NO. A11-1832

# State of Minnesota
# In Supreme Court

Idowu Odunlade, Jose Llangari and Andrea Kral,
on behalf of themselves and all others similarly situated,

*Relators,*

v.

City of Minneapolis, City of Minneapolis Assessor's Office,
City of Minneapolis Assessor Patrick J. Todd, in his personal
capacity, County of Hennepin, Hennepin County Assessor's
Office, Hennepin County Assessor James R. Atchinson,
in his personal capacity,

*Respondents.*

## BRIEF OF RELATORS


Laura M. Thomas (#0271068)
University of Minnesota Law School
Civil Practice Clinic
190 Mondale Hall
229 – 19th Avenue South
Minneapolis, MN 55455
(612) 625-5515

David L. Wilson (#0280239)
Wilson Law Group
3019 Minnehaha Avenue, #200
Minneapolis, MN 55406
(612) 436-7100

*Attorneys for Relators*


*[Counsel for Respondents listed on following page]*


2011 – BACHMAN LEGAL PRINTING – FAX (612) 337-8053 – PHONE (612) 339-9518 or 1-800-715-3582

James A. Moore (#16883X)
Assistant Minneapolis City Attorney
Minneapolis City Hall, Room 210
350 South Fifth Street
Minneapolis, MN 55415
(612) 673-2478

*Attorney for City Respondents*

Lisa Hahn-Cordes (#0238545)
Assistant Hennepin County Attorney
2000A Government Center
300 South Sixth Street
Minneapolis, MN 55487
(612) 348-4621

*Attorney for County Respondents*

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## STATEMENT OF LEGAL ISSUES

1. Did the lower court erroneously conclude in considering Respondents' motion to dismiss that it did not have jurisdiction to hear Relators' claim under Article X of the Minnesota Constitution arising from the design and implementation of an arbitrary property tax practice by a City of the First Class as a declaratory judgment and mandamus cause of action independent of section 278 of the Minnesota Statutes?

   The lower court granted Respondents' motion to dismiss.

   *Programmed Land v. O'Connor,* 633 N.W.2d 517 (Minn. 2001)

   *Land O'Lakes Dairy Co., v. Village of Sebeka*, 225 Minn. 540, 31 N.W.2d 660 (Minn. 1948)

   *Hous. & Redev. Auth. In and For City of Minneapolis v. Beberman,* 289 Minn. 506, 183 N.W.2d 295 (Minn. 1971)

2. Did the lower court erroneously conclude in considering Respondents' motion to dismiss that it did not have jurisdiction to hear Relators' federal and Minnesota constitutional equal protection claims arising from the design and implementation of an arbitrary property tax practice by a City of the First Class as a declaratory judgment and mandamus cause of action independent of section 278 of the Minnesota Statutes?

   The lower court granted Respondents' motion.

   *Programmed Land v. O'Connor,* 633 N.W.2d 517 (Minn. 2001)

   *Land O'Lakes Dairy Co., v. Village of Sebeka*, 225 Minn. 540, 31 N.W.2d 660 (Minn. 1948)

   *Hous. & Redev. Auth. In and For City of Minneapolis v. Beberman,* 289 Minn. 506, 183 N.W.2d 295 (Minn. 1971)

3. Did the lower court erroneously conclude in considering Respondents' motion to dismiss that it did not have jurisdiction to hear Relators' Pay 2011 section 278 tax appeal when Relators filed a single petition with multiple petitioners all residing within the same city?

The lower court granted Respondents' motion to dismiss.

*Rau v. Cnty of Kandiyohi*, Nos. C8-86-533, C8-86-550 and C8-86-567, 1987 WL 5144 (Minn. Tax. Feb. 24, 1987)

## STATEMENT OF THE CASE

This matter is an appeal of a decision of the Tax Court dismissing Relators' Amended Complaint for failure to state a claim under Minn. R. Civ. P. 12.02. Relators are residential property owners from the Minneapolis communities of Camden, Near North, and Phillips, alleging violations of the Fourteenth Amendment to the U.S. Constitution, Article X of the Minnesota Constitution, 42 U.S.C. § 1983, Minnesota Statute Section 273.061 (2011), Minnesota Statute Section 273.11 (2011), and Minnesota Statute Section 278 (2011), against the City of Minneapolis and Hennepin County on behalf of themselves and all those similarly situated.

Relators commenced this action on November 12, 2010 in Hennepin County District Court by serving the Complaint on Respondents City of Minneapolis, the City of Minneapolis Assessor, Patrick J. Todd, in his personal capacity as Minneapolis City Assessor, the Hennepin County Assessor's Office, and James R. Atchison in his personal capacity.

After Respondents moved to dismiss Relators' Complaint, Relators filed an Amended Complaint ("Relators' Amended Complaint") on December 15, 2010, adding several plaintiffs.

On March 4, 2011, Hennepin County District Court, Hon. Joseph R. Klein presiding, granted Respondents' motions to transfer the matter to the Tax Court.

Upon transfer, the Tax Court was endowed with all of the powers of the District Court in deciding the matter. On concurrent motions, Respondent City moved to dismiss for failure to state a claim and Respondent County moved for judgment on the pleadings. Oral arguments were presented to the Tax Court, Hon. Sheryl A. Ramstad, on August 25, 2011.

There were no stipulations by counsel other than an agreement to stay discovery until the resolution of the motions; no testimony was offered and no evidence presented. On August 31, 2001, the Tax Court granted both motions and dismissed Relators' claims in their entirety. Relators appealed the dismissal pursuant to Minnesota Statute Section 271.10 (2011), and received a Writ of Certiorari to appeal this case to the Minnesota Supreme Court.

## STATEMENT OF THE FACTS

The Amended Complaint in this matter alleges a putative class action describing onerous tax assessment practices uniquely harming Respondents in three Minneapolis communities: Camden; Near North; and Phillips. Am. Compl. ¶¶ 2–4, Ex. A. Relators—all residential property owners in the Respondent City—include: Idowu Odunlade of Camden (3228 Dupont Avenue North); Kimberly Larson of Camden (3637 Morgan Avenue North); Charles Enck of Camden (4814 North Sixth Street); Kent Lageson of Camden and Near North (3326 Penn Avenue, and 1317 Russell Avenue); Timothy Wesbrook of Near North (1011 Vincent Avenue North); Jose Llangari of Phillips (2216 11th Avenue South); and Andrea Kral of Phillips (2823 14th Avenue South) (collectively referred to as "Relators"). Am. Compl. ¶¶ 33, 38, 42, 46, 51, 59, 63.

