

NO. A11-1832

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State of Minnesota  
 In Supreme Court

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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.*

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**REPLY BRIEF OF RELATORS**

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## ARGUMENT

City Respondents' attempts to disguise Relators' harms in a haze of statutory complexity and administrative discretion continues to deflect this Court's attention from the gravity of the City's transgression and the necessity for remedying it at its source. This case is, in essence, about all residential property owners in the City of Minneapolis. It is about the City of Minneapolis intentionally creating a "false tax market" to insulate its tax revenue stream from the brutal political choices that the actual, freefalling market will ultimately force the City of Minneapolis to confront. It is about correcting the "tax market" today to ensure it is accurate tomorrow.

Relators ask this Court to stop the practice of excluding valid transaction data from the tax market because this practice has created an unequal and insidious concentration of the tax burden on the City's poorest communities. The United States Constitution, the Minnesota Constitution, or Minnesota Statutes do not tolerate this practice. City Respondents try to subvert the issue, focusing on the right of individual property owners to seek redress. But one, even thousands, of appeals under section 278 will not instill accuracy into the tax market. Rather, the remedies necessary to inject truth into the City of Minneapolis' tax market for the present *and the future* lie outside of section 278.

The Tax Court erroneously dismissed Relators' claims under article X of the Minnesota Constitution and the Equal Protection Clause, as well as Relators' request for declaratory judgment and mandamus relief without permitting any discovery or compelling Respondents City to defend its practice. Relators therefore respectfully request that this Court permit Relators' case to proceed accordingly by reversing the Tax Court's dismissal of its claims.<sup>1</sup>

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<sup>1</sup> The purpose of this litigation is to seek judicial acknowledgment that the City must abide by accepted and established valuation practices, rather than the creation of a false tax market. Therefore, Relators ask for recognition that open-market, Multiple-Listing Service listed, publically offered and advertised sales by a bank to an unknown-to-them third party *are* arm's-length sales. Stated simply, the law does not support using a seller's name to exclude data that is unfavorable to the municipality.

This policy is not an invention of Relators. Rather, the Uniform Standards of Professional Appraisal Practice (USPAP), which is Congress's reference for matters relating to appraisal, states that, "[w]hen the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business: . . . (b) analyze all sales of the subject property that occurred within three (3) years prior to the effective date of the appraisal." USPAP Standards Rule 1-5(b) (2012-2013) *available at* <http://www.uspap.org/>. The intent of this rule "is to encourage the research and analysis of prior sales of the subject property. All sales of the appraised property within the 3 year time period stated in Standards Rule 1-5(b) includes transfers in lieu of foreclosure and foreclosure sales." USPAP Advisory Opinion 4.

The Appraisal Standards Board further clarifies, that "[w]hen there is a glut of distress sales in the marketplace, and those properties are truly comparable to the subject, it would be misleading not to use them as part (or in some cases all) of the basis for a value conclusion." Appraisal Standards Board, Use of Distressed Sales in An Appraisal (2011) *available at* <http://www.amclinks.com/info/wp-content/uploads/2011/06/Use-of-Distressed-Sales-in-Appraisals-USPAP-Update.pdf>. Standards of this sort are prime examples of the type of relief that Relators' are asking for in this litigation to prevent the City from perpetuating its unconstitutional practices.

**I. RELATORS' CLAIMS DO NOT FALL WITHIN MINNESOTA STATUTES SECTION 278.01.**

Section 278 does not preclude Relators from bringing their constitutional claims, despite City Respondents' continued protestations. *See* City Resp. Br. 8. City Respondents admit that "*Programmed Land* does not directly hold that constitutional claims are foreclosed by § 278.01." City Resp. Br. 13. This admission leads to one conclusion: constitutional claims, like those that Relators pleaded here, are litigable outside of section 278.

Despite this concession, City Respondents pursue a misguided attempt to fit Relators' claims within the statutorily enumerated bases of section 278. The flaw in Respondents City's position is that it neglects to acknowledge time and time again that Relators' claims do not involve the illegality of a tax statute or otherwise relate to the assessment process. Instead, the claims involve constitutional questions that implicate the entire community, which are not encompassed by section 278.

