Well, her response to that in part is  
5 that since the State pays no interest on the tax while the  
6 refund's being litigated, that that's not an efficient remedy.  
7 What do you have to say about that?

8 MR. HAUSER: Well, our response is that the taxpayer  
9 would have a right to file a 1983 action in a state court  
10 raising that precise claim. So that even if that claim was  
11 not available, and the difficulty with part of this issue is  
12 that the Illinois Supreme Court has not had a chance -- in  
13 fact, it's not been given a chance -- to rule on the 1983  
14 portion of a claim to interest.

15 The predicate of the taxpayer's argument in this case  
16 is basically the Illinois Supreme Court's holding in  
17 Clarendon Associates v. Korzen, and Lakefront Realty v.  
18 Lorenz.

19 QUESTION: How far behind is your Cook County civil  
20 calendar these days?

21 MR. HAUSER: It's -- well, we're about five years  
22 behind right now. The difficulty -- I need to make it clear  
23 that the specific objections are treated separately from  
24 the entire civil calendar in the Circuit Court of Cook  
25 County.

1 QUESTION: You would call five years' delay a speedy  
2 remedy?

3 MR. HAUSER: Well, it's speedy in the sense that  
4 if the taxpayer -- it's available to the taxpayer, and the  
5 taxpayer has a damage remedy that -- at least a taxpayer who  
6 can pay has a damage remedy available to her. And if the --  
7 I think the ruling of the district court was based on Tully v.  
8 Griffin.

9 The question in the anti-tax injunction statute is  
10 whether there would be a federal right which would otherwise  
11 be lost? And there is no right under Illinois law to interest.  
12 So the question comes down to, and it's a question that's not  
13 been resolved in Illinois, and the question is -- and it's,  
14 I don't think, presented in this case -- whether there is a  
15 constitutional right to interest. Now, the way this case has  
16 been pled, the taxpayer has not asserted, we suggest, a  
17 constitutional right to interest, but it's --

18 QUESTION: Mr. Hauser, isn't it possible that  
19 there's no constitutional right to interest, but that never-  
20 theless, the denial of interest when you have to wait four or  
21 five years to get your money back, would prevent the remedy  
22 from being speedy, adequate, and efficient, or whatever the  
23 statutory language is?

24 MR. HAUSER: Well I think that in that aspect one  
25 has to balance the threatened harm from a federal tax

1 injunction against the delay or the harm that's caused to the  
2 taxpayer. Now if the taxpayer has available to her in this  
3 case, as she did, a federal damage remedy, or --

4 QUESTION: What is the federal damage remedy? What  
5 will that give her? Doesn't that raise the same question?  
6 She only gets interest if she has a constitutional right to  
7 the interest.

8 MR. HAUSER: Well, she would have to show that,  
9 judge.

10 QUESTION: I don't think that responds to my ques-  
11 tion that one might assume there's no federal constitutional  
12 right to interest, and nevertheless feel that a remedy which  
13 denies interest on withheld money for a five-year period is  
14 not an adequate remedy, within the meaning of the statute.

15 MR. HAUSER: Well, again we argue the policy that  
16 under Tully v. Griffin, as long as long as the taxpayer  
17 suffers no irreparable injury, that whatever one might want to  
18 say qualitatively --

19 QUESTION: Well, it's surely irreparable if you  
20 lose the use of the money for five years. You're never going  
21 to get it back. That's irreparable. Maybe it isn't serious  
22 enough to trouble you but it is irreparable.

23 MR. HAUSER: No, Your Honor. It can be a serious  
24 matter, and it certainly can support a damage claim.

25 QUESTION: Well, but it only supports a damage claim



1 if there's a constitutional right to interest.

2 MR. HAUSER: Well, then, what's the -- I question  
3 the policy behind the other side of the argument that there  
4 is some reason why there should be, why that must lay?

5 QUESTION: Well, the reason would be that an adequate  
6 remedy ought to make the litigant who's been harmed whole.  
7 That would be the reasoning, I suppose.

8 MR. HAUSER: Well, the damage remedy certainly does  
9 that, Your Honor.

10 QUESTION: Well, five years at 15 percent a year,  
11 or even ten, to make it easier to compute, at least for me,  
12 that doesn't make them very whole, does it?

13 MR. HAUSER: Well, let me refocus that. If the  
14 taxpayer can demonstrate an unconstitutional overassessment  
15 and if in fact the interest is a measure of damages, then the  
16 taxpayer will have a right to interest, and a taxpayer is  
17 therefore made whole.

18 QUESTION: Yes, but these are all "ifs." You don't  
19 concede on behalf of the County, do you, that she's entitled  
20 to interest?

21 MR. HAUSER: No, we don't, Your Honor. We do not --  
22 the difficulty --

23 QUESTION: You just say she's got a right to file  
24 another lawsuit and see if she can get it?

25 MR. HAUSER: Right. That's exactly right.

1 In the argument that lawsuit has indeed already been filed  
2 and that cause of action basically acknowledged by the 7th  
3 Circuit. So we have a disappearance here of -- you have a  
4 federal tax injunction where the taxpayer has available to her  
5 a federal damage remedy. I need to make one thing clear --

6 QUESTION: But only predicated on a constitutional  
7 violation?

8 MR. HAUSER: Well, that's so; that's so. But why  
9 else? In other words, the policy is, the real question is the  
10 policy behind the federal injunction for state taxes.

11 QUESTION: Right.

12 MR. HAUSER: And we respectfully submit that the  
13 risk -- the complaint alleges, and I need to clarify this, the  
14 complaint alleges a two-year delay, not a five-year delay.  
15 When I responded to one of the Justices' questions, the very  
16 last year that's still open in Cook County is five years old,  
17 but the average delay which is alleged under this remedy is  
18 two years, and that's admitted for the purpose of the motion to  
19 dismiss.

20 This doesn't take into account the fact that the  
21 taxpayer has 90 days within the filing of a specific objection  
22 to arrange a pre-trial settlement discussion with the lawyers  
23 for the County.

24 QUESTION: What's the calendar like in the federal  
25 court for Cook County?

1 MR. HAUSER: The calendar of the federal court?  
2 It's probably as crowded as any federal district court in the  
3 nation.

4 QUESTION: Well, is it slower than -- is it as slow  
5 as the state court?

6 MR. HAUSER: Well, we don't have any federal tax  
7 cases, Your Honor, with which we can measure this. This is  
8 a leading case.