As described by the Amended Complaint, there is a significant difference between the purchase price for each property through valid, arm's-length transactions, and the value at which the property was assessed for tax purposes. Relator Odunlade, for example, bought her property in the Camden neighborhood for $22,000 after it had been on the open market for 159 days. Am. Compl. ¶¶ 114, 117. However, City Respondents did not use that sale as evidence of the property's value; instead, Respondent City used a sale from 2004—a transaction not involving Odunlade—where the property sold for $124,000 to assess

Odunlade's property. Am. Compl. ¶ 123, Ex. B. As a result, Odunlade's residential property was assessed at $90,100 for tax year 2009 (Pay 2010). Am. Compl. ¶ 122. Relator Llangari purchased his property in the Phillips neighborhood in March 2004 for $167,500, but his property was valued by City Respondents in 2008 at $225,500. Am. Comp. ¶¶ 133, 137. Relator Kral, also from the Phillips neighborhood, purchased her property in March 2009 for $34,000, but Respondent city valued the home at $162,500 in 2008 and $138,000 in 2009. Am. Compl. ¶¶ 145, 147–48, 151, 154. Likewise, Relator Larson's home was purchased in 1999 for $82,900, but valued by City Respondent at $118,000 in 2009. Am. Compl. ¶¶ 162–63, 171. Relator Wesbrook purchased his property in June 2008 for $116,000, but was valued in 2009 at $174,000. Am. Compl. ¶¶ 176, 178, 185. Similarly, Relator Enck's home was purchased in September 2009 for $39,900, and valued at $97,000 in 2010. Am. Compl. ¶¶ 200, 204. Finally, Relator Lageson's property in Near North was purchased for $75,000 in June, 2008, but was valued in 2008 at $204,500; his Camden property was purchased in April, 2008 for $45,000 but valued at $85,300 in 2010. Am. Compl. ¶¶ 209, 211, 216, 230, 232, 241.

As these numbers indicate, Relators' properties are being assessed at tens of thousands of dollars more than they are worth. Relators' communities experience average over assessment exceeding 150% of market value, while properties in the

rest of the city are assessed at averages of nearly 100% of market value. Am. Compl. ¶¶ 37, 50, 55, 66, 247, 258, 288, 299, 310, 441, 453–55, 466–67, 479, 489, 496, 498.

Relators point to the City Respondent's refusal to acknowledge sales of property by banks on the open market to individual buyers ("bank sales") as arm's length transactions as the source of this problem. *See* Am. Compl. ¶¶ 288, 299, 310, 344. Pl.'s Mem. City Opp. Mot. to Dismiss 3–5. Consequently, Relators' Amended Complaint alleges violations of Relators' rights to equal protection, due process, and the constitutional guarantee to uniform taxation under Article X of the Minnesota Constitution. Am. Compl. Counts 1–9, 14–22, and 27–28.

## SUMMARY OF THE ARGUMENT

Relators allege systemic discrimination by Respondents because they are unlawfully excluding unfavorable market transaction data when assessing the value of residential properties in the communities of Camden, Phillips, and Near North. Relators maintain that this conduct is violating their right to equal protection under the federal and Minnesota Constitution, and the right under the Minnesota Constitution to uniformity in the taxation process.[1] Relators, and those similarly situated in their respective communities, purchased their homes on the free market from banks, and because of this, are the victims of chronic over assessment that a traditional, individualized proceeding under Minnesota Statute Section 278 is incapable of remedying now and for the future.

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[1] Relators seek review of the lower court's order dated August 31, 2011, in its entirety because it is full of errors both procedural and legal. However, Relators have deliberately narrowed the scope of this appeal and, toward that end, the Relators' brief does not address the following issues involving Hennepin County that were raised by the Statement of Case of Relators: 5(c), whether the County has independent statutory duties within a City of the First Class; 5(d) and (e), whether the County's actions were ministerial with respect to the Truth in Taxation statements and whether such statements were sufficient; 5(f), whether Relators made a showing of malice on the part of the County in using Respondent City's inaccurate and invalid valuations; 5(g), whether the County has statutory duties to insure uniformity in taxing districts where a City of the First Class is acting as assessor; 5(j), whether Relators' claims under Section 1983 were properly dismissed; 5(k), whether any private right of action exists under the Minnesota constitution; 5(m), whether the County has any duty to ensure uniformity in taxation; 5(n), whether the County was a proper party to what the County characterized as a tax appeal in order to move for a transfer of venue; 5(p), whether the lower court's ruling regarding the Tax Injunction Act was erroneous.

The Tax Court, failing to understand its jurisdiction to address independent equal protection and uniformity constitutional claims, improperly granted Respondents' motion to dismiss all of Relators' claims without receiving any evidence regarding the scale or scope of the alleged harm. This Court should embrace the merits of these constitutional claims and provide guidance on the interpretation the definition of market value and the scope of Respondent County's uniformity duties. The Court should agree that the court below committed reversible error when it dismissed Relators' pleading based on the faulty belief that declaratory and mandamus remedies are not permissible when the law plainly states otherwise. Lastly, the Court should reverse the lower court's conclusion that a section 278 petition is sustainable only if it is brought by a single property owner. There is no support for this proposition in Minnesota Statute, precedent, or the construction of the term "petitioner" in other jurisdictions. The lower court's rationalizations are also illogical when juxtaposed against the fact a single owner can petition for review of the taxation of multiple parcels simultaneously. The lower court's reasoning requires this Court to ignore the entire body of the statute, which this Court cannot do. Therefore, this Court should sustain Relators' appeal and remand this matter to proceed consistent with the instructions it provides.

## ARGUMENT

### I. STANDARD OF REVIEW

The Minnesota Supreme Court reviews decisions of the tax court to determine "whether the court lacked jurisdiction, whether the court's decision is supported by the evidence and in conformity with the law, and whether the court committed any other error of law." *Jefferson v. Comm'r of Revenue*, 631 N.W.2d 391, 394 (Minn. 2001); *see also* Minn. Stat. § 271.10, subd. 1 (2011). The Supreme Court is not bound by decisions of the tax court. *A&H Vending Co. v. Comm'r of Revenue*, 608 N.W.2d 544, 546 (Minn. 2000). Legal determinations made by the tax court must be reviewed *de novo*. *Schmeig v. Cnty. of Chisago,* 740 N.W.2d 770, 772 (Minn. 2007). Additionally, the tax court's findings of fact are reviewed under the "clearly erroneous" standard, and must be overruled if not reasonably supported by the evidence as the whole. *Cont'l Retail v. Cnty. of Hennepin*, 801 N.W.2d 395, 398–99 (Minn. 2011) (citing *Lewis v. Cnty. of Hennepin*, 623 N.W.2d 258, 261 (Minn. 2001)).

Relators' Amended Complaint was dismissed on a Rule 12 motion. Rule 12 dismissals are reviewed on appeal *de novo*. *Krueger v. Zeman Constr.,* 781 N.W.2d 858, 861 (Minn. 2010). A complaint may be dismissed under Rule 12.02 for lack of subject matter jurisdiction or failure to state a claim under which relief can be granted. Minn. R. Civ. P. 12.02(a), (e). A complaint should be dismissed

only "if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (quoting *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (1963)). Minnesota courts are not bound by legal conclusions stated in the complaint.[2] *Herbert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008) (citing *Bell Atl. Corp. v. Twomby*, 550 U.S. 544, 555 (2007)). However, the court must "accept the facts alleged in the complaint as true and give the nonmoving party the benefit of all favorable inferences." *Krueger,* 781 N.W.2d at 861 (citing *Bodah v. Lakeville Motor Express,* 663 N.W.2d 550, 553 (Minn. 2003)). Actual proof or ability to prove the allegations is immaterial at this stage. *Martens v. Minn. Mining & Mfg.*, 616 N.W.2d 732, 739 (Minn. 2000).

Additionally, a motion for judgment on the pleadings[3] is proper if a complaint fails to set forth a legally sufficient claim for relief. Minn. R. Civ. P.

