MINNESOTA STATE LAW LIBRARY

NO. A-11-1832

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 CITY RESPONDENTS

James A. Moore (#16883X)
Assistant Minneapolis City Attorney
Gregory P. Sautter (#0326446)
Assistant Minneapolis City Attorney
Amanda Trelstad (#0390665)
Assistant Minneapolis City Attorney
Room 210, City Hall
350 South Fifth Street
Minneapolis, MN 55415
(612) 673-2063

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

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

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LEGAL ISSUES

1) Whether the Tax Court erred in dismissing Relators' Constitutional claims, declaratory judgment claims and mandamus claims for failure to state a claim upon which relief could be granted.

By Order dated August 31, 2011, the Tax Court dismissed Relators' constitutional, declaratory judgment and mandamus claims against the City Respondents for failure to state a claim upon which relief could be granted. The Order was filed September 6, 2001 and judgment was entered thereon on September 21, 2011. Relators timely filed a petition for a writ of certiorari pursuant to Minn. Stat. §271.10 on October 14, 2011.

2) Whether the Tax Court erred in dismissing Relators' claims under Minn. Stat. Ch 278 on the grounds that any such claims for 2008 and 2009 assessments were time-barred.

By Order dated August 31, 2011, the Tax Court dismissed Relators Chapter 278 petitions for the tax years 2008 and 2009 (payable 2009 and 2010) as untimely. The Order was filed September 6, 2011 and judgment was entered thereon on September 21, 2011. Relators timely filed a petition for a writ of certiorari pursuant to Minn. Stat. §271.10 on October 14, 2011.

3) Whether the Tax Court erred in dismissing Relators' claims under Minn. Stat. Ch 278 on the grounds that any such claim for 2010 assessments were improperly filed.

By Order dated August 31, 2011, the Tax Court dismissed Relators' Chapter 278 petitions for the tax year 2010 (payable 2011) as improperly filed because they

included multiple petitioners and multiple unrelated properties. The Order was filed September 6, 2011 and judgment was entered thereon on September 21, 2011. Relators timely filed a petition for a writ of certiorari pursuant to Minn. Stat. §271.10 on October 14, 2011.

STATEMENT OF THE CASE

Relators filed a 75-page (unnumbered), 30-count Amended Complaint/Petition with the Hennepin County District Court seeking relief under both State and Federal law for alleged improper assessments of their properties and those of other, as yet unidentified, property owners in their respective neighborhoods. The Amended Complaint named both the City of Minneapolis and Hennepin County as well as their respective Assessors, individually and in their official capacities, as Defendants/Respondents.

The Hennepin County Defendants/Respondents moved the District Court to transfer jurisdiction of the matter to the Tax Court. By Order dated March 4, 2011, the District Court issued an Order transferring the case to the Tax Court.

All Defendants/Respondents thereafter moved the Tax Court to dismiss the Amended Complaint pursuant to Minn. R. Civ. P. 12. The Tax Court, the Honorable Sheryl A. Ramstad presiding, issued an Order dismissing the Amended Complaint in its entirety. The Order was filed on September 6, 2011 and judgment was entered thereon on September 28, 2011. Relators filed a Petition for a Writ of Certiorari to this Court on October 14, 2011.

STATEMENT OF FACTS

Each of the named Relators owns residential property in Hennepin County. Relators claim that Respondents assessed their properties at an inflated value compared to the properties' market values. (*See, e.g.,* Am.Cmplt. ¶¶ 121, 122). Relators seek "a systemic reassessment of all residential property in the communities for tax assessment years 2008, 2009, and 2010 to correct the amount of property tax that should have (2008 and 2009), and will (2010), be collected from any individual residential property owner." (Am.Cmplt. ¶ 77).

All real property in the State of Minnesota is taxable. (Am.Cmplt. ¶ 93). The Minnesota Legislature prescribes the procedures, rates and exemptions that cities must follow when taxing real property. *See* Minn. Stat. Chs. 270-89. Because the City of Minneapolis is a city of the first class, the City of Minneapolis Assessor's Office performs the duties of the county assessor within the City. (Am.Cmplt. ¶ 98, *ref.* Minn. Stat. § 273.063).

When real property is taxed, assessors must value all property at its market value. Minn. Stat. § 273.11. Market value – a complex definition in statute – is basically an assessor's estimate of what property would be worth on the open market if sold. *See id.* By statute, market value includes the value of nearby properties, but excludes forced sales. *Id.*

January 2nd of each year is the "assessment date," meaning that assessors must base their opinions of market value on a property's worth on that date. Minn. Stat. § 273.01. (*See* Am.Cmplt. ¶ 103).

Between March and May of each assessment year, the City mails "value notices" to property owners containing the property's estimated market value (EMV), classification, the dates of the Local Board of Review and County Board of Equalization, and other information. Minn. Stat. § 273.121. (*See* Am.Cmplt. ¶¶ 13, 105, 107). These notices must be mailed out at least ten days prior to the meeting of the Local Board of Review, which meets between April 1 and May 31 each year. Minn. Stat. § 274.01. After receiving a valuation notice and before the Local Board of Review or County Board of Equalization meets, a property owner may contact the local assessor to request a change to their property's assessment informally. *See* Minn. Stat. § 273.01.

A property owner can appear before the Local Board of Review and the County Board of Equalization to contest the valuation of their property. Minn. Stat. § 274.01, subd. 1; Minn. Stat. § 274.13. Pursuant to Minnesota law, the City of Minneapolis has created a Minneapolis Board of Appeal and Equalization, made up of the standing committee on taxes, that sits as its Local Board of Review. Minn. Stat. § 274.01; Minneapolis City Charter, Ch. 5, § 3. This Board has all the powers granted to county boards of equalization under Minnesota law.

Minneapolis City Charter, Ch. 5, § 3; Minn. Stat. § 274.01, subd. 1. The Board hears and can settle the complaints of individual property owners regarding the valuation of their property. *Id.* If dissatisfied by the resolution reached by the Minneapolis Board of Appeal and Equalization, a property owner can also appeal to the Hennepin County Board of Equalization to seek further review. Minn. Stat. § 274.13.