Relators do not seek to eviscerate the statutory process. *See* City Resp. Br. 8. Rather, Relators' claims reveal the limitations of section 278, in accordance with this Court's decision in *Programmed Land*, 633 N.W.2d 517 (Minn. 2001), which anticipates that the statutory process will not be appropriate in all instances. Accordingly, this Court should reverse the Tax Court's dismissal of Relators'

claims on the grounds that it raises constitutional challenges that lie outside of the scope of section 278.01.

*A. Relators' Claims Do Not Address the "Illegality" of a Tax Statute.*

This Court should disregard City Respondents' invitation to characterize Relators' claims as "illegality" under section 278.01. City Resp. Br. 10. City Respondents attack Relators' distinction between a tax that is *per se* illegal, and an illegal act by an assessor in levying a legal tax. City Resp. Br. 10. But City Respondents fail to recognize that under their interpretation, the "illegality" component of section 278.01 would be rendered so broad as to become absolute; expanding the term to include *any and all* irregularity, constitutional or otherwise, is a distortion of the statute's text and purpose that this Court cannot sustain.

Because "illegality" is merely one of five enumerated categories, it cannot also be read to encompass offenses occurring under any of the *other* four categories espoused by statute and *Programmed Land*. See Minn. Stat. § 278.01 (2011); *see also Programmed Land*, 633 N.W.2d at 517 (Minn. 2001). "Every law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16 (2011). Consequently, "illegality" must possess a distinct meaning of its own, different from the other four categories, lest the Court render the remaining categories a nullity.

For example, an improper classification of a parcel by an assessor, categorized by statute as an “improper classification,” is not also in the category of “illegality.” Nor is a charge that the assessor has improperly valued a parcel, which falls under the statutory rubric of “improper valuation.” “Illegality” therefore, cannot mean *acts* by the assessor which are illegal; it must have some other meaning. The only logical reading of the statutory text is that the category of “illegality” is only intended to address such cases where the very *statute itself* is alleged to be illegal. The Supreme Court recognized this distinction in *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352 (1918), stating that:

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 the statute or by its improper execution through duly constituted agent.

Because Relators have not challenged the legality of any taxation statute, but rather discrimination by a “duly constituted agent,” this case clearly falls outside of the category of “illegality.”<sup>2</sup>

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<sup>2</sup> Similarly, Relators’ claims can in no way be characterized as relating to any of the other Relators’ statutory categories in Minnesota Statutes Section 278.01, because “unequal assessment,” “improper classification,” “improper valuation” and “exemption” all necessarily apply to challenges to the treatment of individual parcels, and not to a policy that affects the system as a whole.

First, Relators’ claims cannot be addressed by a claim of unequal assessment. In order to show such a claim, a party would be required to demonstrate the ratio of their taxable value (as calculated by the assessor) to their actual value (also

Conflating “illegality” with “constitutionality,” as City Respondents would do, renders the holding of *Programmed Land* (that some constitutional claims may be brought outside of section 278) effectively meaningless. Even a broad reading of the statute cannot sustain this conclusion. Consequently, this Court must reject City Respondents’ interpretation of “illegality” as too broad, and hold that Relators’ claims are not precluded by section 278.

***B. Relators’ Claims Do Not “Relate to the Assessment Process.”***

City Respondents also erroneously contend that Relators claims are barred by section 278 because they are “related to the assessment process.” City Resp. Br. 11. At the same time, City Respondents concede that some constitutional claims are permitted, under *Programmed Land*, to proceed outside of the

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calculated by the assessor) is substantially different from other similarly situated property in the taxing district. *See In Re Objection to Real Property Taxes*, 353 N.W.2d 525 (Minn. 1984). However, assessors no longer issue these two calculations, so a comparison of them is impossible. Because the taxing methodology addressed in this category has been phased out, unequal assessment is no longer a viable area for this case or for any other Section 278 appeal.