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[2] In dismissing Relators' Amended Complaint, the Tax Court relies heavily on the standard of review articulated by the Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) that a plaintiff must plead facts that "raise a right to relief above the speculative level." *See Odunlade et al. v. City of Minneapolis et al.*, No. 27-CV-10-26849, slip op. at 11 (Minn. Tax Aug. 31, 2011). In both *Bahr* and *Herbert,* this Court did not expressly adopt the full scope of *Twombly*'s standard. *Bahr*, 788 N.W.2d at 80 ("A plaintiff must provide more than labels and conclusions."); *Herbert*, 744 N.W.2d at 235 ("We are not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim.").

[3] Respondent County moved for judgment on the pleadings pursuant to Minn. R. Civ. P. 12.03. The court below dismissed for failure to state a claim under Minn. R. Civ. P. 12.02. The dismissal was erroneous under either standard.

12.03. The only pleadings in this case are Relators' Complaint and Amended Complaint, as Respondents filed Rule 12 motions in lieu of an Answer. The court below should therefore have considered only Relators' pleadings and attached exhibits. *See Hamann v. Park Nicollet Clinic*, 792 N.W.2d 468 (Minn. Ct. App. 2010).

Dismissal of Relators' constitutional claims also warranted heightened scrutiny. As stated by this Court, "[w]hen the complaint alleges constitutional errors, a Rule 12.02 motion should be even more sparingly granted to ensure that our courts remain open to protect our citizens against possible governmental overreaching" because "allegations of constitutional infirmities deserve a judicial forum." *Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980). Therefore, "the defendant must demonstrate the complete frivolity of the complaint before dismissal under Rule 12.02 is proper." *Id.* at 33.

## II. BY FAILING TO CONTAIN ITS ANALYSIS TO THE PLEADINGS, THE TAX COURT EXCEEDED ITS AUTHORITY AND ITS DISMISSAL OF THE AMENDED COMPLAINT SHOULD BE REVERSED.

Beginning with its statement "[t]he following facts are not in dispute," the court below improperly applied the standard of review on a Rule 12 motion. *See Odunlade et al. v. City of Minneapolis et al.*, No. 27-CV-10-26849, slip op. at 9 (Minn. Tax Aug. 31, 2011). Notably, the lower court "found" as follows:

> When Petitioners' properties were taxed, the assessors determined the market value by considering the value of nearby properties, but excluded those bank transactions they found to be forced sales.

*Id.* at 9. This "finding" is erroneous on two bases. First, it is not alleged in Relators' Amended Complaint. Relators' pleadings do not allege nearby properties were used by Respondent City in determining the market value of Relators' residential properties. In several of the cases Relators allege old sales were used—sales not involving Relators that occurred years earlier. *See* Am. Compl. Ex. E, M, Q. In other cases, Relators lack knowledge regarding the information that was used by the assessor to arrive at the assessed value; Relators only know that the sales they closed on as buyers were not used. *See* Am. Compl. ¶ 122, Ex. B.

Additionally, this "finding" is incorrect because bank transactions are characterized as "forced sales," which is precisely the issue in dispute in this litigation. Moreover, concluding that the assessor "found" certain bank transactions to be forced sales suggests that discretion is allowed in this context.

Relators have not had the benefit of discovery on any issue. For example, whether Respondents have been directed to exclude bank sales; whether emails or guides exist to direct when bank sales are included or excluded or taken into account' and specifically what occurred with respect to Relators' residential properties. Therefore, this finding is not based on anything in the Amended Complaint. The lower court's decision should be reversed on those grounds.

## III. CONFINING RELATORS TO SECTION 278 DENIES THEM THE ABILITY TO COMPEL THE LOWER COURT TO ORDER UNIFORMITY CONSISTENT WITH ARTICLE X OF THE MINNESOTA CONSTITUTION.

The Tax Court erred in dismissing Relators' claims for uniformity consistent with article X of the Minnesota Constitution because it improperly held that section 278 was the proper judicial avenue. This holding was based upon a misreading *Programmed Land*, which in actuality does not prevent Relators' constitutional claims from being brought outside of section 278. The Tax Court erroneously categorized Relators' claims as falling within the "illegality" or "assessment" prong of section 278. But this holding fails to recognize that Relators' Amended Complaint identifies a systemic, widespread problem that requires more than quasi-judicial remedies of section 278. Therefore, *Programmed Land* confirms that at least a portion of Relators' Amended Complaint should have survived the Respondents' motions. Consequently dismissal of the uniformity claims , declaratory judgment, and mandamus relief was unwarranted by law and should be reversed.

### *A.* **Programmed Land** ***recognized the viability of an independent constitutional cause of action outside of the scope of Minnesota Statutes Section 278.***

The lower court seemingly adopted the notion that *Programmed Land* mandates that Minnesota Statutes Section 278 provide the exclusive judicial remedy for *every* legal challenge available that involves the issue of property

taxation, assessment, and market value. *Odunlade,* slip op. at 20–21. *Programmed Land*, however, does not endorse such a broad position. 633 N.W.2d at 523. Rather, this Court held that "chapter 278 does not provide a cause of action for *all* possible challenges to property taxes[.]" *Id.* (emphasis added). *Programmed Land* only indicates that section 278 "provides the exclusive means to bring an action in court to challenge . . . one of the five listed types of challenges." 633 N.W.2d at 523. The five challenges available to property owners under Minnesota Statutes Section 278.01 include: (1) if the property "has been partially, unfairly, or unequally assessed in comparison with other property in the . . . city, or . . . county, or . . . in the case of a county containing a city of the first class, the portion of the county excluding the first class city"; (2) if the property has been "assessed at a valuation greater than its real or actual value"; (3) if the tax is illegal; (4) if the tax has been paid; or, (5) if the property is exempt from the tax. *See* Minn. Stat. § 278.01, subd. 1 (2011). Indeed, *Programmed Land* and subsequent cases establish that when "statutory mechanisms for relief are nonexistent or constitutionally insufficient[,]" a petitioner may recover under common law or equitable theories.[4] *Allright Parking Minn., Inc. v. Cnty. of Ramsey*, 2002 WL 549082 at * 4 (Minn. Tax 2002) (citing *Programmed Land*, 633 N.W.2d 517). The Tax Court's reading

[4] Moreover, courts have recognized that the addition of Minnesota Statutes Section 278.14 as an alternative to section 278.01 for some claims indicates that section 278.01 cannot be the exclusive opportunity to challenge property taxes. *See Beuning Family LP v. Cnty. of Stearns*, 2011 WL 2517522 at *4 (Minn. Tax 2011).

of *Programmed Land*, therefore, is incorrect as a matter of law and should be reversed by this Court for failure to recognize that an alternative constitutional remedy may exist.

### *B. Relators' uniformity claims cannot be characterized as a challenge to the "assessment" or "illegality" of a tax and should not have been dismissed by the Tax Court on Rule 12 motions.*

The court below also held that "because assessment and illegality (the constitutional claims) are among the five types of claims listed in the statute . . . Minnesota Statutes Chapter 278 is the appropriate procedural remedy" for Relators' uniformity claims. *Odunlade*, slip op. at 26. However, this sweeping assertion ignores the heart of Relators' allegations[5] by failing to recognize the scope of the problem and issues involved, and this Court's holding in *Programmed Land v. O'Connor*, 633 N.W.2d 517 (Minn. 2001).