9 QUESTION: What's the civil calendar generally?

10 MR. HAUSER: That I couldn't say, Your Honor. That  
11 I couldn't say.

12 QUESTION: Well, now, what's the interval from the  
13 filing of the complaint to trial in the federal court?

14 MR. HAUSER: I have no idea, Your Honor. The record  
15 doesn't show it. I wish I could help you out there but I  
16 can't.

17 QUESTION: It's probably pretty long, isn't it?

18 MR. HAUSER: Well, it's probably -- the question is  
19 whether that, whether the federal remedy is any speedier than  
20 the state, if we're talking about damage remedies. The ques-  
21 tion is, what has the taxpayer lost if she gets all of the  
22 interest back? In other words, if the delay deprives the  
23 taxpayer of the use --

24 QUESTION: Mr. Hauser, you keep saying, if she gets  
25 the interest back. But your position is she's not entitled

1 to interest. Isn't that correct?

2 MR. HAUSER: Except that her position is that she --

3 QUESTION: I know what her position is, but your  
4 position is that she's not entitled to interest. Isn't that  
5 correct?

6 MR. HAUSER: Under Illinois law.

7 QUESTION: Under Illinois law or under the Federal  
8 Constitution?

9 MR. HAUSER: Well, we argue that also.

10 QUESTION: Yes. You say she's not entitled to  
11 interest, so how can you rely on the fact that she might win  
12 her lawsuit as the reason why she should lose her lawsuit?

13 MR. HAUSER: Well, if she can demonstrate the right  
14 to the interest, she ought not -- unless she can demonstrate  
15 the right to interest --

16 QUESTION: Yes, I know, but you don't concede she  
17 has any right to interest.

18 MR. HAUSER: I couldn't, Your Honor, because we op-  
19 pose that position, and I -- but I say this, that unless the  
20 taxpayer can demonstrate a right to interest and demonstrate --  
21 or, let's say, interest may be the wrong word. Perhaps the  
22 taxpayer must demonstrate a right to the recompense or the  
23 damages for the loss of the use value of the money that's tied  
24 up during the tax proceedings. Now, that's the -- that's  
25 argued in the taxpayer's brief.

1 QUESTION: Well, then she wouldn't -- you can turn  
2 that argument on its head too, and say that if she can't  
3 demonstrate that she has a right to what she's claiming, she's  
4 not entitled to the injunction that she's claiming, not be-  
5 cause of the anti-injunction statute, but because of a short-  
6 coming in her pleadings.

7 MR. HAUSER: We argue that too, Your Honor. We  
8 argue that the allegations that are made in the complaint are  
9 not sufficient to demonstrate a violation of her Fourteenth  
10 Amendment rights. Now --

11 QUESTION: Isn't the real question, how soon should  
12 she get a hearing? And you're arguing -- you certainly are  
13 arguing the merits of her case but isn't the question whether  
14 she should be able to get an earlier hearing in a federal court  
15 than she could in the state?

16 MR. HAUSER: Well, the question is whether she's  
17 entitled to an injunction in a federal court.

18 QUESTION: Yes.

19 MR. HAUSER: And the question in the federal court is  
20 whether -- not only whether there's a plain, speedy, and effi-  
21 cient remedy in the state court, but also whether there's a  
22 remedy in the federal court. Now, she must of course be able  
23 to demonstrate that right, because, if in other words you --

24 QUESTION: Well, is it true that in her administra-  
25 tive remedy, is the remedy provided by the Illinois tax

1 statutes and refund statutes, there is no interest allowable  
2 in those, is there?

3 MR. HAUSER: Not -- the way --

4 QUESTION: Is that right or not?

5 MR. HAUSER: As a matter of Illinois statutory  
6 construction, that's correct, Your Honor.

7 QUESTION: All right. So you rely on the availabil-  
8 ity of an adequate remedy in the state courts on 1983?

9 MR. HAUSER: Or the availability in federal court  
10 of a similar damage remedy which is the predicate for our  
11 state argument. The point that's raised is that if -- the  
12 question is, and I think I need to at the outset distinguish  
13 between the limitation that's contained in 1341, which is a  
14 limitation on injunctions. It creates no jurisdiction. 1341 is  
15 a limitation on the exercise of federal injunctive power, but  
16 it is a limitation which was necessitated initially by the  
17 abuse of diversity jurisdiction, where taxpayers from outside  
18 of states would tie up state taxes, like has happened in  
19 Illinois, and has happened in this case, effectively, where the  
20 taxes have been tied up now for nearly two years without even  
21 the matter being decided.

22 But there's a further view when you have a 1983  
23 action being made, being stated, because that's different  
24 from a diversity case. In other words, the focus in a 1341  
25 action where diversity is involved is solely upon the state

1 remedies, because the federal court had no right to make  
2 federal remedies for the state courts under diversity juris-  
3 diction.

4 But under 1341, and under the Civil Rights Act,  
5 where you have a jurisdictional predicate based on federal  
6 statute, then the question has to go back really to the  
7 historical precedent. Cases like *Matthews v. Rodgers*,  
8 and *Great Lakes Dredge & Dock v. Huffman*. And *Tully v. Griffin*  
9 is a situation where that question is met. And the articulation  
10 of the equity rule is that a federal court is under an equi-  
11 table duty to refrain from interfering with a state's collec-  
12 tion of its revenue except in cases where an assertive federal  
13 right might otherwise be lost. Now, the question is where --

14 QUESTION: Mr. Hauser, it's a little late in the  
15 argument, but how are you going to get under 1983?

16 MR. HAUSER: Well, that's my question too, Your  
17 Honor. I suggest that --

18 QUESTION: That was another question. That  
19 leads to my more threshold question, and that is this:  
20 that in the petition for certiorari you listed only one ques-  
21 tion.

22 MR. HAUSER: That's correct, Your Honor.

23 QUESTION: And the Court of Appeals for the 7th  
24 Circuit referred to that question as the sole question.

25 MR. HAUSER: That's right.

1 QUESTION: I'm looking at page 2a of the certiorari  
2 petition.

3 MR. HAUSER: That's correct, Your Honor.

4 QUESTION: Now, all of a sudden, on the argument, we  
5 have three questions. How'd that happen?

6 MR. HAUSER: Well, here's how it happened, Your  
7 Honor. The --

8 QUESTION: One of those questions is the one to  
9 which my brother Marshall has just directed your attention.

10 MR. HAUSER: Yes. One of those has split, and the  
11 last two questions are the 1983, state 1983 and the state  
12 statutory remedy. The question about 1983 was raised before  
13 the district court.