In November of each year, the County mails "truth-in-taxation statements" to all residential property owners stating the property's EMV and estimated proposed property taxes for the coming year. Minn. Stat. § 275.065, subd. 3. (*See* Am.Cmplt. ¶ 99).

A property owner may file an "abatement" to challenge the valuation of their property and ask the county board to reduce their property's EMV or taxes that were erroneously or unjustly paid, pursuant to Minn. Stat. § 375.192, subd. 2. Applications for abatements must be approved by the county assessor, city assessor and the county auditor. *Id.*

By March 31st each year, the County mails "property tax statements" that include the property's EMV, the property's classification, and the amount of tax payable, along with other information. Minn. Stat. § 276.04, subd. 3.

A property owner may serve and file a Chapter 278 Tax Petition on or before April 30th of the year in which the tax becomes payable. Minn. Stat.

§ 278.01. Under the statute property owners can challenge their tax assessment on five different bases and the dispute is heard by a Judge of the District Court or Tax Court. *Id.* Petitioners must file with the district court administrator copies of their petition and proof of service. *Id.*

There are no allegations in the Amended Complaint that Respondents failed to mail value notices, truth-in-taxation statements or property tax statements or that Relators did not receive them. Indeed, Relators admit that the City issued each Relator a value notice and the County issued each Relator a truth-in-taxation statement. (*See* Am.Cmplt. ¶¶ 286, 296, 398, 408).

Relators instead assert that the City's value notices were deficient. Specifically, Relators complain that the City's value notices "failed to inform them that certain arms' length sales, such as, bank sales would not be included or taken into account in the assessment process." (Am.Cmplt. ¶288). Relators further allege that the value notices "failed to inform Plaintiffs that their residential property...would be assessed at a significantly higher ratio than a residential property located in another community." (Am.Cmplt. ¶ 289).

Under Minnesota law, a property tax payer can contest the valuation of his or her property in a four different ways.[1] First, before the Local Board of Review

[1] Relators agree that property owners have various methods to seek review of their property tax assessments for each year. (*See* Am.Cmplt. ¶ 108). However, Relators appear only to be aware of remedies through the Minneapolis Board of

meets, a property owner may request a change informally by contacting the local assessor. *See* Minn. Stat. § 273.01. Second, a property owner can appear before the Local Board of Review or County Board of Equalization to contest the valuation of their property. Minn. Stat. § 274.01, subd. 1; Minn. Stat. § 274.13. Third, a property owner may file an abatement pursuant to Minn. Stat. § 375.192, subd. 2, challenging the valuation of their property and seeking reduction of their property's EMV or taxes that were erroneously or unjustly paid. *Id.* Fourth, a property owner may serve and file a Chapter 278 Tax Petition to contest the valuation of their property or the inequality of the assessment, among other challenges. Minn. Stat. § 278.01.

ARGUMENT

Standard of Review

When reviewing a decision on a motion to dismiss pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief can be granted, the question before this court is whether the complaint sets forth a legally sufficient claim for relief. *Hebert v. City of Fifty Lakes,* 744 N.W.2d 226, 229 (Minn. 2008) (citing *Barton v. Moore,* 558 N.W.2d 746, 749 (Minn. 1997)). "The reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and

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Appeal and Equalization and the Minnesota Tax Court. (*See* Am. Cmplt. ¶¶ 109, 111).

must construe all reasonable inferences in favor of the nonmoving party." *Bodah v. Lakeville Motor Express, Inc.,* 663 N.W.2d 550, 553 (Minn. 2003) (citing *Marquette Nat'l Bank v. Norris,* 270 N.W.2d 290, 292 (Minn. 1978)). "The standard of review is therefore de novo." *Id.* "Statutory construction is ... a legal issue reviewed de novo." *Lee v. Fresenius Med. Care, Inc.,* 741 N.W.2d 117, 122 (Minn. 2007). "We construe statutes to effect their essential purpose but will not disregard a statute's clear language to pursue the spirit of the law." *Id.* at 123.

Summary of Argument

Each Relator and, indeed, each member of Relators' purported class, had an expedient and adequate statutory remedy available for any claimed inequities in their individual property tax assessments under Minn. Stat. §278.01. Their failure to timely and properly avail themselves of this remedy is fatal to their claims in this lawsuit. In addition, each of Relators' constitutional and common law claims fail on their merits.

I. RELATORS HAD AN ADEQUATE REMEDY UNDER MINNESOTA STATUTES §278.01 AND THEIR FAILURE TO AVAIL THEMSELVES OF THIS REMEDY DEFEATS THEIR PRESENT CLAIMS.

Under Minnesota law, a petition under Minn. Stat. Ch. 278 is the appropriate remedy for challenging property taxes on five statutorily enumerated bases, namely allegedly improper valuation, classification and exemption, unequal assessment or illegality. *See* Minn. Stat. § 278.01; *Programmed Land, Inc., v.*

O'Connor, 633 N.W.2d 517, 523 (Minn. 2001). Relators seek to challenge the valuation of their properties on the grounds that the City's assessment practices resulted in unequal assessment of their properties when compared to those in other parts of the City. Their challenges should have been brought as Chapter 278 petitions.

Chapter 278 benefits both tax payers and local governments – providing tax payers with an efficient mechanism to object to property taxes but also allowing for the prompt collection of taxes and ensuring a reliable stream of revenue for local governments. *See Programmed Land, Inc.*, 633 N.W.2d at 525-26. The statutory framework requires that these petitions must only challenge one assessment year and must be filed by April 30th of the year that the tax becomes payable. Minn. Stat. §§ 278.01, subd. 1(c), 278.02. Despite this clear guidance, Relators failed to timely pursue Ch. 278 petitions as to taxes payable in 2009 and 2010. They also failed to properly pursue Ch. 278 petitions for taxes payable in 2011. Relators now attempt recast their foregone statutory remedies under the rubric of constitutional and common law claims. Allowing such claims to proceed would eviscerate the statutory process.

A. Relators' claims fall within Minn. Stat. Chapter 278.

Minn. Stat. § 278.01 provides, in relevant part:

> **278.01**. Defense or objection to real and personal property taxes; service and filing.