Characterizing Relators' claims as those of "illegality" reveals a lack of understanding of Relators' allegations, and an impermissibly overbroad reading of the plain language of the statute. First, **Relators do not claim any tax is per se illegal**. Instead, Relators allege that Respondents' and their assessors acted illegally in levying a legal tax, because they acted outside the bounds of Minnesota

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[5] Notably, the court below seems to believe that Relators' were seeking damages for violation of Article X of the Minnesota Constitution. *See* Minn. Const. art. X. However, Relators only sought relief to restore and enforce uniformity, not monetary damages under Article X. This merely reinforces the Tax Court's lack of understanding of the nature and scope of Relators' arguments.

Statutes Section 273.11 (2011). Moreover, the Tax Court conflated "illegality" with "unconstitutionality," in a manner inconsistent with the plain language and policy objectives of the law. If "illegality" is defined so broadly as to include any and all possible constitutional challenges to the tax court, then there would be no need to articulate specific categories of grounds available to challenge property tax assessment. *See Programmed Land*, 633 N.W.2d at 531–32 (Stringer, J., dissenting). As noted by the dissent in *Programmed Land*, the legislature would not have intended such a redundancy. *See Id.* Therefore, illegality cannot, as a matter of law, subsume all constitutional challenges to property taxes as alleged by Relators.

The court below also mischaracterized Relators' claims as "related to the assessment process" and therefore precluded by Chapter 278. *Odunlade*, slip op. at 20. Although Chapter 278 provides no definition of the term "assessment," courts have defined the term as the "entire process that results in the determination of *a property's* taxable value." *Programmed Land*, 633 N.W.2d at 524 (emphasis added). Therefore, section 278's applicability is limited to the determination of value for one particular piece of property. Because Relators' allegations seek uniformity across the entire city of Minneapolis, for this and all future years and these Relators and all others similarly situated, they cannot be encompassed by section 278.

Minnesota Statutes Section 273.11 states, in relevant part, "except as provided in this section or section 273.17, (subd.1), all property shall be valued at its market value." The phrase "market value" is unambiguously defined as:

> [T]he usual selling price at the place where the property to which the term is applied shall be at the time of assessment; being the price which could be obtained at a private sale or an auction sale, if it is determined by the assessor that the price from the auction sale represents an arm's-length transaction. The price obtained at a forced sale shall not be considered.

Minn. Stat. § 272.03, subd. 8 (2011). Relators' Amended Complaint explains how their properties are not being calculated pursuant to this statutory definition because the City Respondent refuses to consider valid arm's length transactions

between Relators and the banks ("bank sales"). Am. Compl. ¶¶ 247, 288, 299, 310, 453–55, 466–67, 496, 498.

As this Court has established, bank sales cannot be excused under the exception for "forced sales" found in the statute. *See, e.g., Hous. and Redev. Auth. In and For City of Minneapolis v. Beberman,* 183 N.W.2d 295 (Minn. 1971) (determining that a sale by a lending institution to an individual of a parcel obtained through foreclosure is not a forced sale *per se*). On the contrary, sales like those involving the Relators in this matter are *prima facie* evidence of market value. *In re Taxes of Potlach Timber Co.*, 199 N.W. 968, 969 (Minn. 1924). While the sale price ought not to be conclusive, the fact finder (the assessor) should rely upon it as the most important factor in determining market value. *Id. See also DeZurik Corp. v. Cnty. of Stearns*, 518 N.W.2d 14, 16 (Minn. 1994) (noting that a fair market value assessment considers the value a property would sell for in a sale by a party not required to sell, to another not required to buy); *Henrichsen v. County of Itasca*, 1984 WL 2084 (Minn. Tax 1984) ("The very best evidence of market value is a recent arm's-length cash sale of the subject property. Although we do not hold that this conclusively establishes market value, we are giving it substantial weight."). Bank sales to private persons such as Relators are precisely the type of transactions referred to in these cases, and precisely the type of transactions that Respondent City persists in excluding.

In fact, City Respondent essentially hid sales by banks in the Camden, Near North, and Phillips communities from the public by omitting data from their publications. City Respondent's practices then have the secondary effect of skewing valuations for others within the community, resulting in the communities of Near North, Camden, and Phillips bearing a disproportionate share of the tax burden. Am. Compl. ¶¶ 192–95.

Respondent's practice unilaterally changes the definition of "market value" by broadening the definition of "forced sale," hitting the communities of Camden, Near North and Phillips with a disproportionate property tax burden because foreclosures abound and bank sales are prevalent. The cumulative effect of Respondents' actions cannot be solved by a series of individual assessments—or by section 278 petitions. Am. Compl. ¶ 72. Relators have a constitutional right to reassessment of thousands of residential properties and, in some instances, credits rolling forward. None of the purely administrative remedies under section 278 are even able to address these constitutional issues. And, the Tax Court itself is unable to sufficiently remedy these issues, because it cannot address future years, or other properties. *Erie Mining Co. v. Comm'r of Revenue,* 343 N.W.2d 261, 264 (Minn. 1984) ("If the tax court should declare any matter unconstitutional and no appeal is taken to this court, that ruling shall only be the law of the particular case involved.").

This case can be easily compared to a situation implicating the doctrine of "capable of repetition and likely to evade review." *See Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980). The United States Supreme Court has determined that the "capable of repetition, yet evading review" doctrine applies where: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975). Relators' challenges cannot be adequately addressed given the one-year limitation on section 278 petitions, and will result in the continued need for annual litigation on this matter. This implicates the same concerns, and highlights how Relators' claims cannot fall within the statutory category of "assessment."

Narrowly construing Relators' claims as "assessment" or "illegality" as envisioned by section 278 was improper because the systemic, widespread, and recurring nature of the problem far exceeds the intended nature and scope of these categories. The Tax Court, by failing to recognize the scale and reach of Relators' complaint erroneously dismissed Relators' uniformity claims, and should be reversed by this Court.

### *B. Declaratory judgment is available to Relators because its claims do not fall within Minnesota Statutes Section 278.*

When the Tax Court improperly held that Relators' claims fell into the category of "assessment" or "illegality" under Minnesota Statutes Section 278, it subsequently denied Relators' request for declaratory judgment. *See Odulnade* et al. slip op. at 27. Relators' Amended Complaint in Counts 27 through 30 seeks declaratory judgment providing for reassessment of their residential property for tax year 2010 (Pay 2011). The Tax Court's dismissal was erroneously based on *Land O'Lakes Dairy Co. v. City of Sebeka,* 31 N.W. 660, 662 (Minn. 1948).

However, the reasoning of *Land O'Lakes* does not prohibit Relators' request for declaratory relief. *Land O'Lakes* only stands for the proposition that declaratory judgment is not proper within the confines of Minnesota Statute Section 278. As this Court articulated, "we feel that the legislature intended to remove proceedings to question the validity of real estate taxes from the scope of the Declaratory Judgments Act, at least where the taxes have been assessed and section 278 can be used." *Land O'Lakes*, 31 N.W.2d at 664.