14 QUESTION: But it's not a question, then, on which we  
15 granted certiorari, nor fairly subsumed within it, is it?

16 MR. HAUSER: Well, it's not -- we suggest that it is.

17 QUESTION: We granted certiorari to consider a single  
18 question and the Court of Appeals for the 7th Circuit said they  
19 had a single, and to use their word, s-o-l-e, sole question.  
20 Isn't that correct?

21 MR. HAUSER: Well, that's correct, Your Honor,  
22 although I suggest that if the decision of the 7th Circuit is  
23 incorrect, then if the decision of Judge Bua in the district  
24 court was correct but for the wrong reasons, then it simply  
25 makes sense to reach that issue as a matter of judicial



1 economy. Now, I pointed out, and I did argue and I did set  
2 out in my brief that we were raising a question that arguably  
3 might not be available below, and we did argue in our brief  
4 that we perceived the question to be subsumed within that  
5 question. So --

6 QUESTION: Then the only question presented in the  
7 certiorari petition and the only question that the Court of  
8 Appeals undertook to decide was whether or not there was a  
9 plain, speedy, and efficient remedy in the state courts. Is  
10 that correct?

11 MR. HAUSER: My response to that is that --

12 QUESTION: Isn't that correct?

13 MR. HAUSER: Well, that's the question that they  
14 decided, but --

15 QUESTION: Yes. And the only question presented on  
16 your petition for certiorari.

17 MR. HAUSER: Well, no, there's two questions.  
18 There's the --

19 QUESTION: Well, I only see one, and I'm looking at  
20 page 2 of your petition for certiorari: "Question presented."  
21 And there's only one question.

22 MR. HAUSER: That's correct, Your Honor. However,  
23 that question includes both whether the plain, speedy, and  
24 efficient remedy is included in a state 1983 action which in  
25 Illinois state --

1 QUESTION: Yes. Whether or not there was a plain,  
2 speedy, and efficient remedy in the state courts.

3 MR. HAUSER: Right.

4 QUESTION: But your point is, your question did in-  
5 clude two alternative state remedies, is it not?

6 MR. HAUSER: Yes, it really did.

7 QUESTION: Yes, but it didn't include the propriety  
8 of a federal 1983 action.

9 MR. HAUSER: That's correct, Your Honor, although  
10 that's a fundamental question which is --

11 QUESTION: Well, that's a fundamental and quite a  
12 different question from the one embraced in your certiorari  
13 petition on which we granted.

14 MR. HAUSER: It is a different question, although I  
15 think that if there is federal jurisdiction lacking, again,  
16 the district court ruled in the favor of the County, on grant-  
17 ing the motion to dismiss, and it doesn't seem to make a lot  
18 of sense to allow a judge to be reversed, if he was right  
19 for the wrong reason. I think that might be more the failure  
20 to articulate the reasons for a decision and it might be more  
21 appropriate to encourage district courts to articulate the  
22 reasons for their opinions.

23 QUESTION: Don't you really -- just like in this  
24 case, the question of the power to issue the injunction, was  
25 reached before decisions on whether the complaint stated a

1 cause of action.

2 MR. HAUSER: Well, the difficulty --

3 QUESTION: Which is rather normal, isn't it?

4 MR. HAUSER: Well, the difficulty is that the usual  
5 way that these tax cases go is under a 1341 analysis of the  
6 federal tax injunction statute. And the other questions get  
7 subsumed, in fact, lost. And if there are underlying diffi-  
8 culties and those cases present important issues, then it's  
9 the underlying issues that that case is going to be cited as  
10 authority for.

11 I think that for that reason we thought it impor-  
12 tant not to raise for the court, to give Your Honors a chance  
13 to rule on it. And we indicated that we were raising the  
14 issues that had not been particularly presented to the district  
15 court.

16 Fundamentally, the problem that I need to return to  
17 is the relationship between 1341 and the historical overview  
18 that is set forth in Tully v. Griffin, where a federal court  
19 is said to be under an equitable duty to refrain from inter-  
20 fering with the state's collection of its revenues except in  
21 cases where an asserted federal right might otherwise  
22 be lost. Unless the taxpayer can demonstrate an asserted  
23 federal right, demonstrate that right, assert it, and prove  
24 it, then there ought not to be a federal injunction.

25 If the facts and if the complaint indicates that the

1 taxpayer will not suffer irreparable injury, that is, that the  
2 taxpayer will not suffer an injury which can't be recompensed  
3 by money -- and we're talking about money here; we're not  
4 talking about the loss of the taxpayer's property. In other  
5 words, because the taxpayer had available to her the state  
6 -- the damage remedy, because she was able to pay, a state  
7 refund remedy, there is no threat in this case of loss of the  
8 property. If the property isn't lost, then we're only talking  
9 about interest, and if that's the federal right that's going  
10 to be lost, then the taxpayer can certainly assert that right,  
11 that there's no threat of the loss of that federal right,  
12 then we respectfully suggest that under Tully v. Griffin there  
13 is no right to a federal injunction.

14 QUESTION: Is a 1983 action available in state courts  
15 in this kind of tax case?

16 MR. HAUSER: Well, we don't know that, Your Honor,  
17 because it's never been filed. The --

18 QUESTION: You don't know it. I gather from your  
19 brief you question whether 1983 -- we've never held that a  
20 state court must entertain a 1983.

21 MR. HAUSER: That's correct.

22 QUESTION: We've held it in Thiboutat last term that  
23 it may.

24 MR. HAUSER: That it may.

25 QUESTION: Now, if there's no requirement that -- you

1 don't know whether it will or won't, does that bear on the  
2 plaintiff's speedy and efficient remedy?

3 MR. HAUSER: Yes. Well, Hillsborough v. Cromwell  
4 says that if the remedy in the state court is uncertain, then  
5 1341 is avoided. But our argument is that the facts in  
6 Hillsborough were a situation where the uncertainty was not the  
7 result of a failure of any taxpayers to file the suit. In  
8 other words, you can't establish a state remedy, particularly  
9 a new remedy under 1983 unless some taxpayers file it. And  
10 there's never been a 1983 tax case filed in the state court,  
11 because the history has been that those get filed in the  
12 federal court.