Neither can Relators’ claims be addressed by a claim of improper valuation. Improper valuation, as the name suggests, addresses only the result of the assessor’s calculations, not the methodology employed, and is available only for the parcel that is the subject of the appeal. Realtors challenge more than the erroneous valuation of their properties; they challenge City Respondents’ unfair and unconstitutional interpretation of the statute as it applies both to the valuation of their own parcels and the rest of the residential property in the City, and the resultant misallocation of the tax burden on a community by community basis. In this way, Relators’ case clearly exceeds the bounds of an “improper valuation” appeal.

provisions of section 278. City Resp. Br. 13. If mere relation to the assessment process is all that is required to make section 278 the exclusive remedy, one is left to wonder what kind of claim outside of section 278 the Court in *Programmed Land* could have envisioned. To preclude any and all constitutional challenges because they “relate to the assessment process” essentially negates *Programmed Land*’s preservation of constitutional claims independent of section 278.

Accordingly, this Court must recognize that Relators’ claims are not precluded by section 278 and reverse the Tax Court’s dismissal.

***C. Section 278 Cannot and Will Not Provide an Adequate Remedy for Relators to Seek Relief.***

Despite City Respondents’ claims to the contrary, section 278 does not provide an adequate remedy for Relators. City Respondents confidently assert that Relators’ challenge is “exactly the sort of claim that is routinely made under Ch. 278.” City Resp. Br. 11. Yet they cannot point to a single case to support this fiction because no such case exists.<sup>3</sup> City Respondents continue to view the problem as a singular one—relating to one property wholly independent and uninfluenced by others. Consider a hypothetical: residential property owner Jane Doe resides in the Philips Community; Ms. Doe’s realtor helped her find this property on the Multiple Listing Service; the closing for this property occurred on

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<sup>3</sup> Relators have reviewed the body of decisions on this issue, but have been unable to find any case to which the City refers.

March 30, 2009; Ms. Doe paid \$35,000 for this property. The following tax year 2010 (pay 2011), this property is assessed at \$75,000 because the City's assessor will not recognize her valid, arm's-length transaction.

Ms. Doe pursues a section 278 petition; if she is successful, her home is valued at the purchase price, the arm's length transaction. But her neighbor Mr. Smith also purchased his house from a financial institution on the open market. His property will nevertheless be assessed at a higher number, because his arm's-length transaction value will have been excluded in relation to his property. Because the City bases part of the assessment of Ms. Doe's house on the property values of her neighbors, she will bear a higher tax burden because of the exclusion of Mr. Smith's arm's-length transaction from the calculation with no remedy available to prevent or correct the exclusion. The same principle applies to the house down the street and the one across the park. The entire community is affected by the problem of improperly excluded sales. This problem can only be addressed at a community level.

Clearly, it would be impractical for all the residential property owners in the City of Minneapolis to each file individual 278 petitions, and even if some did, the reassessed value of their home would not be reflected in their neighbor's

assessment.<sup>4</sup> For this reason, section 278 is wholly unable to correct a pre-assessment policy of exclusion. Thus, despite City Respondents' wishful thinking, Relators could not have obtained relief by pursuing a 278 petition or any of the other appeal mechanisms that exist. The Court therefore should reject City Respondents' arguments that section 278 will provide an adequate remedy and permit Relators' claims to proceed.

## **II. CITY RESPONDENTS CONCEDE THAT RELATORS' ARTICLE X UNIFORMITY CLAIMS FALL OUTSIDE OF THE SCOPE OF SECTION 278.**

The Tax Court's dismissal of Relators' claims under the Minnesota Constitution must be reversed because City Respondents seemingly conceded that section 278 does not preclude such claims. Despite City Respondents' assertion that "Chapter 278 establishes a statutory remedy for Relators' Uniformity Clause claims," they ask this Court to "extend the holding of *Programmed Land* and find that Minn. Stat. Ch. 278 is the exclusive remedy for Uniformity Clause challenges to property tax assessments." City Resp. Br. 14. Such a contradiction plainly acknowledges the fact that section 278 does not Relators' claims. By City

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<sup>4</sup> Notably, this hypothetical presumes a static, one-year problem. The problem, however, is not static or isolated to one year. The reality is that this problem will continue unabated in the next tax year. Even if a litigant had success in year one, there is nothing prohibiting City Respondents to returning to the same flawed calculation in the next year. City Respondents' viewpoint requires thousands of litigants to commit to *perennial* litigation. No precedent hints that section 278 requires, or the legislature ever endorsed, such turmoil.