Once Relators' claims are properly viewed outside of the scope of section 278, *Land O'Lakes* no longer bars declaratory relief. Indeed, the very reason why Relators' uniformity claims are outside the scope of section 278 necessitates the use of declaratory judgment—the problem is *so* systemic that it cannot be governed nor remedied by the statutory procedure. The Tax Court's failure to

recognize this fact, amply pled in Relators' Amended Complaint, is an error of law that must be reversed.

Given the scope of Relators' uniformity claims, declaratory judgment should as a matter of law, be available to establish a binding definition of market value valid for subsequent years. Declaratory judgment, also known as the Uniform Declaratory Judgments Act or UDJA and embodied in Minnesota Statutes Section 555, is a broad power of courts to make determinations as to legal rights whenever there is a justiciable controversy." *See Seiz v. Citizens Pure Ice Co.*, 207 Minn. 281, 290 N.W. 802, 804 (Minn. 1940); *Minn. Ass'n of Pub. Sch. v. Hanson*, 287 Minn. 415, 178 N.W.2d 846, 850 (Minn. 1970). Moreover, "[t]he UDJA is remedial in nature and is to be liberally construed and administered to 'settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.'" *See Hoeft v. Cnty. of Hennepin*, 754 N.W.2d 717, 722 (Minn. Ct. App. 2008) (quoting Minn. Stat. § 555.12 (2006)).

Relators qualify for declaratory relief because Respondent City has not complied with the requirements of Minnesota Statutes Section 273.11, as it is not permitted to expand and narrow the definition of "open market value" and "forced sales" at whim. Using Respondent City's definition *du jour*, Relators' properties are unequally assessed. Without clarification on these issues, the uncertainty frustrates taxpayers, the administrative process, and proper determinations by the

courts. Consequently, this Court should reverse the Tax Court's dismissal of Relators' request for declaratory judgment.

### *C. The scale and scope of the uniformity crisis in the City of Minneapolis warrants mandamus relief not available through Minnesota Statutes Section 278 to rectify the current and future valuations.*

For similar reasons, the dismissal of Relators' request for mandamus relief was improper. District courts "have the power to issue writs of . . . mandamus . . . and all other writs, processes, and orders necessary to complete the exercise of the jurisdiction vested in them by law[.]" Minn. Stat. § 484.03 (2011). Mandamus is defined as "ordering a lower court or government official to perform a specified act." *Pigs R Us, LLC v. Compton Tp.*, 770 N.W.2d 212, 215 (Minn. Ct. App. 2009). "The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." Minn. Stat. § 586.01. The test for mandamus relief has three elements: (1) the failure of an official to perform a duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate remedy. *Demolition Landfill Services, LLC v. City of Duluth*, 609 N.W.2d 278, 280 (Minn. Ct. App. 2000). As laid out in *Erie Mining Co. v. Commissioner of Revenue,* the tax court has jurisdiction over such matters once the district court has transferred its power to the tax court. 343 N.W.2d 261,264 (Minn. 1984) ("The district court may either decide the

constitutional issue or refer the matter back to the tax court which will then have subject matter jurisdiction to rule initially on the constitutional issue."). Thus, mandamus relief was properly asserted by Relators in the Tax Court.

However, the court below dismissed Relators' request for mandamus relief on the grounds that Relators did not allege either: (1) the failure of an official to perform a duty clearly imposed by law; or (2) no other adequate remedy. *Odunlade*, slip op. at 28. It is important to note that the Tax Court agreed with Relators that the City Assessor had a duty to perform certain ministerial acts imposed by statute. *Odunlade*, slip op. at 28. Nevertheless, the Tax Court erroneously found that Relators admit that the City Assessor performed his duty. *Odunlade*, slip op. at 28 (citing paragraphs 12–13 in Relators' Amended Complaint). Yet the cited paragraphs of the Amended Complaint admit nothing of the kind. Instead, the entire Amended Complaint is saturated with allegations that the City Assessor did not perform his job properly. Am. Compl. ¶¶ 131, 138–39, 141–42, 144, 155–61. The Tax Court ignored these allegations. This is improper in light of the standard of review, which directed the Tax Court to "accept the facts alleged in the complaint as true and give the nonmoving party the benefit of all favorable inferences." *Krueger,* 781 N.W.2d 858, 861 (Minn. 2010). This omission represents a significant and reversible error.

The Tax Court also erred in its finding that Relators' mandamus claim fails under element three of the test because "there is an adequate remedy at law." *Odunlade*, slip op. at 28. "[T]he remedy which will preclude mandamus must be equally as convenient, complete, beneficial, and effective as would be mandamus, and be sufficiently speedy to prevent material injury." *Kramer v. Otter Tail Cnty. Bd. of Comm'rs*, 647 N.W.2d 23, 26 (Minn. Ct. App. 2002).

As discussed above, the Tax Court held, without proper consideration, that section 278 was the sole remedy for Relators' claims. section 278 may be the "plain, speedy, and adequate remedy" for most property tax challenges, but certainly not when Relators allege such widespread systemic discriminatory practices with effects on the community level. *See* Minn. Stat. § 586.02. However, Relators clearly allege that there is no other adequate specific legal remedy to correct the harm Respondent City has caused to Relators, besides the immediate recognition of valid, arm's-length bank sales and a court-ordered reassessment.

Further, the Respondent City decides on a budget, and divides it by the total amount of real estate value in the city; this is how they determine the mill rate. If the total real-estate value in the city dramatically changes, there is no way to accurately calculate the proper tax burden for any individual – each owner's property tax is calculated in part on their value, but part on the value of all the City's real estate. The only possible way to fix the situation alleged in Relators'

Amended Complaint is through the requested mandamus relief: reassess everything using the correct information.

If, as alleged, the City Respondents illegally and improperly assessed properties throughout the City, in order to remedy this problem the City must complete a systematic reassessment using a methodology that is not illegal and unconstitutional. Without mandamus relief, the taint of Respondent City's unconstitutional actions will continue to harm Relators because the properties that the City Assessor uses as comparisons are themselves unconstitutionally inflated. It is literally impossible for a court to remedy the harm already suffered by Relators without mandamus relief, but the Tax Court never addressed the scope of the problem as alleged by Relators.

## IV. THIS COURT MUST CONCLUDE THAT THE TAX COURT ERRED IN DISMISSING RELATORS' EQUAL PROTECTION CLAIMS BECAUSE THEY FALL OUTSIDE OF THE SCOPE OF SECTION 278 AND WERE ADEQUATELY PLED UNDER A RULE 12 STANDARD PURSUANT TO MINNESOTA LAW.

Relators also challenge the Tax Court's holding that Relators' failure to serve and file a section 278 Petition[6] precluded any and all of Relators' equal protection claims. *See Odunlade,* slip op. at 20–21. Again, the court below relied on Respondent's flawed interpretation of *Programmed Land v. O'Connor,* 633 N.W.2d 517 (Minn. 2001) in dismissing these claims. However, the lower court's

[6] *See* infra Part V for a discussion regarding the sufficiency of Relators' 278 petitions.

decision to adopt Respondents' sweeping assertions clearly disregarded a nuance in *Programmed Land*, which recognizes the viability of an independent constitutional cause of action for equal protection violations outside and independent of section 278. This error in law warrants immediate reversal.

