No. 17-3615

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ROBBIE J. PERRY, et al., on behalf of themselves and others similarly situated as Mattoon Township (Coles County, Illinois) commercial and industrial property owners,

Plaintiffs-Appellants,

v.

COLES COUNTY, ILLINOIS,

Defendant-Appellee.

District Court No: 2:17-cv-02133-CSB
Clerk/Agency Rep Kenneth A. Wells
District Judge Colin S. Bruce
Date NOA filed in District Court: 12/22/2017

APPELLANTS ROBBIE PERRY, et al. PRINCIPAL BRIEF

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January 31, 2018

DISCLOSURE STATEMENT

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 17-3615

Short Caption: Robbie Perry, et al. v. Coles County, Illinois

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Robbie Perry; James Rex Dukeman

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(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

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ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

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Attorney's Signature: s/ Erick G. Kaardal Date: December 28, 2017

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Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes X No ____

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JURISDICTIONAL STATEMENT

A. District Court Jurisdiction

Federal district court subject-matter jurisdiction regarding the asserted claims under the Fourteenth Amendment's Equal Protection Clause of the United States Constitution, seeking declaratory judgment, injunctive relief, and relief under 42 U.S.C. § 1983, is conferred under federal issue jurisdiction under 28 U.S.C. § 1331.

B. Appellate Court Jurisdiction.

The underlying date of the entry of judgment of the order sought for review is December 4, 2017.[1] There was no motion sought to toll the time for appeal.

The notice of appeal was filed on December 22, 2017.[2]

Because the December 4, 2017 order of the district court granted the Appellee's motion to dismiss the underlying action for lack of subject matter jurisdiction, the Appellants Amended Complaint was dismissed. Therefore, this Court, under 28 U.S.C. § 1291 governing the jurisdiction of appeals from all final decisions of the district courts of the United States.

STATEMENT OF THE ISSUE

Whether the doctrine of comity applies to a federal lawsuit seeking injunctive relief challenging the constitutionality of an Illinois county's tax assessments due to procedural irregularities when Illinois Supreme Court precedent prohibits injunctive relief and, therefore, provides no complete state remedy for the claims asserted.

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[1] Distr. Ct. Or. Entry of Judgment, Dckt. 16; App. 1-8.
[2] Not. of App.; Dckt. 17.

STANDARD OF REVIEW

The party asserting jurisdiction has the burden of establishing it under Rule 12(b)(1). *United Phosphorus, Ltd. v. Angus Chem. Co.,* 322 F.3d 942, 946 (7th Cir.2003). "On a motion to dismiss under Rule 12(b)(1), the court is not bound to accept the truth of the allegations in the complaint, but may look beyond the complaint and the pleadings to evidence that calls the court's jurisdiction into doubt." *Bastien v. AT&T Wireless Services, Inc.,* 205 F.3d 983, 990 (7th Cir. 2000). This suggests a situation in which "there is *in fact* no subject matter jurisdiction," even if the pleadings are formally sufficient. *Apex Digital, Inc. v. Sears, Roebuck & Co.,* 572 F.3d 440, 444 (7th Cir. 2009). However, under the circumstances of the case below, another standard is applied regarding facial challenges.

A facial challenge argues that the plaintiff has not sufficiently "*alleged* a basis of subject matter jurisdiction." *Id.* at 443 (emphasis in original). In reviewing a facial challenge, the court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in favor of the plaintiff. *Id.* at 443–44. Because the Appellants Amended Complaint's injunctive relief sought will increase tax revenue, that there is no effort to stop either the tax assessment of Coles County or the collection of the assessments, that equitable relief in state court is not available for the allegations of procedural errors or irregularities in the assessment process, that there is no complete state remedy, and finally, if there is a state remedy the Appellants Robbie Perry and James Dukeman would have no 42 U.S.C. § 1983 claim, the underlying motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil

Procedure, the Appellee Coles County was essentially a facial challenge.[3] As such, the court must also consider "documents attached to the complaint, documents that are critical to the complaint and referred to in it, and information that is subject to proper judicial notice," along with additional facts set forth in Perry's brief opposing dismissal, so long as those facts "are consistent with the pleadings." *Geinosky v. City of Chicago,* 675 F.3d 743, 745 n. 1 (7th Cir. 2012).