Respondents' admission, Relators' uniformity clause claims should be permitted to proceed outside of section 278.

City Respondents feebly argue that preventing Relators from pursuing uniformity claims outside of the statutory procedure would ensure timely collection of taxes. This ignores the fact that Relators have paid their taxes, and do not purport to avoid their tax burden by asserting a claim under article X of the Minnesota Constitution. There is no legitimate reason why Relators should not be able to assure that their constitutional rights are being protected. As such, the Court must reverse the lower court's dismissal of Relators' article X of the Minnesota Constitution claim

**III. THE COURT MUST CONCLUDE THAT RELATORS PLED THEIR EQUAL PROTECTION CLAIMS SUFFICIENTLY CONSISTENT WITH THE REQUIREMENT OF RULE 12 AND PRECEDENT.**

The Court must likewise reverse the Tax Court's dismissal of Relators' equal protection claims. City Respondents argue that "[e]ven if the Court entertains Relators' state equal protection claim outside Minn. Stat. § 278, Relators have failed to adequately plead their claim." City Resp. Br. 20. However, Respondents attempts to attack Relators' pleadings only exposes Respondents flailing attempt to rationalize an irrational practice. Because Relators have adequately pled a cause of action on equal protection grounds, the Court must reverse the lower court and remand this matter for further proceedings.

***A. Relators Are Similarly Situated, Yet Differently Treated.***

Respondent City seems unable to understand Relators' allegations that they are similarly situated, *yet differently treated*, than other homeowners within the same tax district. *See* Am. Compl. ¶¶ 265, 277, 367, and 389. City Respondents' contention that Relators have not shown that they are similarly situated among themselves or to other homeowners in the City of Minneapolis and that Relators were not treated differently from other residential property owners in the City is plainly incorrect.

Even a cursory review of Relators' First Amended Complaint Relators reveals that Relators comprise a group of individuals who reside in the City of Minneapolis, regardless of whether their property was purchased from a financial institution or a private seller. Homeowners in the Phillips, Camden, and Near North communities are entitled to have the value of their properties established by a preponderance of comparable sales within their communities, the so-called "market." Those living in other parts of the city are entitled to the same. *See* Minn. Stat. § 273.11 (2011). In this way, all residential property owners in the City of Minneapolis are similarly situated.

At the same time, Respondents do not treat Relators the same as other residential property owners. Section 273.11 is not protecting homeowners in the Camden, Near North, and Phillips communities in Minneapolis, while those in

other parts of the Minneapolis enjoy the prerogative of section 273.11. *See* Amended Comp. ¶¶ 128, 129, 142, 156, 160, and 170. Relators aver that sales by financial institutions once the seller lists the property on the open market are arm's length sales, and the best evidence of market value of other property within the community. Even City Respondents agree that "[c]ertain bank sales may reflect market value." City Resp. Br. 31. These types of sales are the majority of sales in the Camden, Phillips, and Near North neighborhoods, but City Respondents systematically ignore those sales—focusing instead on stale, inaccurate, or fraudulent data. *See* Am. Compl. ¶¶ 123, 137, 151, 152, 168, 169, 183, 185, 189. Therefore, residents of these communities are not being treated the same as property owners in the rest of the City, where foreclosures do not dominate the market and City Respondents' use timely and accurate data. Stated alternatively, City Respondents are overlooking *almost all transactions* in the afflicted communities with devastating effects, where the same treatment in other communities is so diluted that it does not distort the calculation of actual market value.<sup>5</sup> *See* Am. Compl. ¶¶ 206, 228, and 249.

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<sup>5</sup> The source of comparables in the three afflicted communities is a key, unresolved fact question. If transactions within these communities are excluded entirely, then the comparables that conform to the City's definition of an acceptable transaction are not geographically comparable to any degree. This exposes that the tax market is not just false from a transaction standpoint; rather, it is false from a proximity standpoint too.