### *A.* **Programmed Land** ***recognized the viability of an independent cause of action for equal protection violations outside of Minnesota Statutes Section 278.***

*Programmed Land* does not present an impenetrable barrier to Relators' constitutional claims, as was held by the Tax Court, because *Programmed Land* does not identify equal protection claims as within one of the five bases of appeal under section 278. *Programmed Land*, 633 N.W.2d at 529–30. This Court in *Programmed Land* stated: "[i]f statutory mechanisms for relief are nonexistent or insufficient constitutionally, we will finally consider whether respondents may recover or proceed to recover under common law or equitable theories." *Id.* at 522. Based on stipulated facts, this Court ultimately found that petitioners had not satisfied their evidentiary burden of showing "intentional, arbitrary or systematic discrimination," and dismissed the claims. *Id.* at 530. Thus, there was no need to examine whether section 278 precluded independent constitutional claims.

In the instant case, however, the Tax Court had no evidence in the record with which to make that determination—the court below would have been limited to evaluating whether the Amended Complaint contained sufficient allegations to

survive a Rule 12 motion. Thus, the Tax Court should have first analyzed the scope of Minnesota Statutes Section 278 against the claims set forth in Relators' Amended Complaint to determine whether its provisions applied. Blindly lumping Relators' claims with a general pronouncement that *Programmed Land* precluded them all is an error of law that must be reversed.

### *B. Equal protection claims were adequately alleged by Relators' amended complaint, and erroneously dismissed by the Tax Court.*

Because equal protection claims may lie outside of the scope of a section 278 proceeding, the Tax Court should have first examined whether Relators sufficiently pled a violation of federal and Minnesota equal protection rights. The Tax Court failed to address Relators' equal protection arguments, stating only that "[Relators] make conclusory allegations that the City Respondents intentionally or arbitrarily valued their properties at a lower rate than other properties." *Odunlade*, slip op. at 25. This is not the case.

Relators specifically pled the factual allegations that make up a sufficient claim for equal protection: that City Respondent intentionally **and** arbitrarily assessed their property at a **higher** ratio than similarly situated property. The Amended Complaint painstakingly lays out how Respondent City artificially inflates property value by ignoring bank sales and how that practice affects both the buyer, and the many neighbors (i.e., the comparables). *See generally* Am.

Compl. ¶¶ 37, 50, 55, 66, 247, 258, 288, 299, 301, 310, 322, 325, 351, 369, 449 453–55, 466–67, 496, 498. After construing Relators' pleadings in the appropriate light, this Court must find that the Tax Court improperly dismissed Relators' equal protection claims.

Like the uniformity clause, the equal protection clause of the Fourteenth Amendment to the Federal Constitution forbids the imposition of unequal tax burdens upon persons otherwise similarly situated. *E.g. Cumberland Coal Co. v Bd. of Revision of Tax Assessments*, 52 S Ct. 48. 284 U.S. 23 (1931); *Allegheny Pittsburgh Coal Co. v. Cnty. Corn*, 488 U S. 336 (1989). A property owner may demand that a taxing authority tax his or her property so that it is "the seasonable attainment of a rough equality in tax treatment of similarly situated property owners." *Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n*, 488 U.S. 336, 343 (1989). The federal standard applies a rational basis test by requiring that a statute or policy that distinguishes between individuals based on the community that they live in must be rationally related to a legitimate government purpose. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985). The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational. *Id.*

Consequently, when an assessment places a substantially disproportionate tax burden on one group of taxpayers vis a vis another group of taxpayers, the

assessment violates the equal protection clause. "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Sunday Lake Iron Co. v. Towhship of Wakefield*, 247 U.S. 350, 352 (1918).

The Minnesota Constitution provides similar Equal Protection guarantees in Article 1, Section 2, which states: "[N]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2. This provision applies to "taxation which in fact bears unequally on persons or property of the same class." *Charleston Fed. Sav. & Loan Ass'n v. Alderson*, 324 U.S. 182, 190 (1945).

Minnesota law requires a higher standard for permissible conduct than a federal challenge to equal protection, specifically:

> 1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; 2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and 3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

*See State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991). The same test applies to a government policy. *See Bolin v. State Dep't of Pub. Safety*, 313 N.W.2d 381, 383 (Minn. 1981) (applying the same test to an equal protection case challenging government policy).

Relators have sufficiently pled each element of the Minnesota standard for preserving equal protection claims. First, Respondent City's practice of excluding bank sales is arbitrary. The Supreme Court has held that taxation systems are not arbitrary only "so long as the implicit policy is applied evenhandedly to all similarly situated property" in a tax district. *Allegheny Pittsburgh Coal*, 488 U.S. 336. But in this case, Respondents have adopted a practice that creates distinctions between types of open market sales, contrary to statutory requirements. Minn. Stat. §§ 273.11, 272.03 (2011). This corresponds to certain Minneapolis neighborhoods where property values are falling, compared to areas where property values are rising or staying steady, resulting in an unconstitutional tax burden on Minneapolis's poorer communities by artificially maintaining assessment values from more prosperous years. *See* Am. Compl. ¶¶ 128–130, 258. Respondents have engineered this effect by excluding non-foreclosure open market sales of property simply because they were made by banks after the banks had acquired the property. *See, e.g.,* Am. Compl. ¶¶ 106, 117–123. In all ways, the sales meet Minnesota's statutory definition for "arm's-length sales." These

allegations clearly articulate Relators' right for relief, and should have survived Rule 12 motions.

The second part of Minnesota's equal protection test asks whether Respondent City's exclusion of bank sales is genuine or relevant to the purpose of section 272.03, subdivision 8, which defines market value. Respondent City's practice of excluding all bank sales—regardless of whether they were exposed to the market—is not genuine or relevant to the purpose of the statutes defining and incorporating market value. In fact, it operates in direct contravention to the purpose of the statute because it draws distinctions between otherwise statutorily valid open market sales.

This Court has stressed the importance of recognizing periodic declines in property value before. *Bloomington v. Vinge*, 284 Minn. 202, 169 N.W.2d 752, 756 (Minn. 1969) (holding that a distressed sale at a reduced price was nonetheless a good indice of market value and could not be excluded as a "forced sale"). Here, Respondent City has purposefully adopted a practice that refuses to acknowledge the realities of the market. As a result of these improper assessments, Relators have paid more than their share of property taxes. *See* Am. Compl. ¶ 258. Respondents are now excluding such sales even though Respondents once argued that a bank sale *is* a legitimate arm's-length sale before this court. *See Hous. and Redev. Auth. In and For City of Minneapolis v. Beberman*, 289 Minn. 506, 183 N.W.2d 295

(Minn. 1971) (holding that a bank sale is "a voluntary transaction between [petitioner] and the prior mortgage owner" and not a forced sale). Relators intend to introduce further evidence demonstrating the results of this discriminatory practice in contravention to Minnesota Statutes Section 272.03, but for purposes of a Rule 12 motion, all Relators must do is allege facts sufficient to state a claim for relief. Relators have met this burden.

