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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

ROBBIE J. PERRY, et al.,	)	
	)	
	)	
Plaintiffs,	)	
v.	)	**Case No. 17-CV-2133**
	)	
COLES COUNTY	)	
	)	
	)	
Defendant.	)	

ORDER

On August 3, 2017, Plaintiffs, Robbie Perry and James Rex Dukeman, on behalf of themselves and others similarly situated as Mattoon Township commercial and industrial property owners, filed a First Amended Complaint (#9) against Defendant, Coles County. On August 17, 2017, Defendant filed a Motion to Dismiss (#11). Plaintiffs filed their Response (#14) on August 31, 2017. For the reasons that follow, Defendant's Motion to Dismiss (#11) is GRANTED.

ANALYSIS

Plaintiffs' complaint alleges that Plaintiffs' properties in Mattoon Township were reassessed in 2016 while the commercial and industrial properties elsewhere in Coles County had not been reassessed since before 2002, resulting in a disproportionately high tax placed on Plaintiffs' properties for the 2016 tax year. Plaintiffs state that their tax bills will continue to be disproportionately high, because the other townships in

Coles County will not be assessed until 2017, 2018, and 2019. Plaintiffs assert that the disproportionate tax violates the Equal Protection Clause and that 42 U.S.C. § 1983 provides a federal cause of action for the violation.

Defendant's motion to dismiss argues that this court lacks subject matter jurisdiction and that the principle of comity bars Plaintiffs from raising their state tax law challenges in federal court. Plaintiffs respond that comity does not bar this lawsuit, nor does the Tax Injunction Act (TIA).[1]

Under the doctrine of comity, lower federal courts should refrain from engaging in certain cases falling within their jurisdiction. *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 421 (2010).[2] In cases concerning state tax laws, comity is often discussed alongside the TIA, which Congress passed "motivated in large part by comity concerns." *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 110 (1981); see also *Levin*, 560 U.S. at 421-24. The TIA prohibits lower federal courts from "enjoin[ing], suspend[ing], or restrain[ing] 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; *Levin*, 560 U.S. at 417.

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[1]Defendant did not discuss the TIA in its motion to dismiss.

[2]While Defendant incorrectly described the comity doctrine as jurisdictional, comity nonetheless provides a basis to dismiss a limited class of federal lawsuits. See *Levin*, 560 U.S. at 421-24.

Comity is "[m]ore embracive than the TIA" in the area of restraining federal courts from acting in cases that concern state tax administration. *Levin*, 560 U.S. 413, 425-26. Where comity considerations warrant dismissing a case, the Supreme Court has addressed only the comity issue, reserving judgment on the applicability of the TIA. *McNary*, 454 U.S. at 105; *Levin*, 560 U.S. at 432. Therefore, this court will examine whether the comity doctrine justifies dismissal of this federal action, and doing so will determine whether it is necessary to address the TIA.

This case involves passing on the constitutionality of Coles County's taxation of commercial and industrial properties. "Comity's constraint has particular force when lower federal courts are asked to pass on the constitutionality of state taxation of commercial activity" because "it is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible." *Id.* at 421-22 (internal quotations and citations omitted).

In *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 116 (1981), the Supreme Court applied the comity doctrine where state taxpayers filed a federal lawsuit under § 1983 which alleged that unequal taxation of real property deprived them of equal protection and due process of law. The *McNary* plaintiffs alleged that, because the defendants failed to regularly assess old property, properties with new

improvements were assessed at a much higher percentage of their current market value than properties without new improvements. *Id.* at 106. *McNary* stated:

> . . . we hold that taxpayers are barred by the principle of comity from asserting § 1983 actions against the validity of state tax systems in federal courts. Such taxpayers must seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate, and complete, and may ultimately seek review of the state decisions in this Court.

McNary, 454 U.S. at 116 (footnote omitted).

Just like the plaintiffs in *McNary*, Plaintiffs here brought a § 1983 action alleging that unequal taxation of real property deprived them of equal protection. Thus, Plaintiffs in this case are also barred from asserting their claim in federal court as long as they have access to state remedies that are "plain, adequate, and complete, and may ultimately seek review of the state decisions in [the Supreme] Court." *McNary*, 454 U.S. at 116.