City Respondents conspicuously omit any reference to the standard of review before this Court in challenging the sufficiency of Relators' allegations. "When 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 government 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). City Respondents, ignoring this mandate, attack Relators' allegations as inadequate for a lack of data and other supporting evidence, all of which is unnecessary at this stage in the litigation. Relators' Amended Complaint clearly describes the sale price of Relators' properties, the obligation of the City to view that price as evidence of the properties' market value, and the subsequent discrepancy in the following years' assessment values. *See e.g.*, Am. Compl. at ¶¶ 117–22. Because this is sufficient to survive a Rule 12 motion, this Court must reverse the dismissal of Relators' equal protection claims.

***B. No Rational Basis Exists For City Respondents' Practice.***

Despite City Respondents' arguments to the contrary, Relators have also alleged sufficient facts to establish that the City Respondents' exclusion of bank sales has no rational basis. City Respondents themselves reveal just how irrational

the practice actually is, as they admit: “[c]ertain bank sales may reflect market value.” City Resp. Br. 31. Therefore, there is no rational basis for their exclusion.

City Respondents blithely defend their actions by claiming they are “rooted in statute.” City Resp. Br. 26. But the statute they cite to does not authorize the exclusion of *bank*-sale data—it authorizes the exclusion of *forced*-sale data. Minn. Stat § 273.11. City Respondents have surmised, without cognizable legal authority, that the two are interchangeable. *They are not.*

In *Beberman*, the Court found that a sale between a bank and a private buyer of a parcel obtained through foreclosure was not a forced sale for purposes of valuation. *See Hous. and Redev. Auth. In and For City of Minneapolis v. Beberman*, 289 Minn. 506, 507, 183 N.W.2d 295, 296 (Minn. 1971) (holding that a bank sale is “a voluntary transaction between [petitioner] and the prior mortgage owner” and not a forced sale). This remains the state of the law today. Even City Respondents seem confused; they state: “[c]ertain bank sales may reflect market value. Others may constitute forced sales.” City Resp. Br. 31. These positions are irreconcilable.

City Respondents have no discretion to exclude all bank sales from their analysis. Although they later cite *Beberman* for this proposition, they overlook that section 273.11 describes only “market value.” *See* City Resp. Br. 31, Minn. Stat. § 273.11. In North Minneapolis, an area encompassing two of the Relators’

communities, 71.8% of all home sales were bank sales in 2008; by 2009 that percentage had risen to 77.5%.<sup>6</sup> To an overwhelming extent, bank sales *are* the market. City Respondents assert that the process is functioning “precisely as the legislature dictated.” City Resp. Br. 31. This accusation—that the legislature meant for City Respondents to categorically ignore nearly three-quarters of the market in assigning market value—truly strains credulity.

City Respondents also seek to muddy the waters by characterizing Relators’ equal protection claims as challenging the distinction between “forced sales” and “arm’s-length transactions.” Relators pled that their sales were arm’s length, open-market, sales; this allegation must be taken as true. *See* Am. Compl. ¶¶ 118, 134, 145, 148, 162, 179, 197, 209, 233. Relators have not pled that Relators have purchased their property through an auction sale, sheriff’s sale, or other compulsory transaction. Thus, the sole distinction between Relators’ purchase and those of other property owners is the *identity of the seller*. City Respondents do not have the discretion to engage in such an arbitrary and fanciful distinction: the exclusion of all open market sales when the sole variable of exclusion is the identity of the seller (as in this instance, a financial institution).

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<sup>6</sup> Minn. Area Ass’n of Realtors, Twin Cities Housing Market Annual Report 2008, 2009 6 (2009). Relators understand that the values presented are not evidence. However, they are noted to illustrate that the dismissal of Relators’ claims based on the pleadings without the Tax Court seeking any data about the scope and scale of the alleged harm is unsustainable.