Part three of the test asks whether Respondents have a legitimate reason for the classification. There is no legitimate reason why Respondents' should adopt a practice that creates arbitrary and discriminatory distinctions in the valuation of residential properties. Respondents have established different tax burdens among similarly situated residential property owners based solely upon whether an individual lives in an area with an increased number of bank sales or not. *See* Am. Compl. ¶¶ 257–58. By Respondent City's own definition, a property's assessment is based on what that property could be sold for on the open market. *See* City of Minneapolis Mem. Supp. Mot. Dismiss at 3. However, Respondent City's rhetoric contravenes their actual practice. By excluding sales by banks, Respondent City acts discriminatory and arbitrarily for the purposes of equal protection. *Scott v. Minneapolis Police Relief Ass'n, Inc.*, 615 N.W.2d 66, 74 (Minn. 2000). An irrelevant or arbitrary classification is not legitimate. *Reed v. Bjornson*, 191 Minn. 254, 264; 253 N.W. 102, 107 (Minn. 1934). There is no reason to distinguish all

open-market bank sales from all other open-market sales; the only relevant characteristic by statute is that both are open-market. This distinction may be convenient to collect more revenue, but it is not a permissible distinction in light of the duty of uniformity based in Article X of the Minnesota Constitution. The allegations of Relators' Amended Complaint therefore satisfy the burden of a Rule 12 motion on this final element of the equal protection standard.

*Programmed Land*, far from preventing any non-278 property tax challenges, recognizes that constitutional claims like equal protection may be properly brought outside the scope of section 278. In particular, close reading of its holding indicates that courts must examine whether there is a viable equal protection claim—a holding which the court below in this matter failed to recognize and adhere to. Because the record was limited to the pleadings on a Rule 12 motion, the Tax Court should have examined whether Relators' alleged sufficient factual allegations to support its equal protection claims. Because the Tax Court failed to do so, dismissal of Relators' equal protection claims was erroneous and should be reversed by this Court.

## V. EVEN IF THIS COURT FINDS RELATORS' CLAIMS TO BE MORE PROPERLY BROUGHT UNDER MINN. STAT. § 278 RELATORS SATISFIED THE PROCEDURAL REQUIREMENTS OF SUCH A PETITION.

Finally, because Relators did comply with the statutory requirements under Minnesota Statutes Section 278 to challenge their property tax assessments for tax

year 2010 (Pay 2011), this portion of the Amended Complaint should have survived Respondents' Rule 12 motions.[7] The court below dismissed Relators' claims for a lack of jurisdiction because they filed one petition together instead of filing multiple, separate petitions. *Odulnade*, slip op. at 18–22. However, a review of the plain language of Minnesota Statute Section 278 and Minnesota canons of construction demonstrates that the lower court's conclusion was erroneous. At a minimum, the Court should reverse the lower court's dismissal and allow Relators to proceed on to trial on their pay 2011 claims.

### *A. The plain language of Minnesota Statutes Section 278 permits multiple petitioners to file one petition against the same party for the same tax year.*

The court below erroneously held that Relators' section 278 petition was "fatally deficient because it includes multiple petitioners and different properties." *Odunlade,* slip. op. at 22. However, this is an incorrect statement of the requirements of a section 278 petition, an error of law sufficient to warrant reversal of the Tax Court's dismissal

First, Minnesota Statutes Section 278 expressly allows for the filing of a petition with multiple parcels of land. Minn. Stat. § 278.02 ("[S]everal parcels of land . . . may be included in the same petition . . . ."). Regarding multiple petitioners, the court below relied on the "any person" language of section 278.01

[7] Relators concede that, should their claims be limited to a Chapter 278 proceeding, they may only proceed on the claims filed for tax year 2010 (pay 2011).

in holding that multiple petitioners were precluded from bringing a single petition. *See* Odunlade, slip op. at 22 ("The language refers in the singular to 'a person'"). However, the Tax Court's decision was without support in statutory language, principals of statutory interpretation, and case law.

The canons of statutory construction easily reveal the Tax Court's error. When interpreting Minnesota statutes, the legislature instructs that "the singular includes the plural; and the plural, the singular." *See* Minn. Stat. § 645.08 (2). This canon is typically used to ascertain the plain meaning of statutes unless there is specific legislative intent to the contrary. *See, e.g., Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431, 435 (Minn. 2009); *Cnty. of Wash. v. Am. Fed'n of State, Cnty. and Mun. Emp.,* 262 N.W.2d 163, 168 (Minn. 1978) (interpreting the statutory phrase "a supervisory employee" to include all supervisory employees); *State ex rel. Klitzke v. Indep. Consol. Sch. Dist. No. 88*, 61 N.W.2d 410, 417 (Minn. 1953) ("We are admonished by our own statute, section 645.08, to . . . construe statutory words importing the singular number as to include the plural unless it be otherwise specifically provided or unless there be something in the subject or context repugnant to such construction."); *State v. Indus. Tool & Die Works*, 21 N.W.2d 31, 38 (Minn. 1946). The singular and plural rule exists because legislation generally speaks in nonnumeric and abstract terms. 2A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 47:34 (7th

ed. 2008). Federal laws as well as statutes in nearly every state include some variation of the principle that when interpreting statute, the plural and singular are interchangeable unless specifically stated otherwise. *See* Minn. Stat. § 645.08 (2011). *See, also,* 1 U.S.C. § 1 (2011); Ala. Code § 1-1-2 (2011); Alaska Stat. § 01.10.050(b)(2011); Az. Rev. Stat. § 1-214(B)(2011); Ark. Code § 1-2-203 (2011); Cal. Civil Code § 2-21(14) (2011); Col. Stat. § 2-4-102 (2011); Conn. Gen. Stat. § 1-1(f)(2011); 1 Del. Code § 304(a) (2011); Flor. Stat. § 1.01(1) (2011); Ga. Code § 1-3-1(6) (2011); Hawaii Rev. Stat. 1 § 1-17 (2011); Idaho Code § 28-1-106(1) (2011); Kan. Stat. § 77-201 (2011). Therefore, the legislature's use of "any person" in section 278.01 cannot preclude the inclusion of multiple petitioners, as stated by the plain language of the statute itself.

Other provisions of section 278 only confirm this interpretation of the statute's provisions. For example, as cited above, Minnesota Statutes Section 278.02, allows for multiple parcels of land to be included in one petition, even where those parcels cross city or town boundaries. Interestingly, there is no explicit prohibition against multiple petitioners. While the legislature did intend to place some limits on the scope of section 278, multiple petitioners was not one of them.

Further, Minnesota courts have been hearing cases with multiple parties and multiple parcels of land for decades. In fact, the only case relied on by the court below to support its holding regarding multiple petitioners is *Rau v. County of*

*Kandiyohi*, Nos. C8-86-533, C8-86-550, C8-86-567, 1987 WL 5144 (Minn. Tax. Feb. 24, 1987). *Odunlade*, slip op. at 22. *Rau*, an unpublished tax court decision with no citation history until this case, has never before been relied upon by this or any tax court to preclude a section 278 petition with multiple parties. Further, *Rau* provides no support for the notion that section 278 petitions must be filed individually other than the language of section 278.01 itself—which we have already seen, by instruction of the legislature, is intended to be interpreted to include the plural. *See Rau*, 1987 WL 5144 at *1 (citing only to section 278.01 to support its conclusion that the statute refers to an individual petitioner); Minn. Stat. § 645.08.