13 It's only after cases when people start thinking  
14 along the lines of filing 1983 cases in the state court, as  
15 occurred in Martinez, and it's occurred in Thiboutat, that  
16 you have this clash --

17 QUESTION: My question really is, it's clear that  
18 the action is available in the federal court; no doubt about  
19 that. If it's uncertain whether it's available in the state  
20 court, then why can't the taxpayer seek an injunction in  
21 federal court with a 1983 suit?

22 MR. HAUSER: The question is, there's a failure, I  
23 think, to distinguish between injunctive relief as against  
24 damage relief. Now, Alberty was a damage case, and there's  
25 a federal case -- Fulton Market, the 7th Circuit; Fulton

1 Market v. Cullerton, which is a damage case also, which deals  
2 with allegations very similar to this case. We respectfully  
3 submit that the analysis has to be in view of the disrup-  
4 tion that's created to a state tax system by a tax injunction,  
5 where tax machinery is disrupted, where there's an obstruction  
6 of revenue, perhaps damaging the budget, where there's a risk,  
7 of taxpayer insolvency which is shifted to the state, and where  
8 there are state law questions that need to get sorted out all  
9 along. Those are all factors which were set out in your  
10 Perez concurrence in the dissenting opinion.

11 In that situation it's necessary to balance the  
12 damages threatened to the state, as against what we might con-  
13 sider the best Illinois damage remedy. And if the fact is  
14 that the taxpayer will not suffer any irreparable injury, that  
15 the taxpayer will not lose her property and must merely wait  
16 to be recompensed by damages for a claim which she must estab-  
17 lish under Tully, because if she can't establish the claim un-  
18 der Tully then there's no federal right which will be lost,  
19 then we respectfully submit that the policy underlying federal  
20 tax injunctions and the limit of those federal tax limitation  
21 injunctions --

22 QUESTION: Does this imply that were this 1983  
23 action of the taxpayer in federal court limited to a claim of  
24 a damage remedy, you wouldn't be making this argument?

25 MR. HAUSER: I'm not sure that I understand that.

1 If there was no --

2 QUESTION: Well, would you be resisting the 1983  
3 suit, seeking only damages in federal court?

4 MR. HAUSER: We resisted that in federal court and  
5 we lost in the 7th Circuit and certiorari was denied. I think  
6 with two justices dissenting from the denial. So the law as  
7 it stands -- and we accept the law as it stands -- is that  
8 there is a federal damage remedy that's available in the nor-  
9 thern district of Illinois for any money damages that we felt --

10 QUESTION: But it's an availability under federal  
11 law. You're in a state court but you're appealing the federal  
12 law. And do you have any authority that 1341 should be con-  
13 strued to include remedies in state courts under federal law  
14 as well as under state law?

15 MR. HAUSER: I think that --

16 QUESTION: After all, it will be federal law, won't  
17 it?

18 MR. HAUSER: Well, the difficulty we --

19 QUESTION: Well, will it or not?

20 MR. HAUSER: I think it might --

21 QUESTION: If it's under 1983 with this as a  
22 federal statute, it will be federal law.

23 MR. HAUSER: It will be a state determination of  
24 the federal law.

25 QUESTION: Well, that the action substantively will

1 proceed under federal law?

2 MR. HAUSER: Right. That's right. And I think  
3 that supports my position, because when the Illinois courts  
4 look to the --

5 QUESTION: Oh, I don't know. It's a question of con-  
6 struction of 1341.

7 MR. HAUSER: Well, yes --

8 QUESTION: A remedy in the state courts. Does it  
9 mean under federal law as well as under state law?

10 MR. HAUSER: Well, here's what I would say to that --

11 QUESTION: I know what your answer is, but -- your  
12 answer is, yes.

13 MR. HAUSER: The answer is that the state court will  
14 look to federal law, much the same way that federal courts look  
15 to state law in diversity jurisdictions. You have a straight  
16 example of reverse diversity jurisdiction, and that is, I think  
17 that once Martinez is decided the way it is and once Maine  
18 v. Thiboutat is decided the way it is, that's a problem that's  
19 created. And I don't think it's a problem because if you look  
20 at the final, in the final analysis, the taxpayer indeed has a  
21 choice. The taxpayer, who is not threatened with irreparable  
22 injury, has a choice of filing either in the state court or  
23 in the federal court to recoup the damages which are monetary  
24 damages threatened by those parts of the Illinois remedy to  
25 which she objects.



1 QUESTION: But if the remedy you're relying on to  
2 get you out from under 1341 is a damage suit in federal court,  
3 it simply doesn't come within the language of 1341.

4 MR. HAUSER: That's correct, Your Honor. And the  
5 reason why that's so is because initially 1341 was directed  
6 to diversity actions.

7 QUESTION: Well, however it may be, you can't invoke  
8 1341 by saying that she has an adequate damage remedy in  
9 federal court. Because it doesn't come in under the terms of  
10 1341.

11 MR. HAUSER: But we do argue that in Tully v.  
12 Griffin, a 1341 case that under the broader view of equity law,  
13 that a federal court is under an equitable duty to refrain from  
14 interfering with a state's collection of its revenue, except  
15 in cases where a federal right may otherwise be lost, and the  
16 view is not restricted solely to the state remedy, but to the  
17 federal remedy too.

18 QUESTION: Mr. Hauser, I think my brother Rehnquist's  
19 point is that the plain language of 1341 says that a federal  
20 court does not have the power to enjoin the collection of  
21 state taxes where there is a speedy, a plain, speedy, and  
22 efficient remedy in the state courts, in the state courts.

23 MR. HAUSER: That's right. My response to that is,  
24 Your Honor, that unless you distinguish between 1341 and the  
25 traditional limitations put on any federal district court in

1 dispensing injunctions, you will end up with a plain, speedy,  
2 and efficient federal damage remedy, as we have in this case,  
3 that will --

4 QUESTION: Well, there might be reasons not to issue  
5 an injunction in various cases, depending upon --

6 MR. HAUSER: Yes.

7 QUESTION: In any particular case, depending upon the  
8 generally applicable maximus of equity with respect to irre-  
9 parable damage and no adequate remedy at law and the rest of it.  
10 But the question in this case is whether or not such an in-  
11 junction is barred by 1341, and that's the only question, isn't  
12 it?