City Respondents can no better argue that this distinction is genuine or relevant. Indeed, they even admit that “[c]ertain bank sales may reflect market value. Others may constitute forced sales.” City Resp. Br. 31. So instead, they defend the practice of excluding bank sales by claiming that it “ensure[s] accurate and uniform valuations not impacted by recognized outlier transactions.” City Resp. Br. 28. This cannot be the case in the communities of Phillips, Camden, and Near North communities where bank sales predominate the market.<sup>7</sup> In these communities, these types of transactions *are not outliers, but the norm*, and their exclusion creates a false market that perpetuates inaccurate valuations and unconstitutionally results in differential treatment among homeowners. *See* Am. Compl. ¶¶ 128, 129, 142, 156, 160, and 170.

Finally, City Respondents argue that the exclusion of bank sales “serves the purpose of uniform taxation,” a “legitimate purpose the state can achieve.” City Resp. Br. 28. Relators do not dispute that fair taxation of property is a legitimate purpose that the state can achieve, but cannot understand how their current practices are rationally related to achieving this goal. City Respondents have given no rational reason to why open market bank sales to the detriment of certain communities is rationally related to “fair taxation of property.”

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<sup>7</sup> *See supra* note 6.

The proper question before this Court is whether it is rational, in the face of statute, appraisal authority, and industry practice, to *exclude* a large majority of open-market sales in the communities, sales which even City Respondents acknowledge “may reflect market value.” City Resp. Br. 31. Relators have alleged sufficient facts at this stage of the litigation to state a claim that it is not. Consequently, the Tax Court’s dismissal of Relators’ equal protection claims must be reversed.

**IV. RELATORS HAVE A RIGHT TO DECLARATORY AND MANDAMUS RELIEF FOR CONSTITUTIONAL VIOLATIONS INDEPENDENT OF 42 U.S.C. § 1983 AND MINNESOTA STATUTES SECTION 278.**

City Respondents’ attempts to deny Relators’ demand for declaratory relief must also be rejected. City Respondents baselessly infer that Relators’ constitutional claims cannot be sustained outside 42 U.S.C. § 1983. City Resp. Br. 15. This misstatement ignores the power of Minnesota courts to remedy Realtors’ harm.<sup>8</sup> Declaratory relief, by way of Minnesota Statutes Section 555, is proper to test the facial or as-applied constitutionality of any contract, ordinance, statute, or rule. *See* Minn. Stat. § 555.02 (2011), *Peterson v. Minn. Dept. Labor & Industry*, 591 N.W.2d 76, 78 (Minn. Ct. App. 1999); *see also* 2 Minn. Prac. C. Rules

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<sup>8</sup> City Respondents bemoan the “ill-defined” nature of Respondents’ request for declaratory relief. Unlike Respondents, Relators have not improperly taken on the duty of defining what is and is not a forced sale, preferring the judgment of this Court in a matter so wholly beyond the duties of the City Assessor.

Annotated Rule 57 (4th ed.). Courts need only consider whether the judgment will assist in clarifying and settling legal relations and will afford relief from insecurity and controversy. City Respondents rebuff this broad power by repeatedly relying on the *Fichtner v. Schiller* dicta that the UDJA “. . . is not available to test questions of valuations or assessments in real estate tax matters.” City Resp. Br. 28; *Fichtner v. Schiller*, 135 N.W.2d 877, 881 (Minn. 1965). Relators have thoroughly explained how the relief they seek does not speak to the assessment of any individual property, but rather a definitional policy adopted by the City for the purpose of revenue retention. This decision—to exclude market data of sales by financial institutions through an open market, arm’s-length transaction—has the effect of unconstitutionally burdening Relators’ communities.

City Respondents would have this Court relegate any question touching any facet of the assessment process to the scope of section 278. Theirs is the faulty premise. They contend that Relators’ claim, that the harm suffered is beyond section 278, “ignores the purpose of the statute and does not become more persuasive by sheer repetition.” City Resp. Br. 28. The same could be said of the City’s wholesale reliance on section 278 as the only proper remedy for Relators. Relators understand the purpose of section 278, and so too its limitations. *See supra* part I. These limitations clearly identify that section 278 was never intended

to remedy the type of violations alleged in Relators' Amended Complaint and does not become capable of doing so by virtue of the City Respondents' insistence.