> **Subdivision 1. Determination of validity.** (a) Any person having personal property, or any estate, right, title, or interest in or lien upon any parcel of land, *who claims that such property has been partially, unfairly, or unequally assessed in comparison with other property in the (1) city... or that the parcel has been assessed at a valuation greater than its real or actual value, or that the tax levied against the same is illegal, in whole or in part* ... may have the validity of the claim, defense, or objection determined by the district court of the county in which the tax is levied or by the Tax Court by serving one copy of a petition for such determination upon the county auditor, one copy on the county attorney, one copy on the county treasurer, and three copies on the county assessor. ...
>
> (c) For all counties, the petitioner must file the copies with proof of service, in the office of the court administrator of the district court on or before April 30 of the year in which the tax becomes payable. A petition for determination under this section may be transferred by the district court to the Tax Court....

(emphasis added).

This statutory procedure was available for Relators to challenge their assessments in 2008, 2009 and 2010. They chose not to do so. Instead, they initiated the instant action which seeks common law remedies. The Tax Court found that Relators' failure to pursue their statutory remedy foreclosed their constitutional and common law claims. Relators now argue that "[t]he Tax Court erroneously categorized Relators' claims as falling within the 'illegality' or 'assessment' prong of section 278." Relators' Br. at 14 (sic). The Tax Court did not err in this determination.

B. Despite their protestations to the contrary, Relators' claims are that their assessments were illegal.

Relators first argue that their claims are somehow not claims of illegality such that the statute would apply to their claims. They argue that the Tax Court erred in conflating "illegality" under § 278.01 with "unconstitutionality." Relators' Br. at 17. They seek to distinguish between a claim that a tax is *per se* illegal from their supposed claim that the City's assessors acted illegally in levying a legal tax. Relators' Br. at 16. This purported distinction finds no support in the statute or case law.

Relators would have this Court find that claims that the assessor violated the statute in assessing a particular property are not claims "*that the tax levied... is illegal in whole or in part.*" However, this Court has held that "[t]he express wording of section 278.01 supports a broad interpretation of its scope..." *Programmed Land,* 633 N.W. at 526. This direction cannot be reconciled with Relators' reading of the statute.

Relators' present challenge to the City's assessment process apparently assumes that all bank sales are improperly excluded from the calculation of market value as "forced sales." Given the present posture of this case, this assumption has not been tested. However, even assuming that this assumption is true, Relators have failed to explain why this allegation is not properly characterized as "illegality" under § 278.01. Relators claim that the City Assessor is failing to

follow the law as they read it by failing to include bank sales in assessment calculations. They claim that this approach to assessment violates terms of the statute and thus seek a Declaratory Judgment "...to establish a binding definition of market value...." Relators' Br. at 23. Relators offer no support for their claim that they would have been precluded from bringing this challenge under the statute. To the contrary, a claim that certain local bank sales should have been included in the valuation of their individual properties because the bank sales were not forced sales and were actually reflective of the market value is exactly the sort of claim that is routinely made under Ch. 278.

The statutory purposes of promoting prompt collection of taxes and avoiding a multiplicity of suits would not be served by Relators' cramped reading of the term "illegality" in the statute. On Relators' reading, the statute only applies to claims that the taxing authority lacks authority to impose a tax. Nothing in the language of the statute, nor the case law interpreting it, leads to this conclusion. Relators assertion that their Amended Complaint does not involve claims of illegality must be rejected.

C. Relators' lawsuit challenges the fairness or equality of their assessments.

Relators next seek to challenge the Tax Court's conclusion that Relators' action is "related to the assessment process" such that Ch. 278 provides the appropriate remedy. Relators' Br. at 18. Again, Relators' claimed distinction is

illusory. Relators argue that § 278.01 is "...limited to the determination of *a property's* taxable value" and they attempt to distinguish their action as involving *multiple* properties. Relators' Br. at 18[2]. Their Amended Complaint, they argue, seeks uniformity across the entire city...[and] cannot be encompassed by section 278." *Id.* This argument ignores the fact that each Relator and each member of their purported class had an available remedy under § 278.01 for the alleged improper valuation of their individual properties. Relators could have challenged the assessment of their individual properties, but did not do so. They offer no reason why they should now be permitted to conglomerate those missed claims into a new cause of action

D. Relators fail to distinguish their claims in this lawsuit from those under Minn. Stat. Ch. 278.

Minn. Stat. § 278.01 defines the *types of claims* to which it applies. Relators' arguments fail to acknowledge this fact and instead focus on the alleged scope of the problem they claim to have identified and the breadth of the remedies they seek. In essence, Relators' arguments are not that their claims are not "related to the assessment process", but rather that the remedy they seek is not provided for in the statute. This argument misses the point. The statute defines the types of

[2] Relators' claim in this regard is inconsistent with their argument later in their brief that the Amended Complaint serves as a proper Ch. 278 petition for the individual properties identified in the Amended Complaint. See, Relators' Br. pp. 36-41.

claims that must be made within its strictures and provides statutory remedies to taxpayers. If Relators are correct in their criticism of the City's assessment process, they each could have each obtained relief by timely pursuing a Ch. 278 petition. They missed that opportunity. It is no answer to the statutory limitations to say that Relators' claims are covered but they wish to establish a remedy that the legislature has failed to provide. Relators' attempt to recast their claims as constitutional, Declaratory Judgment or Mandamus must be rejected.

II. RELATORS FAIL TO STATE CLAIMS UNDER THE UNITED STATES OR MINNESOTA CONSTITUTIONS.

A. Relators' constitutional claims should be precluded by Minn. Stat. Ch. 278.

Relators also argue generally that *Programmed Land* "does not prevent Relators' constitutional claims from being brought outside of section 278 [sic]." Relators' Br. at 14. Relators are correct that *Programmed Land* does not directly hold that constitutional claims are foreclosed by § 278.01. *Programmed Land,* 633 N.W.2d at 529-530 (As to claims of equal protection under the Fourteenth Amendment to the U.S. Constitution and the Uniformity Clause in Article X, Section 1 of the Minnesota Constitution, "[w]e do not reach the issue of whether respondents may proceed independently under either theory because we conclude as a matter of law that the class rate error did not violate respondent's federal and state equal protection rights.").