Even if *Rau* applied, this court is not bound by it. *A&H Vending*, 608 N.W.2d at 546 ("Decisions of the tax court are not binding on this court."). Several more recent decisions of the tax court have held differently with regard to multiple petitioners. *See, e.g. Arcadia Dev. Corp. et al., v. Cnty. of Hennepin*, 528 N.W.2d 857 (Minn. 1995) (allowing a section 278 appeal with multiple petitioners to proceed); *L.G.S.R.G. P'ship v. O'Connor*, 1998 WL 765701 (Minn. Tax. Oct. 30, 1998) (allowing a section 278 proceeding with multiple petitioners proceed to the class certification phase of trial); *H J of M Land Venture et al. v. Hennepin Cnty.*, 1993 WL 283218 (Minn. Tax., Jul. 26 1993) (permitting a section 278 appeal with multiple petitioners).

Although the court below made a cursory attempt to distinguish these cases, further reflection shows how they in fact support Relators' position. Regarding *Arcadia Development*, 528 N.W.2d 857, the court below incorrectly characterized the case as not arising under section 278, noting that "the taxpayers were not challenging their property taxes." *Odunlade*, slip op. at 22 n.35. While not a property tax appeal, the case still arose under section 278 and therefore is still evidence that multiple petitioners are permissible for a challenge under that section. The Tax Court also mischaracterized *L.G.S.R.G. Partnership*, stating that "the action was not a property tax appeal brought pursuant to Minn. Stat. Ch. 278." *Odunlade*, slip op. at 22 n.35. However, the procedural history of the case reveals that the plaintiffs alleged "they were unequally taxed in comparison to other similarly situated taxpayers in violation of the equal protection clause of the United States Constitution and the uniformity clause of the Minnesota Constitution." *L.G.S.R.G. Partnership*, 1997 WL 756560 (Minn. Tax 1997). While the Court in that case did not specifically reference section 278, it is clear that the case involves similar issues. *Id.* The Tax Court also distinguished *H J of M Land Venture et al. v. Hennepin County*, 1993 WL 283218 (Minn. Tax 1993) and *Community Housing Development Corp. v. County of Hennepin*, 1993 WL 443978 (Minn. Tax 1993), as having multiple petitioners in regard to the same parcel, but nowhere in the Order does the Court explain how that is statutorily permissible while Relators' claims

are not. Even *Programmed Land*, 622 N.W.2d 517, 519–20, was distinguished by the Tax Court for consolidating multiple individual petitioners without addressing whether the Tax Court could permit them to file a simultaneous action. It is clear that in distinguishing these cases, the court below failed to recognize what they have in common: they all do in fact have multiple petitioners. If the language of section 278 bars multiple petitioners in a suit, it does so without discrimination, and therefore it would foreclose judicial consolidation, with the identical effect.

The same policy arguments for allowing consolidation are only magnified when considering whether to allow multiple petitioners and parcels to proceed in unison and from the outset.[8] When parties all share the same nexus of operative fact and law as relates to their property, the principles of judicial economy, access, and fairness should permit the filing of a section 278 petition by multiple aggrieved individuals. Therefore the court below improperly dismissed Relators' section 278 petitions as it relates to tax year 2010 (pay 2011).

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[8] Of course, where legitimate reasons exist to require separate filings, such as for unrelated claims, the courts retain the power to bifurcate or otherwise sever petitions containing multiple petitioners or parcels as justice or judicial economy requires. But this is not the situation in the case at hand, as Relators' claims are related and rooted in the same law and facts.

### *C. If multiple petitioners are not permitted in a Section 278 challenge, Relators should have been given leave to correct the procedural deficiency.*

Finally, should this court find that a section 278 petition does not permit multiple petitioners, *Rau* provides a reasonable remedy for Relators which the Tax Court failed to consider in this case. Specifically, the *Rau* court remarked:

> "[t]his [c]ourt is cognizant of the dilemma in which our ruling places these multiple petitioners. Their individual right to contest the 1985 assessments on their property will not be denied. As indicated by the Court . . . the individual petitioners will be given leave to file individual Minn. Stat. § 278 petitions within 60 days."

*Rau*, 1987 WL at *2. If the Court adopts *Rau*'s holding, Relators urge the Court to also adopt *Rau*'s remedy and allow time to file individual section 278 petitions.

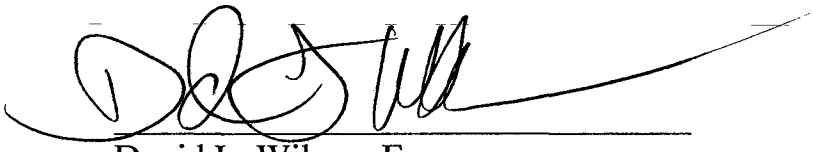
## CONCLUSION

For the reasons set forth above, Relators' respectfully request that this Court reverse the order of dismissal and remand to the lower court for further proceedings.

Dated: 12/1/2011

**COUNSEL FOR RELATORS**

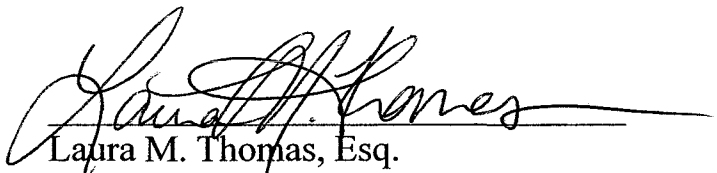
WILSON LAW GROUP



David L. Wilson, Esq.
Atty. Reg. # 0280239
3019 Minnehaha Avenue #200
Minneapolis, MN 55406
(612) 436-7100 / (612) 436-7101 (fax)
dwilson@wilsonlg.com

AND

UNIVERSITY OF MINNESOTA
CIVIL PRACTICE CLINIC



Laura M. Thomas, Esq.
Atty. Reg. # 0271068
Supervising Attorney
Katherine Pasker, student attorney
Anupama Sreekanth, student attorney
University of Minnesota Law School
Mondale Hall
229 19th Ave. S., Room 190
Minneapolis, MN 55455
(612) 625-5515

## CERTIFICATION OF BRIEF LENGTH

**STATE OF MINNESOTA**
**IN SUPREME COURT**

Idowu Odunlade, Jose Llangari and Andrea Kral, on behalf of themselves and all others similarly situated

Relators,

v.

City of Minneapolis, City of Minneapolis Assessor's Office, City of Minneapolis Assessor Patrick J. Todd, in his personal capacity, County of Hennepin, Hennepin County Assessor's Office, Hennepin County Assessor James R. Atchinson, in his personal capacity

Respondents.

**CERTIFICATION OF BRIEF LENGTH**

Tax Court Case No. 27-CV-10-26849

Supreme Court No. A111832

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Counsel for Relators hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subd. 1, 3, for a brief produced with a proportional font. The length of the brief is 9,771 words. This brief was prepared using Microsoft Word 2007.

Dated: December 1, 2011.


CIVIL PRACTICE CLINIC
UNIVERSITY OF MINNESOTA

Laura M. Thomas
Attorney Reg. No. 0271068
Supervising Attorney
Katherine Pasker, student attorney
Anupama Sreekanth, student attorney
University of Minnesota Law School
Civil Practice Clinic
190 Mondale Hall
229 19th Ave. South
Minneapolis, MN 55455
(612) 625-5515

WILSON LAW GROUP

David L. Wilson, Esq.
Attorney Reg. No. 0280239
3019 Minnehaha Avenue #200
Minneapolis, MN 55406
(612) 436-7100 / (612) 436-7101 (fax)
dwilson@wilsonlg.com