STATEMENT OF THE CASE

The Appellants Robbie J. Perry and James Rex Dukeman are commercial and industrial real property owners in Mattoon Township, Coles County.[4] The taxing entity, Appellee, Coles County, is located in Illinois.[5]

Under Illinois state law, general assessments were to be completed by counties in 1994, 1998, 2002, 2006, 2010, 2014 and every fourth year thereafter:

> General assessment years; counties of less than 3,000,000. Except as provided in Sections 9-220 and 9-225, in counties having the township form of government and with less than 3,000,000 inhabitants, the general assessment years shall be 1995 and every fourth year thereafter. In counties having the commission form of government and less than 3,000,000 inhabitants, the general assessment years shall be 1994 and every fourth year thereafter.[6]

[3] *See e.g. Munson v. Gaetz,* 673 F.3d 630, 632 (7th Cir.2012); *Apex Digital,* 572 F.3d at 443–44; *Patel v. City of Chicago,* 383 F.3d 569, 572 (7th Cir.2004).
[4] Amended Compl. ¶¶ 1, 20; Dckt. 9; App. 8; 12.
[5] *Id.* ¶¶ 1, 23; App. 8; 12.
[6] 35 ILCS 200, § 9-215; *see also* Amended. Compl. ¶ 28; App. 13.

But, Coles County chose not to do any assessments are required by state law in 2002, 2006, 2010, and 2014.[7] Thus, for over 15 years Coles County failed to generally assess commercial and industrial properties.[8] When it did decide to assess taxes, the County imposed them upon only Mattoon Township's commercial and industrial properties.[9] The underlying amended complaint alleges that the Mattoon School District, encompassing the townships of Mattoon, Lafeyette, Paradise, and North Okaw,[10] was experiencing a state revenue short-fall and required tax revenue relief.[11] Communications between County officials and school district officials reveal that a plan needed to be implemented to provide the moneys the Illinois legislature was anticipated not to provide to the School District.[12] The County came to the School District's aid, but only on the backs of Mattoon Township's commercial and industrial property owners.

The result of the procedural irregularities, the assessment for the 2016 tax year completed only for Mattoon Township for the benefit of the School District budgetary deficient, resulted in an unconstitutional disproportionate amount of taxes paid by Mattoon Township commercial and industrial landowners:[13]

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[7] *Id.* ¶ 30; App. 14.
[8] *Id.* ¶¶ 31-32; App. 14.
[9] *Id.* ¶¶ 52–54; 84; App. 18; 23.
[10] *See id.* ¶ 89; App. 24.
[11] *Id.* ¶¶ 72–78; App. 21–22.
[12] *E.g. id.* ¶¶ 53-53; 74–78; App. 18; 84. In fact officials did meet without public notice to discuss specifically "assessment issues" which notably included officials from the school district. *See e.g. id.* ¶¶ 42-50; App. 16–17. Although the meeting was held, no county website archive record shows that this meeting occurred. *Id.* ¶ 50; App. 17.
[13] *Id.* ¶ 84; 23.

Lafayette 2015 Total	Lafayette 2016 Total	Difference Between Tax Year 2015 and Tax Year 2016
$3,067,340.59	$3,082,067.77	$14,727.18
Mattoon 2015 Total	Mattoon 2016 Total	Difference Between Tax Year 2015 and Tax Year 2016
$4,035,118.61	$4,964,995.02	$929,876.41
North Okaw 2015 Total	North Okaw 2016 Total	Difference Between Tax Year 2015 and Tax Year 2016
$4,732.62	$31,159.32	$26,426.70
Paradise 2015 Total	Paradise 2016 Total	Difference Between Tax Year 2015 and Tax Year 2016
$248,761.39	$233,947.90	($14,813.49)
2015 Grand Total (whole dollars)	2016 Grand Total	Difference Between Tax Year 2015 and Tax Year 2016
$7,355,953.21	$8,312,170.02	$956,216.80[14]

Moreover, Coles County hired a person to do the appraisals who was not qualified to do so, also a violation of state law.[15]

The underlying action seeks injunctive relief to cure the unequal assessment of property taxes based solely upon the procedural irregularities of Coles County due to the sole assessment of property taxes on commercial and industrial properties in Mattoon Township. The Appellants also sought, for their Equal Protection Clause claims, declaratory judgment and claims under 42 U.S.C. § 1983. As argued in district court the Appellants found that Illinois Supreme Court precedent precluded injunctive relieve for procedural

[14] *Id.* ¶ 85; App. 23–24.
[15] *Id.* ¶¶ 63–70; App. 20–21.