However, Relators wholly fail to explain how their purported constitutional claims differ from claims that clearly could be made within the Ch. 278 framework. Relators claims here are that their property was unfairly or unequally assessed in comparison with other property in the city; claims that fall squarely within the statute. Nor have Relators explained *why* they should be allowed to proceed with constitutional claims in these circumstances. Chapter 278 establishes a statutory remedy for any Uniformity Clause claims by taxpayers. The remedy is simple and efficient. It advances the legitimate governmental interests of assuring timely collection of taxes while protecting the constitutional rights of citizens. There is no reason to believe that the legislature intended to preserve an independent constitutional cause of action and no reason for this Court to recognize such an action. This Court should extend the holding of *Programmed Land* and find that Minn. Stat. Ch. 278 is the exclusive remedy for Uniformity Clause challenges to local property tax assessments.

B. Relators' claims pursuant to 42 U.S.C. § 1983 are barred by the Tax Injunction Act.

Relators have wholly failed to address the impact of the Tax Injunction Act on their purported United States Constitutional claims. The Amended Complaint alleges violations of their Equal Protection and Due Process rights under the United States Constitution through 42 U.S.C. § 1983. The Tax Court dismissed these claims finding that the Tax Injunction Act, as interpreted by the courts,

defeats Relators' United States Constitutional claims. Relators have not briefed their due process claims and have apparently abandoned them. They do continue to pursue claims, however, under the Equal Protection Clause of the United States Constitution.[3]

The Tax Injunction Act, 28 U.S.C. § 1341, bars federal courts from considering any § 1983 claim challenging a state tax that seeks injunctive relief. The Act states:

> The district courts shall not enjoin, suspend, or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

28 U.S.C. § 1341. Federal courts also must not issue declaratory relief in state tax cases where there is an adequate state law remedy available to the taxpayer. *See Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 300-01 (1943).

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[3] Relators brief makes no reference to 42 U.S. C. § 1983. This failure appears to acknowledge that Relators' § 1983 claims are defeated by principles of comity and case law interpreting the Tax Injunction Act. Yet, Relators continue to assert equal protection claims under the United States Constitution. *See, e.g.* Relators' Br. at 30 ("like the uniformity clause, the equal protection clause of the Fourteenth Amendment to the Federal Constitution forbids the imposition of unequal tax burdens..."). This incongruity can only be explained by assuming that Relators believe that an equal protection claim can be brought directly under the United States Constitution, rather than through § 1983. Of course, to the extent that they believe this, they are wrong. Section 1983 "is not itself a source of substantive rights," but merely provides "a method for vindicating federal rights elsewhere conferred." *Graham v. Connor,490 U.S. 386, 393-394 (1989)* (citing, *Baker v. McCollan,* 443 U.S. 137, 144, n. 3 (1979)).

Section 1983 claims for damages in state tax cases were held improper in *Fair Assessment in Real Estate Assn. v. McNary*, 454 U.S. 100, 102 (1981). The Supreme Court affirmed dismissal of the action, which sought compensatory and punitive damages for deprivation of equal protection and due process rights when state taxes were allegedly assessed unequally. *Id.* at 105-07. The Court reasoned that the principle of comity bars money damages from federal courts in tax matters under § 1983 where there is a plain, adequate and complete state remedy. *Id.* at 116.

In *National Private Truck Council, Inc. v. Oklahoma Tax Com'n*, the Supreme Court extended the prohibition of § 1983 actions regarding state tax challenges to state courts. 515 U.S. 582, 589 (1995). In that case, plaintiffs brought a class action in state court challenging state taxes under § 1983, seeking injunctive and declaratory relief. *Id.* at 583-84. The United States Supreme Court affirmed the Oklahoma Supreme Court's conclusion that neither injunctive nor declaratory relief is available in tax cases under a § 1983 theory, even if brought in state court, when there is an adequate legal remedy. *Id.* at 589. "[W]e hold that § 1983 does not call for either federal or state courts to award injunctive and declaratory relief in state tax cases." *Id.* Thus, no plaintiff may seek injunctive or declaratory relief in a state tax case under § 1983 when there is an adequate remedy through state law.

Since *National Private Truck*, state courts have further recognized that there is no § 1983 claim for damages in state tax cases where an adequate state law remedy exists. *See Gen. Motors Corp. v. City of Linden*, 671 A.2d 560, 565 (N.J. 1996), *cert. denied* 519 U.S. 816 (1996); *Gen. Motors Corp. v. City & County of San Francisco*, 69 Cal.App.4th 448, 457-61 (Cal. Ct. App. 1999); *PPG Industries, Inc. v. Tracy*, 659 N.E.2d 1250, 1252 (Ohio 1996); *Murtagh v. County of Berks*, 715 A.2d 548, 550-51 (Pa. Commw. Ct. 1998). In *Gen. Motors Corp. v. City of Linden*, the Supreme Court of New Jersey found:

> When read in light of *National Private Truck*, we believe that *Fair Assessment* is best understood as limiting not the jurisdiction of federal courts, but the availability of section 1983 actions in any court, federal or state. As we read it, *National Private Truck* states that a violation of the United States Constitution arising out of an assessment of a state tax generally will not give rise to a section 1983 action when the state has provided an adequate legal remedy. In sum, both state and federal courts 'must refrain from granting federal relief under § 1983 when there is an adequate legal remedy.' [*National Private Truck*], 115 S.Ct. at 2357.

671 A.2d at 564-65. *See Allright Parking Minnesota, Inc. v. County of Ramsey*, No. C2-01-4979, 2002 WL 549082, *3-4 (Minn.Tax March 27, 2002).