13 MR. HAUSER: Well, no. We think the question is  
14 broader because of the language in Tully v. Griffin, in Tully  
15 v. Griffin. And that's because you have the limitation of  
16 1341. And it at least starts out being a limitation of diver-  
17 sity jurisdiction. As you start creating more federal rights,  
18 either in federal question jurisdiction by statutes or in 1983  
19 by expanding that jurisdiction, it's necessary to view the  
20 equitable powers of the district courts in the broader view,  
21 the one that's articulated in Tully v. Griffin, which is  
22 clearly a 1341 case.

23 QUESTION: Well, what case is there that fits in to  
24 say that you do have a remedy in the state courts of Illinois  
25 under 1983? What case do you have that says that?

1 MR. HAUSER: I have a case, I cited it in my brief,  
2 Your Honor, Alberty v. Daniel. And Alberty v. Daniel indicates  
3 the willingness of Illinois courts to accept 1983 --

4 QUESTION: I didn't say, willingness; I said, that  
5 says it can be done.

6 MR. HAUSER: Well, Your Honor, if Your Honor demands  
7 a case, me to demonstrate a case that's never been filed, I  
8 can't. And no taxpayer --

9 QUESTION: Well, isn't that what the statute re-  
10 quires?

11 MR. HAUSER: No, I don't think so, because I think  
12 that is --

13 QUESTION: Well, I think the statute requires either  
14 a case or a statute which says that the courts of Illinois  
15 are open for this point, 1983. And you don't have either.

16 MR. HAUSER: The only point I would make, Your Honor,  
17 is that as far as 1983 is concerned, the Illinois appellate  
18 court in the district in which the taxpayer's property is  
19 located has accepted jurisdiction of a 1983 action arising out  
20 of employment claims. It wasn't a tax case; but no Illinois  
21 court has ever denied a 1983 tax claim.

22 QUESTION: I know a lot of other things they've  
23 never denied. They've never denied an admiralty case either,  
24 have they?

25 MR. HAUSER: That's correct, Your Honor.

1 QUESTION: Mr. Hauser, just one question, if I may.  
2 This argument that you're now making really depends on our  
3 agreeing with the 7th Circuit decision in the Fulton Market  
4 case, doesn't it?

5 MR. HAUSER: Yes, that's correct, Your Honor. If  
6 there's a disagreement with that, then that changes the avail-  
7 ability of remedies altogether.

8 Thank you very much, Your Honors.

9 MR. CHIEF JUSTICE BURGER: Mr. Fox?

10 ORAL ARGUMENT OF JAMES L. FOX, ESQ.,  
11 ON BEHALF OF THE RESPONDENT

12 MR. FOX: Mr. Chief Justice, and may it please the  
13 Court:

14 As it has been remarked, there is one basic question  
15 before the Court today. That is, is there a plain, speedy,  
16 and efficient remedy at hand, available without doubt, --  
17 Cromwell -- in the courts of Illinois? Counsel has maintained  
18 in his petition for cert. that, one, the present statutory  
19 remedy which returns a taxpayer's money as alleged and proce-  
20 durally admitted, after about two years without interest,  
21 is adequate; it is plain, speedy, and efficient, and he merely  
22 reiterates the holdings, not the dicta but the holdings of the  
23 Supreme Court of Illinois in Lakefront, reiterated in the  
24 Clarendon decision, and in a host of other decisions in  
25 Illinois.

1           The Illinois court has unequivocally determined that  
2 the nonpayment of interest does not render a remedy inadequate.

3           QUESTION: Do you equate inadequate with inefficient?

4           MR. FOX: Yes, sir. "Inadequate" has been used  
5 commonly in the federal court, sir, Mr. Chief Justice, with  
6 the "PS&E," plain, speedy, and efficient. I believe if we go  
7 back into cases like Great Lakes and into Matthews v. Rodgers  
8 and the extensions of those, "plain, speedy, and efficient"  
9 has been declared coterminous with or the same, has the same  
10 meaning as "adequate."

11           QUESTION: Well, there are a great many claims  
12 against the United States in which no interest is allowed.  
13 Not in this context, but would you say that that's not an  
14 adequate remedy that might lay a foundation for some other  
15 type of relief such as equitable relief?

16           MR. FOX: Sir, in the context of the United States,  
17 first of all, we do have the question of the sovereign.  
18 And interest allowable against the sovereign is by statute, as  
19 witness the Internal Revenue Code.

20           QUESTION: Well, haven't you got a sovereign here?

21           MR. FOX: We are not claiming, Mr. Chief Justice,  
22 that Illinois is compelled to award interest. That question  
23 is not specifically within this case. I refer, for instance,  
24 to Judge Haynsworth's remarks in the Livingston case which we  
25 have cited in our brief wherein he said South Carolina may  
elect to pay interest or not. It is a sovereign and it doesn't

1 have to award interest on tax refunds. But if it does not,  
2 it then opens its door to federal jurisdiction by not provid-  
3 ing a plain, speedy, and efficient remedy.   
4 In the 7th Circuit we had the same thing in Olin  
5 Mathieson.

6 QUESTION: Well, there's a certain circularity to  
7 that, though, counsel, isn't there? Because if it opens the  
8 doors to federal courts but is not required to pay interest,  
9 all you get is the same relief in federal court as you would  
10 have gotten in state court, that is, your refund without  
11 interest.

12 MR. FOX: No, sir, because we do not sue for a re-  
13 fund -- 1341 is directed only to injunctive relief and this  
14 case stands on that particular proposition which we have alleged.  
15 We seek injunctive relief and we maintain that injunctive re-  
16 lief is the only relief which will maintain this taxpayer  
17 whole. We maintain that if we're going to keep it --

18 One, we have an admitted, we believe, constitutional  
19 deprivation of --

20 QUESTION: Now, what is that? Interest?

21 MR. FOX: No, sir. The constitutional deprivation  
22 is the inequitable tax assessment we're under, under a system --

23 QUESTION: It's an equal protection claim?

24 MR. FOX: An equal protection and due process, no  
25 matter how you call it. It's due process in this respect, that

1 a lien for taxes affixes against a person's property on the  
2 first day of January in any particular tax year, and therefore  
3 amounts to a taking, as it were, of the taxpayer's property  
4 without due process of law, and it of course subsumes the  
5 equal protection --

6 QUESTION: You're -- the lack of provision for  
7 interest is simply the reason why the remedy is inadequate?

8 MR. FOX: The remedy is inadequate. As I said  
9 before --

10 QUESTION: And the merits of your constitutional  
11 claim are not here at all, are they?

12 MR. FOX: I think they are procedurally admitted.

13 QUESTION: Yes, but the only question is, whether or  
14 not 1341 bars an injunction.

15 MR. FOX: Exactly.

16 QUESTION: There's no question here about whether or  
17 not, for some other reason, you may not be entitled to an  
18 injunction.