irregularities, citing *Millennium Park Joint Venture, LLC v. Houlihan,* 241Ill.2d 281, 296, 349 Ill. Dec. 898, 948, 948 N.E.2d 1 (2010); *Lackey v. Pulaski Drainage Dist.,* 122 N.E.2d 257, 258 (Ill. 1954) ((“[E]quity will not assume jurisdiction unless special grounds for equitable jurisdiction are established, and unless the plaintiff does not have an adequate remedy at law, is subject to two exceptions; namely, where a tax is unauthorized by law or is levied upon exempt property.”); *Wood River Tp. v. Wood River Tp. Hosp.,* 772 N.E.2d 308, 311 (Ill. App. 5th Dist. 2002)(“[E]quitable relief is not available where a complaint merely alleges procedural errors or irregularities in the taxing process.”(citation omitted).[16] If injunctive relief is unavailing, complete state remedies are not available for the type of claims asserted under the circumstances of this case.

The district court disagreed. Without referencing the Illinois Supreme Court precedent, the court found that the doctrine of comity refrains the federal court from acting in cases that concern tax administration.[17]

SUMMARY OF THE ARGUMENT

The district court should not have dismissed the underlying Amended Complaint for lack of subject matter jurisdiction under the doctrine of comity. The underlying claims is a rare exception to the comity doctrine because of the explained factual circumstances and the state law that prohibits the remedy requested—injunctive relief. No where in the Amended Complaint do the Appellants Robbie Perry and James Rex Dukeman (collectively “Perry”) seek to impair the administrative application and collective processes of the Appellee Coles County. First, the injunctive relief sought will increase tax revenue. Second, there is no effort

[16] Perry Opp. Memo. to Mot. to Dismiss (Aug. 31, 2017); Dckt. 14.
[17] Distr. Ct. Or. 2-3; Dckt. 15; App. 2-3.

to stop either the tax assessment of Coles County or the collection of the assessments. Third, as noted, the equitable relief in state court is not available as the Perry claims allege procedural errors or irregularities in the assessment process. Fourth, there is no complete state remedy and hence no comity issue. Finally, if there is a state remedy, Perry would have no 42 U.S.C. § 1983 claim.

Here, the district court did not analyze the state court decisions. It presumed that because tax assessments were at issue "there [was] *in fact* no subject matter jurisdiction," even if the pleadings were formally sufficient. *Apex Digital, Inc. v. Sears, Roebuck & Co.,* 572 F.3d 440, 444 (7th Cir. 2009). However, because there is no complete remedy available in state court, jurisdiction remains with the federal district court. Again, this is a very narrow and rare exception to the rule refraining federal district courts from injecting itself into state taxing issues.

Moreover, because the district court dismissed the matter under the comity doctrine, the instant matter is not precluded from federal court adjudication under the Tax Injunction Act ("TIA"). The TIA prohibits any action that enjoins, suspends, or restrains the assessment, levy, or collection of a state tax. That does not mean all claims. If it merely inhibits those activities, federal courts can maintain jurisdiction. *Direct Mktg. Ass'n. v. Brohl,* 135 S.Ct. 1124, 1133 (2015). Rather, the action must seek to "stop" the taxing activity. *Id.* This is not the case. The underlying action does not seek to stop the Appellee Coles County from assessment activity. The issues relate to procedural irregularities of which state courts cannot review because of the relief requested.

Therefore, the district court should not have dismissed the underlying action for lack of subject matter jurisdiction under the doctrine of comity and that decision should be reversed.

ARGUMENT

I. Because there is no complete state remedy for Perry to pursue his claims, the comity doctrine is inapplicable and, hence, federal court subject matter jurisdiction is retained to adjudicate the claims asserted.

The Appellant Perry's Amended-Complaint asserts the following claims:

- Injunctive relief will increase tax revenue;
- There is no effort to stop either the tax assessment of Coles County or the collection of the assessments;
- Equitable relief in state court is not available as the claims allege procedural errors or irregularities in the assessment process;
- There is no complete state remedy; and
- Finally, if there is a state remedy, the Appellants would have no 42 U.S.C. § 1983 claim.[18]

The Amended Complaint does not assert that the Coles County assessments on commercial and industrial properties were unauthorized by law nor levied on tax-exempt property. If so, state injunctive relief would be available. As Illinois courts have opined,

> Only where the tax is unauthorized by law or where it is levied on tax-exempt property may the taxpayer bypass the statutory remedy and seek injunctive relief in the [state] circuit court.