The courts have good reason to decline to entertain the possibility of federal relief under § 1983 in state tax matters. Were it not for the Tax Injunction Act and the related doctrine of comity, state tax administration might be thrown into disarray, and taxpayers might escape the ordinary procedural requirements imposed by state law. *See Empress Casino Joliet, Corp., v. Baltimore Racing*

Club, Inc., No. 09-3975, 2011 WL 2652201, * 2 (7th Cir. July 8, 2011). During the pendency of the lawsuit, the collection of revenue under the challenged law might be obstructed, with consequent damage to the local government. *Id.*

Tax appeal remedies in Minnesota have been ruled to be plain, speedy and efficient.[4] Chapter 278 provides "an adequate, speedy, and simple remedy for any taxpayer to have the validity of his claim, defense or objections determined by the district court." *Land O'Lakes Dairy Co. v. Village of Sebeka*, 31 N.W.2d 660, 665 (Minn. 1948). "Viewing c. 278 in its entirety, in the light of its plain terms and the imperative tenor of its various provisions, we conclude that, in the interest of a better tax-collection practice, the legislature intended that it should provide the exclusive means by which a taxpayer may assert the defense of an unfair or unequal assessment." *State v. Elam*, 84 N.W.2d 227, 281 (Minn. 1957). The Minnesota Supreme Court has held "chapter 278 provides the exclusive means to bring an action in court to challenge an assessment, one of the five listed types of challenges" listed in Minn. Stat. § 278.01. *Programmed Land, Inc.*, 633 N.W.2d at 523. Relators allege that their properties were unequally assessed, thus Chapter 278 provides the exclusive and adequate state law remedy to challenge the amount of Relators' assessments.

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[4] The U.S. Supreme Court clarified that there is no significant difference between remedies that are "plain, adequate and complete" as articulated by the courts and remedies that are "plain, speedy and efficient" as articulated by § 1341. *Fair Assessment*, 454 U.S. at 115, n.8.

Relators have not argued that they should be allowed to proceed with their § 1983 claims because Minnesota's tax appeal remedies are constitutionally inadequate. Relators have not challenged the constitutionality of any statute.

Courts only require minimal procedural criteria to constitute a "plain, speedy and efficient" state law remedy. *See Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 512 (1981) (state tax refund procedure was plain, speedy and efficient even though it required an approximately two-year wait, a potential multiplicity of suits and no availability of interest on refund). Courts must narrowly construe the adequate remedy exception to the Tax Injunction Act. *California v. Grace Brethren Church*, 457 U.S. 393, 413 (1982). The Supreme Court has described an acceptable state law remedy as one where "it appears that the state legislature has provided that on payment of any challenged tax to the appropriate state officer, the taxpayer may maintain a suit to recover it back." *See Great Lakes*, 319 U.S. at 301.

In Minnesota, each statutory remedy (three administrative and one legal) outlined above provides either pre-deprivation or post-deprivation relief to tax payers who challenge their assessment. A property tax payer who challenges the value of their property and prevails is entitled to a refund with interest. Minn. Stat. § 278.08. Additionally, appeal from a decision of the Tax Court is taken directly to this Court. Minn. Stat. § 271.10. The remedies under Minnesota law are more than adequate and preclude consideration of a § 1983 claim.

In the present matter, any § 1983 cause of action, including Relators' claim for violation of Equal Protection under the Federal Constitution, fails to state a claim. There is an adequate state law remedy, a Ch. 278 petition, which the Relators could have pursued. Under *National Private Truck* and other United States Supreme Court precedent, Relators cannot pursue injunctive or declaratory relief in any purported § 1983 claims. Relators' purported claims for damages are barred under this same rationale. Therefore, Relators' § 1983 claims fail to state a claim upon which relief can be granted.

C. Relators' equal protection claims fail on their merits as a matter of law.

Even if the Court entertains Relators' state equal protection claim outside Minn. Stat. § 278, Relators have failed to adequately plead their claim. In an equal protection analysis under the Minnesota Constitution, "[e]qual protection requires that persons similarly situated be treated similarly." *Lidberg v. Steffen,* 514 N.W.2d 779, 784 (Minn. 1994). The difference between classes need not be great, and if any reasonable distinction can be found, a court should sustain the classification. *In re McCannel*, 301 N.W.2d 910, 917 (Minn. 1980).

If persons are similarly situated, they may be treated differently when a distinction in treatment "bears a rational relation to a legitimate government objective." *Bannum, Inc. v. City of St. Charles, Mo.*, 2 F.3d 267, 271 (8th Cir.1993). The separate Minnesota rational-basis test requires that:

> (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.

State v. Russell, 477 N.W.2d 886, 888 (Minn. 1991). However, the Court has acknowledged that the Minnesota three-part test has been applied inconsistently since its creation in 1979, and that there is no apparent logic when to apply the Minnesota test versus the federal test. *State v. Cox*, 798 N.W.2d 517, 525 (Minn. 2011) (Strass, J., concurring) ("our equal protection jurisprudence is inconsistent and confusing"), 798 N.W.2d at 531 (Paul Anderson, J., dissenting) ("We have applied our three-part test to equal protection claims under the Minnesota Constitution since 1979. At times, however, we have applied the federal rational basis test to such claims.").

When court's apply the Minnesota rational basis test, the key distinction between the Minnesota test and the federal test is that Minnesota Courts "have been unwilling to hypothesize a rational basis to justify a classification, as the more deferential federal standard requires." *Greene v. Comm'r of Minnesota Dept. of Human Services*, 755 N.W.2d 713, 729 (Minn. 2008), *quoting State v. Garcia,* 683 N.W.2d 294, 299 (Minn. 2004). "Instead, [the Court has] required a reasonable

connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals." *State v. Russell,* 477 N.W.2d 886, 889 (Minn. 1991).

Here, Relators' equal protection claim fails because they have not alleged facts to establish they are similarly situated to other homeowners who were treated differently and because the facts asserted by Relators do not show an absence of a rational basis. Thus, even if this Court addresses Relators' equal protection claim on its merits, the Complaint should be dismissed.

1. Relators have failed to allege facts which show that they are similarly situated to other homeowners.

Before a Court will even consider an equal protection challenge, it is the burden of the Plaintiff to "show that similarly situated persons have been treated differently." *State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011) (quoting *Paquin v. Mack,* 788 N.W.2d 899, 906 (Minn. 2010)). The Court imposes the threshold of similar situation "because the guarantee of equal protection does not require that the State treat persons who are differently situated as though they were the same." *Id.* Equal protection claims are routinely rejected when "a party cannot establish that he or she is similarly situated to those whom they contend are being treated differently." *Id.* "Minnesota Courts follow federal law in determining whether groups are similarly situated." *State v. Cox*, 798 N.W.2d at 521. "The focus, then,

in determining whether two groups are similarly situated is whether they are alike in all relevant respects." *Id.* at 522.

a. Relators are not similarly situated among themselves.