19 MR. FOX: That is correct. At least not in the  
20 petition for cert. This matter, by the way, came on below on  
21 a petition for a preliminary injunction, which was denied and  
22 the case dismissed under the grounds which are set forth in  
23 the Appendix by the district judge.

24 The elementary question is not really -- again, I  
25 want to emphasize that -- not whether or not we have a

1 constitutional right to interest. We are not litigating that  
2 particular question today.

3 QUESTION: But then, why should it be of any import-  
4 ance in the administration of the anti-injunction statute that  
5 a state doesn't allow interest, if you have no constitutional  
6 right to it?

7 MR. FOX: Because, I believe that to take a man's  
8 money today -- to paraphrase Judge Learned Hand about 50 years  
9 ago in the Procter & Gamble case, to take a man's money today  
10 as a condition of his going into court and being able to sue  
11 for a refund and then two or more years later giving back that  
12 same money, is giving back less than the state took.

13 QUESTION: So, even though it is not a constitu-  
14 tional violation, it brings into play, it relieves you from  
15 the bar of 1341?

16 MR. FOX: Yes, sir. Now, it would be a second story  
17 if we were to go into the condition which obtains in the finan-  
18 cial world today -- and it is not without some degree of irony  
19 that the day on which this Court granted certiorari the prime  
20 rate was set at 19 percent, which is not available to the  
21 average taxpayer, of course, at prime.

22 Now, is it -- and this is a second question, or a  
23 sequel. Does it deny due process to the citizenry of Illinois  
24 merely to have a remedy which merely after an hiatus of two  
25 or more years gives back far less than the state took;



1 meanwhile allowing the state to use that taxpayer's money to  
2 generate interest for the state which the county treasurer is  
3 allowed to do?

4 QUESTION: Now you're talking about a Fifth Amend-  
5 ment taking?

6 MR. FOX: Yes, sir. It is not in this case and I  
7 don't mean to go far afield.

8 QUESTION: Well, but you've said it's not in this  
9 case, but you've put it in the case.

10 MR. FOX: I apologize --

11 QUESTION: All right.

12 MR. FOX: -- because one of the justices had asked  
13 me --

14 QUESTION: I'm not saying this critically.

15 MR. FOX: I see.

16 QUESTION: I hope it's analytically.

17 MR. FOX: It is.

18 QUESTION: You're really raising a taking point  
19 when you make that argument, a point which you then say is not  
20 in the case.

21 MR. FOX: But under the circumstances of this case,  
22 where we allege, and it is admitted, there was an unconstitu-  
23 tional taking, we believe that a remedy which does not give  
24 back everything that is taken, making the party whole, is it-  
25 self constitutionally infirm.

1 QUESTION: But I thought you said a minute ago that  
2 Illinois was not required to pay interest?

3 MR. FOX: It is not.

4 QUESTION: Then did I misunderstand you just now in  
5 saying that it is?

6 QUESTION: I mean, what's less, less than what?  
7 You said they got back less. Why less?

8 MR. FOX: Why? Because let's merely assume a  
9 12 percent inflation rate and give it back in two years, you're  
10 giving back 75 cents for the dollar you took.

11 QUESTION: You got less because of inflation, not be-  
12 cause you were denied interest.

13 MR. FOX: Because of inflation. That's one aspect,  
14 one prong. The other prong is this, as Judge Learned Hand  
15 says, that a dollar a year from now is not worth a dollar  
16 today. And if they take a dollar today, even absent infla-  
17 tion, and give it back a year from now without interest, they  
18 have not given me my dollar back.

19 QUESTION: Well, this is still a question of the  
20 construction of 1341, isn't it?

21 MR. FOX: That's right. I grant you, Mr. Justice  
22 White --

23 QUESTION: And so you will argue that that is not a  
24 plain, speedy, and adequate remedy, or whatever the words are.

25 MR. FOX: That's what this appeal is all about.

1 QUESTION: I suppose one relevant question is, what  
2 the Congress had in mind in what an inadequate remedy might be.  
3 Wasn't it, historically, the notion that interest isn't  
4 allowable against the government, absent some specific statute?

5 MR. FOX: That is correct. There is a -- if you go  
6 down and make a tally of the states, some do, some don't. Many  
7 of the states which don't allow interest allow declaratory or  
8 injunctive relief. In fact, even in Illinois, sir, in the --

9 QUESTION: Well, is there any -- have you got any  
10 evidence at all, any legislative history or any other indica-  
11 tions that Congress thought the unavailability of interest  
12 was tantamount to the lack of a speedy and adequate remedy?

13 MR. FOX: No, sir, the legislative history of 1341  
14 which I have been able to read is not indicative of that par-  
15 ticular point. It merely recites the problem of out-of-state  
16 corporations coming in and interrupting the tax collection  
17 procedures.

18 QUESTION: Well, what you're saying, it seems to me,  
19 is that you treat "efficient" as a synonym for "adequate."  
20 And this remedy is not efficient, that is, adequate, because  
21 it isn't speedy.

22 MR. FOX: Nor is it plain.

23 QUESTION: Well, I'm not sure what plain means in  
24 this setting.

25 MR. FOX: I think the 7th Circuit views that --

1 I think the 7th Circuit, Mr. Chief Justice, used the term  
2 "plain" in its decision.

3 QUESTION: Well, I'm not sure what it means. Plain  
4 or fancy wouldn't make much difference. The important thing  
5 is whether it's speedy and whether it's adequate. And speedy  
6 and adequate are really interrelated, aren't they?

7 MR. FOX: I believe so; yes. I think they are sub-  
8 sumed, that speedy is subsumed under the word adequate, which  
9 seems to be more generic.