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[18] *See generally* Amended Compl.; Dckt. 9; App. 8–34.

Millennium Park Joint Venture, LLC v. Houlihan, 241Ill.2d 281, 296, 349 Ill. Dec. 898, 948, 948 N.E.2d 1 (2010).

Instead, the Perry Amended Complaint[19] asserted procedural errors or irregularities in the taxing process and because it did so, equity relief in state court is unavailable:

> [A] true "unauthorized by law" challenge arises where the taxing body has no statutory power to tax in a certain area or has been given no jurisdiction to tax a certain subject, as opposed to a complaint that merely alleges procedural errors or irregularities in the taxing process, in which case *equity relief would not be available.*

Id. 241 Ill.2d at 307, 349 Ill. Dec. at 898, 948 N.E.2d at 17 (emphasis added). *See also, Lackey v. Pulaski Drainage Dist.,* 122 N.E.2d 257, 258 (Ill. 1954) (("[E]quity will not assume jurisdiction unless special grounds for equitable jurisdiction are established, and unless the plaintiff does not have an adequate remedy at law, is subject to two exceptions; namely, where a tax is unauthorized by law or is levied upon exempt property."); *Wood River Tp. v. Wood River Tp. Hosp.,* 772 N.E.2d 308, 311 (Ill. App. 5th Dist. 2002)("[E]quitable relief is not available where a complaint merely alleges procedural errors or irregularities in the taxing process."(citation omitted).

The district court decision did not consider the lack of state court remedies sought by Perry as reflected by Illinois Supreme Court precedent. Illinois case law reveals that there is no state statute or other process available to challenge the procedural errors or irregularities complained of in which a complete state remedy is available. Despite state law, the district court found that the doctrine of comity applied regardless of how the Perry Amended

[19] Unless otherwise stated, "Perry" refers to both Appellants, Robbie J. Perry and James Rex Dukeman. Referring to "Perry" only is for readability.

Complaint was framed essentially because it implicates a challenge to the tax assessment system in Coles County, comity applies:[20] "Under the doctrine of comity, lower federal courts should refrain from engaging in certain cases falling within their jurisdiction."[21] And while the district court explained that "[t]he adequacy of Illinois state procedures to address claimed violations of federal rights is well settled,"[22] we assert the state procedures are not adequate under the circumstances of this case and in light of existing Illinois Supreme Court precedent.

> Unlike the TIA [Tax Injunction Act], the comity doctrine is nonjurisdictional.

Direct Mktg. Ass'n v. Brohl, 135 S. Ct. 1124, 1134 (2015). "More embracive than [its statutory counterpart], the comity doctrine ... restrains federal courts from entertaining claims for relief that risk disrupting state tax administration." *See Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 417 (2010). To that end, federal courts will not assume jurisdiction over state tax claims where a plain, adequate, and *complete* remedy exists at state law:

> [W]e 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.

Fair Assessment in Real Est. Ass'n, Inc. v. McNary, 454 U.S. 100, 116 (1981) (citations and footnote reference omitted). Notably, if there was an adequate state legal remedy available to

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[20] Distr. Ct. Or. 4-5; Dckt. 15; App. 4–5.
[21] *Id.* citing *Levin v. Commerce Energy, Inc.,* 560 U.S. 413, 421 (2010).
[22] Distr. Ct. Or. 5, Dckt. 15; App. 5, citing *Fromm v. Rosewell,* 771 F.2d 1089, 1092 (7th Cir. 1985).

Perry, there would be no 42 U.S.C. § 1983 claim for Perry to pursue. As of the United States Supreme Court opined,

> We simply do not read § 1983 to provide for injunctive or declaratory relief against a state tax, either in federal or state court, when an adequate legal remedy exists.

Natl. Priv. Truck Council, Inc. v. Oklahoma Tax Commn., 515 U.S. 582, 592 (1995). Thus, "plaintiffs seeking protection of federal rights in federal courts should be remitted to their state remedies if their federal rights will not thereby be lost." *Brooks v. Nance*, 801 F.2d 1237, 1241 (10th Cir. 1986). Although *National Private Truck Council, Inc.* regarded a state court challenge to the constitutionality of certain Oklahoma taxes, which the Oklahoma Supreme Court found unconstitutional, the state supreme court refused to reward relief under §1983. As Justice Thomas explained and his point is applicable here that

> When a litigant seeks declaratory or injunctive relief against a state tax pursuant to § 1983, however, state courts, like their federal counterparts, must refrain from granting federal relief under § 1983 when there is an adequate legal remedy.