Relators are not even similarly situated among themselves. Some Relators have alleged that they wish to represent a class of homeowners who purchased their properties from banks or other financial institutions. Amended Complaint, ¶¶ 37, 50, 55, 66. The "bank class" property owners also seek to represent homeowners from defined areas of the City. Am. Compl., ¶¶ 36, 49, 54, 65. Yet other Relators seek only to represent homeowners based on location, but not on the factor of bank sale or financial institution purchase. Am. Comp., ¶¶ 41, 45, 58, 62, 65. Based on the allegations in the Amended Complaint alone, Relators cannot meet their burden to show that they are similarly situated in every relevant respect, the threshold requirement of an equal protection analysis.

b. Relators have not alleged facts sufficient to demonstrate that they are similarly situated to other residential property owners in Minneapolis.

Relators have not alleged in their Amended Complaint that they are similarly situated in relevant respects to other residential property owners in Minneapolis. Instead, they make conclusory legal allegations in their causes of action that they have been treated differently than other "similarly situated" residential property owners.

> Defendants' tax assessment scheme and methodology for assessing residential real property resulted in Plaintiffs being treated differently from other similarly situated residential property owners in the Defendant City -- a single taxing district.

Am. Comp., ¶ 256; *see also* Am. Comp. ¶¶ 265, 277, 367, 377, 389, and 477 (using similar, but not identical language). While notice pleading permits a plaintiff to allege the mere bare bones of an allegation and survive a motion to dismiss, *see Barton v. Moore*, 558 N.W.2d 746, 749 (Minn.1997), Realtors have failed even to meet their low burden. Rather, they allege similar situation, but do not attempt even to identify the similarly situated property owners.

A closer look at Relators' theory of the case demonstrates that other residential property owners are not similarly situated. Specifically, Relators allege that they have been treated differently because bank and financial institution sales are not included in the calculation of their residential property values. Relators' Br., at 29-32. However, the Amended Complaint fails to allege facts showing that Relators and their neighborhoods are similarly situated to residential property owners in other areas of the City. Relators do not allege in their First Amended Complaint that other residential property owners benefited from the City's alleged failure to consider bank sales. Nor do Relators allege that there are even a significant number of bank sales, nor do they allege a lack of bank sales in the parts of the City supposedly benefitted by the City's assessment system. Without some clarification as to whom the alleged bank sales affect, Relators cannot show

that they are similarly situated to the allegedly, but unidentified, benefitted residential property owners in Minneapolis.

2. Relators have not alleged facts to establish that they were treated differently.

It is Relators' burden to "show that similarly situated persons have been treated differently." *State v. Cox*, 798 N.W.2d at 521 (Minn. 2011). Under Relators' theory of the case articulated in their brief, they cannot show that they have somehow been treated differently than other residential property owners in Minneapolis. Minn. Stat. § 272.03, subd. 8 precludes the use of forced sales and sales not made at arm's-length in calculating a property's estimated market value. If, as Relators allege, Respondents systematically excluded bank sales and financial institution sales in their calculation of property values pursuant to that provision, then Relators have been treated the same as all other residential property owners in the City. In fact, the alleged method of systematic exclusion of a class of sales that potentially impacts all residential property owners is not a differential in treatment, it is evidence that all residential property owners, regardless of location, have been treated the same. Without some allegation of different treatment, Relators cannot sustain an equal protection claim under the Minnesota or the federal law.

3. Even were the Court to deem the Amended Complaint sufficient in its allegation of similar situation, the Relators have not alleged facts sufficient to show that no rational basis exists.

Under both the federal and Minnesota rational basis tests, Relators have failed to allege facts sufficient to establish that no rational basis exists to justify the City's methodology of assessing properties. If, as Relators allege, Patrick Todd and the City Assessor's Office systematically excluded bank sales and financial institution sales from their assessment of residential properties, then a rational basis exists to support the practice. Relators' Br. at 32.

First, the challenged practice is rooted in statute. Minn. Stat. § 273.11 requires that all property should be valued at its market value. "Market value" is defined as:

> the 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. (emphasis added). The definition specifically excludes transactions that are not at arms-length or made by forced sale. If, as alleged, bank sales have been excluded, they have been excluded to comply with the statute to exclude forced sales and those not made at arm's-length.

a. The distinction between forced sales and arm's-length transactions is neither arbitrary nor fanciful.

Element one of the Minnesota three-part test is fulfilled by the City's alleged practice. *See State v. Russell,* 477 N.W.2d at 888 ("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"). The exclusion of transactions not of arm's-length and forced sales is neither arbitrary nor fanciful. It is a practice dictated by Minn. Stat. §§ 272.03, subd. 8, and 273.11. Banks who obtain properties through foreclosures are often deemed to have only a motivation to recover their investment, or reduce their losses. The challenged practice exists to ensure that market valuations are fair and uniform and not unduly affected by outlier sales.

b. The distinction serves to provide accurate valuations.

Element two of the Minnesota test is met as well. *See State v. Russell,* 477 N.W.2d at 888 ("the classification must be genuine or relevant to the purpose of the law"). The purpose of assessment is to provide a means to tax real property in Minnesota.

> All real and personal property in this state, and all personal property of persons residing therein, including the property of corporations, banks, banking companies, and bankers, is taxable, except Indian lands and such other property as is by law exempt from taxation.

Minn. Stat. § 272.01. Excluding transactions not of arm's-length and forced sales serves that purpose because it helps ensure accurate and uniform valuations not impacted by recognized outlier transactions. Given the alleged practice, and the purpose it serves, element two of the test is met.

c. The exclusion of certain transactions serves the purpose of uniform taxation

Finally, element three of the Minnesota test is met because fair taxation of property is a legitimate purpose the state can achieve.

III. RELATORS DO NOT STATE A CLAIM FOR DECLARATORY JUDGMENT.

A. Relators' claims for declaratory relief are precluded by Minn. Stat. Ch. 278.

Relators seek to bring a variety of claims under the Uniform Declaratory Judgments Act ("UDJA"), Minn. Stat. Ch. 555. Many of Relators' purported causes of action seek to vindicate constitutional rights through the UDJA. (Am.Cmplt. Counts 1, 4, 5, 8, 14, 17, 18, 21, 22, 27 and 28) Other claims ask the Court for declaratory judgment that Respondents have violated Minnesota law. (Am.Cmplt. Counts 10, 11, 23, 24, 29 and 30). It has been long established that the UDJA "....is not available to test questions of valuations or assessments in real estate tax matters." *Fitchner v. Schiller*, 135 N.W.2d 877, 881 (Minn. 1965).