City Respondents' reliance on *Land O'Lakes Dairy Co. v. City of Sebeka*, 31 N.W.2d 660 (Minn. 1948) and *Fichtner v. Schiller* is similarly misplaced. Those cases clearly limit declaratory relief only when section 278 is an adequate remedy. Relators do not challenge, as those petitioners did, their property being taxed or placed in a different classification. Relators challenge an impermissible legislative function being performed within the quasi-judicial assessment process (that of defining forced sales contrary to the definition of market value in Minnesota Statutes Section 273.11) and City Respondents' attempts to insulate this impermissible definition from judicial review. As such, City Respondents' contention that declaratory judgment is unavailable to Relators lacks merit. Accordingly, this Court should reverse the Tax Court's dismissal of Relators' request for declaratory judgment.

For similar reasons, the dismissal of Relators' request for mandamus relief must be reversed. In arguing that Relators "could have obtained complete relief . . . under section 278," City Respondents' ignore the fact that their practice has the effect, *even with a correction of Relators' valuations*, of skewing the taxation

system such that Relators still bear a disproportionate part of the tax burden.<sup>9</sup> A section 278 appeal is utterly impotent to remedy harm of this scope and is no remedy at all in constraining Relators to its limited relief. Only a mandamus, directing the city assessor to follow the law in section 273.11 and assign *actual market values* to all properties, could possibly result in the uniform and equitable distribution of the tax burden. For purposes of this rule 12 motion, it is notable that this defect in the section 278 process was pled with specificity in Relators' Amended Complaint. *See* Am. Compl. ¶¶ 76, 77, 78. Therefore, this Court must reverse the Tax Courts' dismissal of Relators' mandamus claims.

### 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.

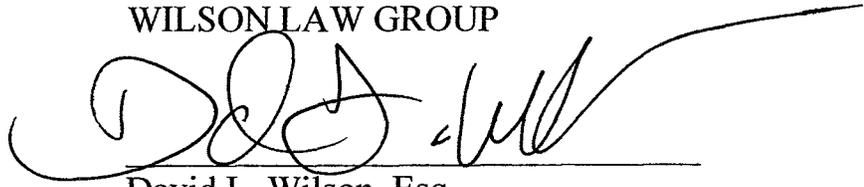
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<sup>9</sup> This occurs because the mill rate is arrived at after determining all of the tax capacity in the city, and then dividing by a budget figure. Where, as here, higher-value properties are assigned lower-than market values, and lower-value properties are assigned higher-than-market values, the mill rate will become artificially high, reflecting a burden-shifting to the lower-valued properties. This effect remains for Relators even if their assessments are reduced to market value. This is because some portion of the taxes paid on Relators' homes subsidizes the portion that is under-assessed on properties in wealthier communities.

Dated: January 16, 2018

**COUNSEL FOR RELATORS**

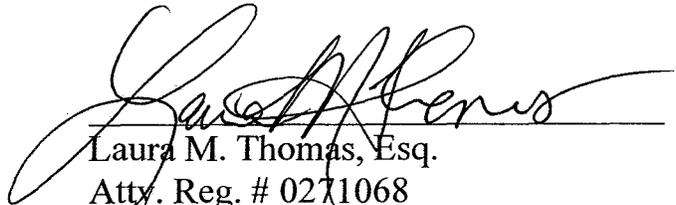
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**CERTIFICATION OF BRIEF LENGTH**

**STATE OF MINNESOTA  
IN SUPREME COURT**

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

Relators,

**CERTIFICATION OF  
BRIEF LENGTH**

v.

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

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

Supreme Court No. A11-1832

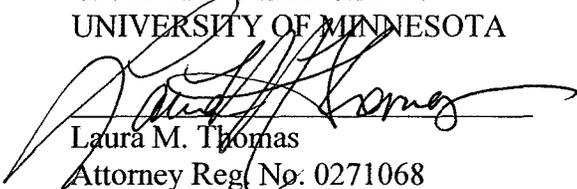
Respondents.

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Counsel for Relators hereby certify that this reply 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 5545 words. This brief was prepared using Microsoft Word 2007.

**Dated: January 16, 2012.**

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