Natl. Priv. Truck Council, Inc., 515 U.S. at 592.

The underlying Amended-Complaint's injunctive remedy would increase tax revenue and correct the irregularity or procedural error regarding Coles County's tax assessments on commercial and industrial properties. In order to ensure tax assessments were equitable as the County commenced a re-valuation of properties via assessment districts per Illinois Statutes § 9-155,[23] a county-wide valuation of properties was necessary. However, although

[23] Illinois Stats. § 9-155 for valuation in general assessment years reads:

> On or before June 1 in each general assessment year in all counties with less than 3,000,000 inhabitants, and as soon as he or she reasonably can in each

the law under § 9-155 required the valuation of properties in general assessment years since 1994, Coles County failed to do so in 2002, 2006, 2012, and 2016.[24] While the same statute allows for the division of the County into assessment districts, because Coles County failed to value the properties since before 2002, when in 2015 it re-valued commercial and industrial properties only and exclusively in Mattoon Township (for collection in 2016 in part to address the school district deficient.[25]) it resulted in a disproportionate tax increase triggering Perry's equal protection claim. Coles County simply unconstitutionally applied the law.

Then in 2016, because the re-valuation of commercial and industrial property occurred only in Mattoon Township, while all other township assessment values remained stagnate because taxes were based upon pre-2002 valuations, commercial and industrial properties in Mattoon Township paid a disproportionate and unequal tax on their properties as compared to all others.[26] By doing so, there was no uniform starting point. And because the County violated Illinois Statutes §§ 9-215 and 9-155, the starting point requires an

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> general assessment year in counties with 3,000,000 or more inhabitants, or if any such county is divided into assessment districts as provided in Sections 9-215 through 9-225, as soon as he or she reasonably can in each general assessment year in those districts, the assessor, in person or by deputy, shall actually view and determine as near as practicable the value of each property listed for taxation as of January 1 of that year, or as provided in Section 9-180, and assess the property at 33 1/3% of its fair cash value, or in accordance with Sections 10-110 through 10-140 and 10-170 through 10-200, or in accordance with a county ordinance adopted under Section 4 of Article IX of the Constitution of Illinois. The assessor or deputy shall set down, in the books furnished for that purpose the assessed valuation of properties in one column, the assessed value of improvements in another, and the total valuation in a separate column.

[24] Amended Compl. ¶ 3; Dckt. 9; App. 9.
[25] *See id.* ¶¶ 75-77, 82; App. 22.
[26] *See id.* ¶¶ 85, 87-88, and 89-90; App. 23; 24; 25.

assessment of all commercial and industrial properties at the same time throughout the County and in particular within the townships of the Mattoon School District under the facts of the underlying Amended Complaint. Notably, while Mattoon properties paid 97% of additional revenues collected in the tax year 2016,[27] with the increase reflecting a proportional tax increase of 5%, other township commercial and industrial properties revealed a *decrease* or no difference in their respective proportionate tax.[28]

Nor does the instant action disrupt the administration of the assessment. Here, the taxes were collected and will be continued to be collected. For instance, challenges to the valuation of individual property assessments continue.[29] But, it is the procedural process and irregularity of the assessment process county-wide in the application of Illinois Statute §9-155 that is complained of resulting in disproportionate tax burdens of one township's commercial and industrial properties against all others with the county upon which the underlying equal protection claim arises.

Perry's allegations and claims are wholly independent of the calculation of his assessment tax liability, determination of his tax schedule, or any claimed exemption status of his property (none of which are complained of). The claims asserted do not encroach on Coles County's ability to administer its tax laws. The relief sought regards conduct unrelated to the tax assessment itself, its levy, or collection so as to justify non-exercise of federal jurisdiction. *See Col. River Water Conservation Dist. v. United States,* 424 U.S. 800, 817 (1976) (noting "the virtually unflagging obligation of the federal courts to exercise the jurisdiction

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[27] *See e.g. id.* ¶¶ 85–88; App. 23–24.
[28] *Id.* ¶ 89; App. 25.
[29] *See e.g. id.* ¶ 15; App.11.

given them"). Therefore, if there existed adequate constitutional procedures to challenge the procedural error or irregularity of the Coles County assessment upon the commercial and industrial properties for Mattoon Township against that of all other similar properties in the County, federal court jurisdiction would not be available. But, this is not the case here.