This Court specifically addressed the non-availability of the UDJA to challenge taxes in *Land O'Lakes Dairy Co. v. City of Sebeka*, 31 N.W.2d 660, 662 (Minn. 1948), concluding:

> In order that there shall be no future confusion on this particular point of the law, we hold that in enacting M.S.A. c. 278 it was the intention of the legislature to provide an adequate, speedy, and simple remedy for any taxpayer to have the validity of his claim, defense, or objections determined by the district court in matters where the taxpayer claims that his real estate has been partially, unfairly, or unequally assessed, or that it has been assessed at a value greater than its real or actual value

Id. at 665. The *Land O'Lakes* court determined that, in real estate tax matters, Minnesota Statutes Chapter 278 is the tax payer's remedy and "the Uniform Declaratory Judgments Act[] is not available...as an alternative remedy." *Id.*

Despite this clear guidance, Relators persist in their pursuit of a declaratory judgment. They claim that *Land O'Lakes* is inapplicable "[o]nce Relators' claims are properly viewed outside of the scope of section 278 [sic]." Relators' Br. at 22. Here, they simply repeat their argument that Ch. 278 shouldn't apply because "...the problem is *so* systematic that it cannot be governed nor remedied by the statutory procedure." *Id.* (emphasis in original). This argument is entirely dependent upon the faulty premise that the individual remedies proscribed by the legislature under Ch. 278 do not apply if a property owner suspects that an error has been made in setting his or her property's EMV and that this same error may

have affected other property owners as well. This argument ignores the purpose of the statute and does not become more persuasive by sheer repetition.

B. Relators' declaratory judgment claims also fail on the merits.

Relators request for declaratory relief is ill-defined. They seek "...to establish a binding definition of market value valid for subsequent years." Relators' Br. at 23. They have failed to articulate, however, what specific definition they seek. Citing *Hous. and Redev. Auth. in and for the City of Minneapolis v. Beberman,* 183 N.W.2d 295 (Minn. 1971), Relators argue that bank sales cannot be properly characterized as forced sales. Apparently, then, they would have this Court exclude all bank sales from the definition of "forced sales" under the statutory definition of market value. This argument misreads *Beberman* and invites the Court to limit the discretion of tax assessors in determining whether a particular sale is a "forced" sale, which should not be considered in establishing market value of neighboring properties.

Relators' reliance on *Beberman* is misplaced. *Beberman* involved an evidentiary question of whether the sale price of a property purchased from a bank should come into evidence to help establish market value in a condemnation proceeding. The *Beberman* court ruled that the district court did not err in allowing the evidence under the circumstances. This holding is a far cry from the proposition for which Relators offer *Beberman.*

Relators claim that *Beberman* established a blanket rule that a bank sale can never be characterized as a "forced sale." *Beberman* will not bear this heavy weight. Properly read, *Beberman* stands for the proposition that a bank sale *may* be evidence of market value. This reading is entirely consistent with the legislature's exclusion of "forced sales" from the calculation of market value for tax assessment purposes. Certain bank sales may reflect market value. Others may constitute forced sales. The Assessor exercises discretion in determining which bank sales ought to be included in the calculation of market value and which bank sales were "forced." If a property owner believes that the Assessor has erred in this determination, the taxpayer has the ability to challenge the determination through a valid and timely Ch. 278 petition. In short, the system works precisely as the legislature has dictated, and no declaratory judgment is necessary.

IV. RELATORS FAIL TO STATE A CLAIM FOR MANDAMUS.

A. Relators' claim for mandamus relief are precluded by Minn. Stat. Ch. 278.

Mandamus is an extraordinary legal remedy. *State v. Pero*, 590 N.W.2d 319, 323 (Minn. 1999). The authority to issue a writ of mandamus is statutory and governed by Minn. Stat. § 586.01, *et seq. In re State v. Wilson*, 632 N.W.2d 225, 227 (Minn. 2001). According to this Court: "[t]he two primary uses of mandamus are (1) to compel performance of an official duty clearly imposed by law and (2) to compel the exercise of discretion when that exercise is required by law." *Mendota*

Golf LLP v. City of Mendota Heights, 708 N.W.2d 162, 171 (Minn. 2006) (citing Minn. Stat. §§ 586.01-586.12 (2004); *Northern States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004)). Mandamus by definition only applies to non-discretionary acts. *Pigs R Us, LLC,* 770 N.W.2d 212, 217 (Minn. Ct. App. 2009).

In order to be entitled to mandamus relief Relators must show 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. App. 2000). Mandamus "shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law." Minn. Stat. § 586.02.

Since Ch. 278 provides a recognized remedy for Relators' claims, Relators fail the third element of a claim for mandamus. Relators' again argue that the scope of the remedy they seek means that the relief that was available to each of them under Ch. 278 was inadequate. As argued above, each Relator and any member of their purported class could have obtained complete relief for any alleged inequities in valuation if they had properly pursued petitions under §278.01. On this basis alone, Relators' mandamus claims should be dismissed.

B. Relators' mandamus claims also fail on the merits.

"The clear legal duty to act which evokes a right to mandamus, *does not rise with respect to an act that principally involves the exercise of judgment and discretion.*" *Mendota Golf*, 708 N.W.2d at 179 (internal citations omitted) (emphasis added). "Mandamus does not lie for the mere error in the exercise of discretion." *Id.* (citing *Zion Evangelical Lutheran Church of Detroit Lakes v. City of Detroit Lakes*, 21 N.W.2d 203, 205 (1945)).

The acts of the City Assessor, while guided by statute, are fundamentally discretionary acts. "The assessor must be given reasonable latitude in the exercise of his sound judgment in determining such values." *State of Minnesota v. Fed. Reserve Bank of Minneapolis*, 25 F.Supp. 14, 20 (D. Minn. 1938). "[T]he assessor must determine to the best of his judgment from all the factors present the true value of such property." *Id.* at 18. This type of judgment, on a property-by-property basis, or on a City-wide basis is a clear exercise of discretion. As a result, mandamus will not lie.