10 QUESTION: If it were speedy so that you got it in  
11 60 days, you wouldn't be making all this argument about the  
12 dollar and the inflation and the use of the money.

13 MR. FOX: On the other hand -- I would not say that  
14 either, sir, quite; because if we're looking at a basic con-  
15 stitutional deprivation to begin with, somehow or other that --  
16 For instance: let us suppose that this constitutional depriva-  
17 tion of high taxes or high assessments were motivated by ethnic  
18 or religious or racial considerations on the part of the  
19 Assessor of Cook County, is it proper relief, is it adequate  
20 relief to say, oh, go ahead, Mr. Polish, or Mr. Irish, or  
21 Mr. Italian taxpayer, in this particular neighborhood, pay your  
22 taxes in full under protest, sue for refund, and then in 60  
23 days you can get your money back?

24 QUESTION: Well, that's just what 1341 says, isn't  
25 it? You cannot enjoin in federal court the situation that you

1 specify, if it's a tax -- if it's limited to taxation.

2 MR. FOX: I think, Mr. Justice Rehnquist, that the  
3 fact that this insult occurs as a result of a constitutional  
4 deprivation removes so-called irreparable injury, removes this  
5 period of time, pure time. For instance -- and I would refer,  
6 let's say, to the case of Henry v. Greenville Airport, which  
7 was cited in our brief, which states that when a constitutional  
8 right is invaded like this, that questions of irreparable  
9 injury and the like are not even properly considered.

10 QUESTION: But 1341 purports to impose a prohibition  
11 over and above the normal injunctive precautions, doesn't it?

12 MR. FOX: That is right. And again, however, we are  
13 in a theoretical area when we say, if the next day you could  
14 get your money back -- which is absolutely impossible under  
15 the Cook County collection procedures, because you pay your  
16 taxes over a period of six months and are not able to sue until  
17 about nine months after the taxes have been paid in the first  
18 instance.

19 QUESTION: What would be a reasonable limit, in your  
20 mind? Presumably there isn't a jurisdiction in the country  
21 that is going to give you your taxes back on the same day you  
22 pay them under protest. Would 20 days be sufficient?

23 MR. FOX: I think -- may I answer this in another  
24 way? I think that there is -- personally, that injunctive  
25 relief should lie at either the state level to provide an

1 adequate remedy, immediate injunction at the state level to  
2 provide an adequate remedy, or some other remedy than  
3 requiring a taxpayer, as here, to pay 3-1/2 times the just  
4 taxes merely to have the right to go in to sue to have them  
5 come back.

6 QUESTION: So you say the state remedy contemplated  
7 by 1341 must be injunctive in nature? That a payment under  
8 protest and ultimate refund, even in a very short period of  
9 time, isn't adequate?

10 MR. FOX: That's right. My own personal opinion,  
11 however, I think that if Illinois paid reasonable interest on  
12 tax refunds, commensurate with the market today, I do not think  
13 that we would be before this Court today.

14 QUESTION: And you didn't do it because you knew you  
15 couldn't make them pay it.

16 MR. FOX: We couldn't make it, we couldn't make it.  
17 I have to cite -- we have been told that there is a possibility  
18 out there of a 1983 action, but we have three cases in Illinois  
19 in which the issue has been presented to the Illinois court --  
20 and the Illinois court has -- with these federal equal protec-  
21 tion due process claims, and the Illinois Supreme Court came  
22 back and said, you can test those claims by paying your taxes  
23 in full and suing out a refund, and you can get an answer to  
24 your constitutional claims. It did that in the case of  
25 La Salle National v. the County of Cook in the 57 Illinois 2d,

1 which we have cited. It did the same thing in the case of  
2 Fulton Market Cold Storage Company at the appellate level and  
3 then at the Supreme Court level, again a case cited in our  
4 brief. And as recently as this last year in Chrysler Corpora-  
5 tion v. Gunderson, the Illinois court, the appellate court,  
6 aware of the decision of the 7th Circuit in this case, said,  
7 furthermore, our own state Supreme Court's clear rulings in  
8 Lakefront and Lorenz, and Clarendon, stating that the remedy is  
9 adequate without interest, remain controlling precedent on us,  
10 as on all Illinois courts, unless reversed by that court or  
11 by the United States Supreme Court.

12 QUESTION: That case is not in your brief, is it,  
13 counsel?

14 MR. FOX: Sir?

15 QUESTION: Chrysler Corporation?

16 MR. FOX: It's in the response to the petition, sir.

17 QUESTION: I see.

18 QUESTION: All this discussion, and I've contributed  
19 to it, talking about the specific words, has maybe taken us off  
20 of what was the genesis of the Anti-Injunction Act? Wasn't it  
21 to mandate a direction to the federal courts to keep hands off  
22 of state tax procedures? Just let the states work it out on  
23 their own?

24 MR. FOX: Mr. Chief Justice, the genesis of that  
25 Act was the problem encountered under 1332 jurisdiction, where

1 foreign corporations were coming into the several states and  
2 enjoining state tax collections. That's in Senator Bone's  
3 remarks in the legislative history. I think there are -- at  
4 least through that entire discussion. It is not a protection,  
5 really, as/or against citizens of the state itself bringing  
6 actions.

7 QUESTION: Well, but the Act doesn't make any dis-  
8 tinction, does it?

9 MR. FOX: No. It does not. But the genesis which  
10 you referred to is found in the problems of big interstate  
11 companies coming in, using diversity where people couldn't do  
12 it locally, and if you recall at that time, they couldn't use  
13 1343 because this was all pre-Household v. Lynch.

14 QUESTION: Could I ask you, if you paid the tax and  
15 sued for a refund and it was -- in the state courts?

16 MR. FOX: Yes, sir?

17 QUESTION: Or do you do it administratively? You do  
18 file it in a state court?

19 MR. FOX: In a state court it's the statutory proce-  
20 dure.

21 QUESTION: And in that case you could present your  
22 federal constitutional question?

23 MR. FOX: Yes. And the court said that, and  
24 La Salle testified --

25 QUESTION: Yes, well, all right, but now, if you won



1 on your constitutional argument, your colleague suggested that  
2 the state would pay interest.