Thus, had all the properties been properly valued before the assessment districts were created, the County would have had recognized an *increase* in tax revenue and with any subsequent re-valuation in subsequent four-year cycles under the recently created assessment districts per Illinois Statute § 9-155, would be equitable as the statute allows for the re-valuation of properties to proceed. This would not result or otherwise operate in any practical sense to suspend or restrain the assessment, levy, or collection of any tax under state law.[30] But because Coles County failed to follow the law in the first instance, the process the County created resulted in a procedural error or irregularity in the tax process of which Perry complains of and seeks relief.[31]

Here, the district court challenged Perry's claim that there is no "plain, adequate, and complete" remedy to challenge in state court the procedural errors of irregularities complained of.[32] The court, without analyzing the state supreme court cases cited above apparently presumed that Perry's constitutional challenges could be asserted in state court proceedings. The district court also wrote that Perry cannot try to plead around the comity doctrine by "framing their requested relief in terms of an injunction seeking to raise third parties' taxes rather than a request to lower their own tax bills" citing *Levin v. Commerce*

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[30] *See Fair Assessment in Real Est. Ass'n, Inc. v. McNary,* 454 U.S. 100, 115 (1981).
[31] *E.g.* Amended Compl. ¶¶ 113–116; Dckt. 9; App. 31–32.
[32] Distr. Ct. Or. 2–3 (Dec. 4, 2017) citing *McNary,* 454 U.S. at 116; Dckt. 15; App. 2–3.

Energy, Inc., 560 U.S. 413, 426 (20101).[33] However, in *Levin,* the taxpayers did not seek to lower their taxes (Perry did) and notably, there is no discussion regarding the prohibition of injunctive relief as in this case. The injunctive relief Perry seeks would not interfere with the collection of taxes or restrain Coles County in the assessment process.

The *Levin* Court asserted that "if the Ohio scheme is indeed unconstitutional, surely the Ohio courts are better positioned to determine—unless and until the Ohio Legislature weighs in—how to comply with the mandate of equal treatment."[34] *Levin,* 560 U.S. at 429. But here, the Illinois legislature laid out how counties were to assess taxes, but Coles County ignored state law, and the cure Perry seeks, is *unavailable in state court.*[35] The underlying complaint is not about an objection of an assessment of the property assessed (such as Perry's). It is about the procedural irregularities Coles County applied to Mattoon Township commercial and industrial properties without proper assessment valuations and assessment valuations on other similar properties within the Mattoon School District causing Mattoon Township commercial and industrial property owners to foot the entire budgetary short-fall of the School District.

In *Levin,* the Supreme Court noted that "[W]hen the right invoked is that to equal treatment, the appropriate remedy is a *mandate* of equal treatment, a result that can be accomplished" in more than one way." *Heckler v. Mathews,* 465 U.S. 728, 740 (1984) quoting *Iowa–Des Moines Nat. Bank v. Bennett,* 284 U.S. 239, 247 (1931); internal quotation marks omitted)). "On finding unlawful discrimination, we have affirmed, courts may attempt,

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[33] Distr. Ct. Or. 3; App. 3.
[34] *Levin,*
[35] *Supra.*

within the bounds of their institutional competence, to implement what the legislature would have willed had it been apprised of the constitutional infirmity." *Levin,* 560 U.S. at 427. But here, the Illinois Supreme Court has found that it is *not* within the Illinois courts "institutional competence" to invoke injunctive relief for procedural irregularities Perry complains of. Since the Illinois Supreme Court has barred injunctive relief as a remedy, the procedural irregularities complained of cannot be presented in state court as "an issue of state law."[36]

Moreover, the timing of the wrongdoing is of import as well. Here, the alleged violation of Perry's equal protection claim occurred at the time of the assessed inequality occurred—of Mattoon Township only—as to when to measure the adequacy of the state remedy, not when or if a procedure exists to reduce the tax assessment. The later process does nothing for the procedural irregularities complained of. And in this case, there is no "complete" remedy available as explained above. As the Ninth Circuit Court of Appeals explained in a context of a taking claim, "the time at which the taking occurs is the appropriate period for measuring the adequacy of a state's compensation procedures." *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 920 F.2d 1496, 1507 (9th Cir. 1990), *disapproved of by Toigo v. Town of Ross*, 82 Cal. Rptr. 2d 649 (Cal. App. 1st Dist. 1998).

[36] Distr. Ct. Or. 5; Dckt. 15; App. 5.