Relators do not plead and cannot show the essential elements of a mandamus action. Respondent Todd has not failed to do anything which this Court could require him to do. Relators do not quibble with whether or not Respondent Todd conducted his assessment of their properties as he was required to by law. Rather, their concern is with the ultimate valuation reached by the City Assessor. Relators

admit in their Complaint that the City Assessor *performed* his duty imposed by law to assess properties in the City. (Am. Comp. ¶ 12, 13). Relators fail to allege facts that meet the first element of a mandamus analysis – failure to perform a duty clearly imposed by law.

V. RELATORS' CLAIMS FOR DAMAGES ARE BARRED BY IMMUNITY.

Relators wholly fail to address the applicability of Minn. Stat. § 466.03. Minn. Stat. § 466.02 establishes liability for tort claims against municipalities, their officers, employees and agents.

> Subject to the limitations of sections 466.01 to 466.15, every municipality is subject to liability for its torts and those of its officers, employees and agents acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.

Minn. Stat. § 466.02.

By statute municipalities are immune from liability when a party brings "[a]ny claim in connection with the assessment and collection of taxes." Minn. Stat. § 466.03, subd. 3. *See Loven v. City of Minneapolis*, 639 N.W.2d 869, 871 (Minn. 2002) (citing Minn. Stat. § 466.03, subd. 3 (1998)) (a city remains immune from liability for claims in connection with the assessment and collection of taxes). Thus, Respondents hold immunity with regard to any tort claims or damages alleged by Relators.

In paragraphs 35 and 36 of the Prayer for Relief section of the Amended Complaint, (page number 74, as counted by the City Attorney's Office) Relators claim compensatory damages under state law. Respondents are immune from liability under Minn. Stat. § 466.03, subd. 3.

VI. THE TAX COURT DID NOT ERR IN DISMISSING RELATORS' 2008 AND 2009 CHAPTER 278 PETITIONS AS UNTIMELY.

Relators' Amended Complaint seeks to challenge, among other years, assessments made in 2008 (payable 2009) and 2009 (payable 2010). Relators filed their original Complaint in this matter on November 7, 2010, although it was not served in the manner required by Chapter 278. After Respondents served a Notice of Motion and Motion to Dismiss that identified that deficiency in service, Relators served the Amended Complaint pursuant to Minn. Stat. §278.01, subd. 1(a), on or about December 2, 2010. Relators' "petition" is clearly untimely as to the 2008 and 2009 assessments.

Relators' claimed ignorance of the basis for their assessments in prior tax years does not excuse their failure to pursue their statutory remedies. "[A] person who pays an illegal or irregular tax, even if ignorant that the tax is illegal or irregular, is not entitled to recover the tax in equity when that person has a statutory remedy by review, appeal or defense to proceedings to enforce the tax." *Programmed Land, Inc.,* 633 N.W.2d at 522 (citing *Gould v. Bd. of Comm'rs of Hennepin County*, 79 N.W. 303, 303 (Minn. 1899)). Minn. Stat. Ch. 278 provided

a process to challenge any alleged issues in the assessment of Relators' properties in past years. Relators failed to file petitions in 2008 and 2009, and they cannot resuscitate claims from those tax years now.

VII. THE TAX COURT DID NOT ERR IN DISMISSING RELATORS' 2010 CHAPTER 278 PETITIONS AS IMPROPERLY FILED.

As for the 2010 (payable 2011) taxes, although the Amended Complaint was timely served as a Chapter 278 petition, the Tax Court properly ruled that the pleading is fatally deficient because it includes multiple petitioners. Tax Court slip op., Relators' Add. at 67 (citing *Rau v. County of Kandiohi,* 1987 WL 5144 (Minn. Tax 1987) (petitioners must file their petition individually, not as a group)). Relators argue that Minn. Stat. §278.01 does not specifically limit the number of properties that can be included in a petition. This argument ignores the language of § 278.01 that any person having an "...interest in or lien upon *any parcel of land...*" may challenge the assessment of "...such property." This language is clearly limiting and precludes the multiple, unrelated properties, with separate owners being included in a singe petition.

Relators cite the provisions of § 278.02 that allow a single petitioner to include his/her multiple properties a single petition. Contrary to Relators' belief, this specific authorization does not support their argument about the scope of §278.01. The legislature specifically addressed the question of a single property owner filing a single petition for his or her multiple properties. Presumably, this

legislative judgment was made for the convenience of the tax payer. However, the legislature did not allow multiple tax payers to file a single petition for unrelated properties, likely in deference to the Tax Court. Adopting Relators' reading of the statute would unduly burden the Tax Court.

To support their argument that their 2010 petitions were properly filed, Relators also cite cases where multiple petitioners claimed interest in a single property or where the Tax Court consolidated separate petitions for hearing. Each of these authorities is distinguishable and none directly support Relators' arguments or overrule *Rau*. This Court should dismiss Relators claims for 2010 taxes under § 278.01 because they were not properly pled.

CONCLUSION

For the reasons set forth herein, Respondents City of Minneapolis, City of Minneapolis City Assessor's Office and Minneapolis Assessor Patrick J. Todd respectfully request that the Court affirm the Tax Court in all respects. Moreover, the City Respondents also respectfully request that the Court hold that Minn. Stat. Ch. 278 is the exclusive remedy for Uniformity Clause claims involving local property tax assessments.

Dated: 1/3/12

SUSAN L. SEGAL
City Attorney
By
James A. Moore

PETER W. GINDER (#35099)
Deputy City Attorney
JAMES A. MOORE (#16883X)
Assistant City Attorney
GREGORY SAUTTER (#0326446)
Assistant City Attorney
AMANDA TRELSTAD (#390665)
Assistant City Attorney
City Hall-Room 210
350 South 5th Street
Minneapolis, MN 55415
(612) 673-2478

Attorneys for Defendants City of Minneapolis, City of Minneapolis Assessor's Office, and City of Minneapolis Assessor Patrick J. Todd, in his personal capacity