Plaintiffs assert that "there is no state statute or other process to challenge the procedural errors of irregularities complained of." However, the Seventh Circuit has held otherwise, repeatedly.[3] On numerous occasions, the Seventh Circuit has held that the available procedures for challenging the Illinois tax system are "plain, adequate,

[3]For in-depth discussions of the procedures for challenging the Illinois tax system, see *Fromm v. Rosewell*, 771 F.2d 1089, 1092 (7th Cir. 1985); *Capra v. Cook Cty. Bd. of Review*, 733 F.3d 705, 714-16 (7th Cir. 2013); *Heyde v. Pittenger*, 633 F.3d 512, 514-15 (7th Cir. 2011).

and complete" under *McNary*.[4] See *Capra*, 733 F.3d at 715; *Heyde*, 633 F.3d at 520 (stating "we have continually found that the available state procedures for challenging the Illinois tax system are acceptable under *McNary,*" and collecting cases). It is clear that constitutional challenges can be raised during state court proceedings. *Capra*, 733 F.3d at 715; *Rosewell*, 771 F.2d at 1092. The adequacy of Illinois state procedures to address claimed violations of federal rights is well settled. *Rosewell*, 771 F.2d at 1092. This court will not depart from that precedent.

Plaintiffs cannot plead around the comity doctrine by framing their requested relief in terms of an injunction seeking to raise third parties' taxes rather than as a request to lower their own tax bills. In *Levin v. Commerce Energy, Inc.,* 560 U.S. 413, 426 (2010), a group of taxpayers complained that they were taxed unevenly in comparison to other taxpayers. The Supreme Court considered, "under the comity doctrine, a taxpayer's complaint about allegedly discriminatory state taxation framed as a request to increase a competitor's tax burden." *Levin*, 560 U.S. at 425-26. *Levin* held "that comity precludes the exercise of original federal-court jurisdiction" in such cases. *Id.* How to eliminate unconstitutional discrimination is an issue of state law, and the "relief the complaining party requests does not circumscribe this inquiry." *Id.* at 427.

[4]While some cases evaluate whether the remedies available in Illinois state courts are "plain, speedy and efficient," the Seventh Circuit views that standard as comparable to the "plain, adequate, and complete" standard. *Capra*, 733 F.3d at 714.

In this case, Plaintiffs allege that their 2016 tax bills were disproportionately high as compared to other Coles County commercial and industrial properties, and that their tax bills will continue to be disproportionately high until all Coles County properties are reassessed. While Plaintiffs state that they seek to make their tax bills proportional by raising others' tax bills, even if their equal protection claim had merit, Plaintiffs would have no entitlement to their preferred remedy. *Levin*, 560 U.S. at 427, 430. "Of key importance, when unlawful discrimination infects tax classifications or other legislative prescriptions, the Constitution simply calls for equal treatment. How equality is accomplished—by extension or invalidation of the unequally distributed benefit or burden, or some other measure—is a matter on which the Constitution is silent." *Levin*, 560 U.S. 413, 426-27. Thus, as far as the Equal Protection Clause is concerned, the argument that third parties' tax bills are too low is interchangeable with the argument that Plaintiffs' tax bills are too high. Plaintiffs cannot escape the application of the comity doctrine through a pleading that casts the requested remedy in one of those ways rather than the other. See *Levin*, 560 U.S. at 425-33.

Moreover, Plaintiffs seek to lower their own taxes. They seek $929,876.41, representing a refund in the amount their 2016 taxes increased after their properties were reassessed. Plaintiffs could challenge their tax bills and raise their equal protection claim in state court proceedings. Plaintiffs' chosen framing of the issue in their complaint does not make it true that there was no available state procedure that would be acceptable under *McNary*.

The available procedures for challenging the constitutionality of the Illinois tax system are "plain, adequate, and complete." See *Capra*, 733 F.3d at 715; *Heyde*, 633 F.3d at 520, *Rosewell*, 771 F.2d at 1092. Thus, dismissal of Plaintiffs' complaint on the basis of comity is warranted, and it is not necessary to discuss the applicability of the TIA.

IT IS THEREFORE ORDERED THAT:

(1) Defendant's Motion to Dismiss (#11) is GRANTED. Plaintiffs' Amended Complaint (#9) is hereby DISMISSED.

(2) This case is terminated.

ENTERED this 4th day of December, 2017.

s/COLIN S. BRUCE
U.S. DISTRICT JUDGE