II. Although the district court did not reach this issue, due to its adjudication on the comity doctrine, the Tax Injunction Act under the circumstances of this case supports federal court jurisdiction for the relief Perry seeks.

The district court did not reach an analysis of the Tax Injunction Act ("TIA") as it dismissed the underlying action under the comity doctrine.[37] Generally, the TIA bars federal courts from "enjoin[ing], supend[ing,] or restrain[ing] the assessment, levy or collection of taxes under [s]tate law." 28 U.S.C. § 1341. To that end, it divests the federal courts from subject matter jurisdiction over claims challenging state taxation procedures. *See e.g., Marcus v. Kan. Dep't of Rev.,* 170 F.3rd 1305, 1309 (10th Cir. 1999). *But not all claims.* "[A] suit cannot be understood to 'restrain' the 'assessment, levy or collection' of a state tax if it merely inhibits those activities." *Direct Mktg. Ass'n v. Brohl,* 135 S.Ct. 1124, 1133 (2015). Rather, an action must "to some degree *stop*" state taxation activity to fall under the TIA. *Green Soltion Retail, Inc. v. United States,* 855 F.3d 1111, 118-19 (10th Cir. 2017) (citing *Direct Mktg.,* 135 S.CT. at 1130, 1133 (original emphasis).

Perry's § 1983 claims here do not seek to stop the Coles County assessment activity. Perry's claim reveals a legal injury embodied with the U.S. Constitution's Equal Protection Clause because of the procedural error or irregularity of the assessment process as described above.

As the U.S. Supreme Court in *Hibbs v. Winn,* 542 U.S. 88 (2004), noted, there is a difference between "taxpayer claims that would reduce state revenues and third-party claims that would enlarge state receipts." *Id.* at 108. The Court held that the latter category of claims

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[37] *Id.* 2–3; Dckt. 15; App. 2–3. While the district court did not opine on the TIA, because there is a close relationship to the county doctrine (and Perry did argue that the TIA did not apply) it was thought prudent to address this statutory legal principle as well.

does not implicate the Tax Injunction Act because those claims *do not* "seek to impede [a state's] receipt of tax revenues." *Id.* at 93. The Court explained that the TIA was not intended to "insulate state tax laws from constitutional challenge in lower federal courts even when the suit would have no negative impact on tax collection." *Id.* at 94.

Hence, *Hibbs* stands for the proposition that challenges to the validity county-taxing schemes fall outside the ambit of the TIA if the challenges, if proved successful, would result in the increase of tax liabilities of others (the increase in tax revenues to the other townships within the Mattoon School District for instance within Coles County). This is essentially how the Seventh Circuit (and others) have read *Hibbs. Johnson v. Orr,* 551 F.3d 564, 571 (7th Cir. 2008). *See Henderson v. Stalder,* 407 F.3d 351, 359 (5th Cir. 2005); *City of Jefferson City v. Cingular Wireless, LLC,* 531 F.3d 595, 603-04 (8th Cir. 2008); *May Trucking Co. v. Oregon Dept. of Transp.*388 F.3d 1261, 1267 (9th Cir. 2004); *Hill v. Kemp,* 478 F.3d 1236, 1249 & n. 12 (10th Cir. 2007); and *Il. v. Alabama,* 739 F.3d 1273, 1283 (11th Cir. 2014).

While Coles County may suggest that if Perry prevails tax revenues will not increase, whether they rise or fall becomes a jurisdictional factual question. But, there is no reason to believe why taxes would not rise but for the procedural error or irregularity of the County in the first instance. Nevertheless, the type of injunctive relief Perry seeks would not halt all property tax collections. It would not because Perry is not seeking to strip the County of any authority necessary to issue valid property valuations. Hence, Perry's federal action is not barred by the TIA.

Finally, the U.S. Supreme Court in *Levin* recently, albeit in dicta, supports Perry's argument that the TIA does not bar a federal court's jurisdiction of his claims as presented:

"*Hibbs* held that the TIA d[oes] not preclude a federal challenge by a third party who object[s] to a tax credit received by others, but in no way object[s] to her own liability under any revenue-raising tax provision." *Levin,* 560 U.S. at 430. Here, Perry is not objecting to his liability to Coles County's ability to assess taxes on the value of his commercial property, but does challenge the procedural error or irregularity of the imposition in a manner that establishes an inequitable assessment received by others.