3 MR. FOX: No, sir, because the State has unequivoco-  
4 cally stated in all --

5 QUESTION: I know, but I thought the State had said  
6 only that without adjudicating the constitutional point.  
7 Suppose the state courts had themselves decided that the  
8 assessment was unconstitutional, and that you deserved a  
9 refund. Have the state courts then said there would be no  
10 interest payable?

11 MR. FOX: Yes. There is no interest payable, because  
12 the Illinois law is, no interest without a statute providing  
13 for interest, and there is no statute in Illinois.

14 QUESTION: Whether or not the assessment is consti-  
15 tutional?

16 MR. FOX: That's right. Furthermore, the Illinois  
17 Legislature has had before it twice within the last four or  
18 five years bills to provide interest on tax refunds.

19 QUESTION: Well, didn't you understand the State to  
20 argue to the contrary or not? Did I miss any -- I must have  
21 misunderstood your colleague, here for the State?

22 MR. FOX: I did not understand him to say that.

23 QUESTION: Okay. Thank you.

24 MR. FOX: There is no interest payable in Illinois  
25 without a statute, and there is no statute and the Illinois

1 Legislature has turned down such a statute twice within the  
2 last three or four legislative sessions.

3 I will not address, because of Mr. Justice Stewart's  
4 interrogation of my colleague here, the collateral issues  
5 which were raised on this particular, in the briefs, such as  
6 as the 1343 argument and the other arguments that were raised.

7 Counsel has adverted, however, on several occasions  
8 to the question of the state remedies of 1983. There is no  
9 grounds for a state 1983 remedy. In fact in a damage action,  
10 as Mr. Justice Marshall pointed out, there just isn't any  
11 case to which you can point. There is no rule, of course, as  
12 Note 1 in *Maine v. Thiboutat* pointed out, that the state must  
13 hear a 1983 action, and I can think of nothing more intrusive  
14 by the federal judiciary into the state than to require the  
15 State of Illinois, let's say, first to hear that kind of 1983  
16 action; secondly, to grant an injunction or damages; thirdly,  
17 perhaps, to grant attorneys' fees, which are not provided for  
18 under the statute, or to pay interest, or to waive its exhaus-  
19 tion of administrative remedies, which the State absolutely  
20 declined, the court in the State absolutely declined to do in  
21 the *Fulton Market* case, which we have cited, because that was  
22 taken up on a 1983 case, citing *Monroe v. Pape*, *Damico*,  
23 *McNeese*, and the other cases, for failure to exhaust notwith-  
24 standing a constitutional deprivation.

25 The Supreme Court of Illinois shook its head and

1 said, no, after the appellate court had overruled the trial  
2 court. The Supreme Court reversed and said, no, we don't have  
3 to reach that issue, the plaintiff here did not exhaust his  
4 administrative remedies, and notwithstanding any federal claims  
5 and so forth which were briefed and argued, we're not going to  
6 waive our exhaustion relief.

7 Counsel, I think, has been most forthright in saying  
8 that he cannot speak for the Illinois court, that he cannot  
9 assure us that there would be any remedy under 1983 or any  
10 other remedy in the Illinois court. And Cromwell has been  
11 good law for years and years in the United States.

12 QUESTION: If you win -- if you're allowed to main-  
13 tain your action in the federal court and you get an injunc-  
14 tion, you win on your equal protection ground; you wouldn't  
15 expect to get interest?

16 MR. FOX: No, sir. No, sir. The only possibility,  
17 Mr. Justice White, under those circumstances would be that  
18 under the rationale of *Fulton Market v. Cullerton*, that we  
19 might go back at a later date and sue for whatever other ex-  
20 penses we had. But, note, that under an injunction, under an  
21 injunction --

22 QUESTION: You're asking for the injunction, and  
23 even if you ask for damages you wouldn't get interest as  
24 damages.

25 MR. FOX: Well, you see, truthfully, if we got an

1 injunction, one, we would not have to pay the unjust moiety.

2 QUESTION: All right.

3 MR. FOX: Secondly, under 1988, we would be entitled  
4 to our client's attorneys' fees, so that the client would be  
5 made whole with an injunction. She would not have to lay out  
6 her money, and her attorneys' fees and costs would be paid.

7 QUESTION: Yes.

8 MR. FOX: And, by the way, there is no such provi-  
9 sion under Illinois law, allowing the so-called rule of attor-  
10 neys' fees in prevailing in a case such as this. There is no  
11 interest, there are no attorneys' fees, there is nothing.  
12 Neither, as we pointed out, is there any interest even after  
13 judgment.

14 QUESTION: Mr. Fox, if the State of Illinois amended  
15 its procedure to allow interest at something that may be less  
16 than the prime rate, provided no recovery of attorneys' fees  
17 or anything else, would it then be an adequate remedy, in  
18 your judgment?

19 MR. FOX: If it were -- Mr. Justice Stevens, if it  
20 were reasonable interest in the line with the market. I merely  
21 point out --

22 QUESTION: Say, it's the same provision they have,  
23 whatever the interest rate is, on judgments now? I don't know  
24 what it is.

25 MR. FOX: That really does not square with reality

1 in Illinois at the present time. On judgments against the  
2 State, it's six percent. The Internal Revenue Service under  
3 Section 482 is now talking a range of 11 to 13 percent. I  
4 think the court would then have to face a due process question  
5 in the amount of interest. If they allowed four percent or  
6 five percent in a day when we have a 15-1/2 percent prime, this  
7 is another question. I mean, I think it's a -- is it rea-  
8 sonable?

9 QUESTION: Well, this isn't a due process question.  
10 It's a statutory question --

11 MR. FOX: It's a statutory, yes.

12 QUESTION: -- of whether or not there exists a plain,  
13 speedy, and efficient remedy in the courts of the State.

14 MR. FOX: But again, and I hate to bring the question  
15 up, Mr. Justice Stewart, but is the payment -- is the taking of  
16 money today and giving it back in a lesser amount sometime  
17 hence, is that itself a denial of due process?

18 QUESTION: That's a separate question.

19 MR. FOX: And as I say, we'll leave that to fight  
20 for another day. Thank you.

21 MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.  
22 The case is submitted.

23 (Whereupon, at 2:52 o'clock p.m., the case in the  
24 above-entitled matter was submitted.)

CERTIFICATE

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North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 79-1157

EDWARD J. ROSEWELL, ETC., ET AL.,

v.

La SALLE NATIONAL BANK, TRUSTEE, ETC.

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: WJW  
William J. Wilson

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