CONCLUSION

Because the Appellants Robbie J. Perry and James Rex Dukeman injunctive relief sought will increase tax revenue; there is no effort or effect that would stop either the Coles County tax assessment or the collection of property taxes. Equitable relief in state court is not available as Perry's claims allege procedural errors or irregularities in the assessment process and there is no complete state remedy. The doctrine of comity does not divest the federal court of subject matter jurisdiction. Thus, Coles County's request for relief under Rule 12(b)(1) of the Federal Rules of Civil Procedure should be denied.

Dated: January 31, 2018

/s/Erick G. Kaardal
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APPELLANT COUNSEL'S AFFIRMATIVE STATEMENT

I, Erick G. Kaardal, affirm that I have complied with Circuit Court Rule 30(a) and (b) to the best of my knowledge.

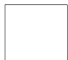
/s/Erick G. Kaardal
Erick G. Kaardal

CERTIFICATE OF SERVICE

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on January 31, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Erick G. Kaardal



CERTIFICATE OF SERVICE

Certificate of Service When Not All Case Participants Are CM/ECF Participants

I hereby certify that on ____________________, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:	address:

s/________________________________

No. 17-3615

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ROBBIE J. PERRY, et al., on behalf of themselves and others similarly situated as Mattoon Township (Coles County, Illinois) commercial and industrial property owners,

Plaintiffs-Appellants,

v.

COLES COUNTY, ILLINOIS,

Defendant-Appellee.

District Court No: 2:17-cv-02133-CSB
Clerk/Agency Rep Kenneth A. Wells
District Judge Colin S. Bruce
Date NOA filed in District Court: 12/22/2017

APPELLANTS ROBBIE PERRY, et al. APPENDIX

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January 31, 2018

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E-FILED
Monday, 04 December, 2017 09:48:53 AM
Clerk, U.S. District Court, ILCD

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.

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[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

E-FILED
Thursday, 03 August, 2017 12:13:32 PM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT

FOR CENTRAL DISTRICT OF ILLINOIS

Robbie J. Perry and James Rex Dukeman, on behalf of themselves and others similarly situated as Mattoon Township (Coles County, Illinois) commercial and industrial property owners,

Plaintiffs,

vs.

Coles County,

Defendant.

Court File No. 17-CV-2133

JURY TRIAL DEMANDED

AMENDED VERIFIED COMPLAINT

Plaintiffs Robbie J. Perry and James Rex Dukeman on behalf of themselves and others similarly situated as Mattoon Township (Coles County, Illinois) commercial and industrial property owners for their Complaint allege as follows:

INTRODUCTION

1. In this lawsuit, the Plaintiffs who are Mattoon Township commercial and industrial property owners sue Coles County, State of Illinois, for real estate taxes, covering tax year 2016, which unconstitutionally violate the Fourteenth Amendment's Equal Protection Clause by placing a disproportionate tax on Mattoon Township commercial

and industrial properties as opposed to commercial and industrial properties elsewhere in the Mattoon School District and in the County.

2. Coles County under color of state law has violated the Fourteenth Amendment's Equal Protection Clause in its unlawful, intentional and arbitrary, discriminatory assessments against Plaintiffs for 2016 tax year.

3. Coles County failed in 2002, 2006, 2008, 2012 and 2016 to actually view and assess its commercial and industrial properties as required by Illinois law.

4. Instead, each year, Coles County would use the assessment from the prior year.

5. In 2015, Coles County ordered a county-wide re-assessment of commercial and industrial properties.

6. However, at the urging of the Mattoon School District and other taxing authorities to complete the Mattoon Township re-assessments in time for 2016 tax year, Coles County for tax year 2016 completed the reassessment for only the Mattoon township which is within the Mattoon School District – leaving the other Coles County townships using the prior assessments from 2015 tax year.

7. The result was a huge increase in reassessed values for Mattoon Township commercial and industrial properties.

8. For commercial properties, 2015 tax year assessed values of $42,850,065 increased for 2016 tax year to $53,507,033 (prior to the Board of Review proceedings). (Exhibit #21) The estimated increase for assessed values of commercial properties from 2015 to 2016 tax year is $10,656,968 – a 25% increase. (Exhibit #21)

9. For industrial properties, 2015 tax year assessed values of $7,322,680 increased for 2016 tax year to $8,869,743 (prior to the Board of Review proceedings). (Exhibit #21) The estimated increase for assessed value for industrial properties from 2015 to 2016 tax year is $1,547,063 – a 21% increase. (Exhibit #21)

10. Everywhere else in the County the assessments for 2015 tax year were used for 2016 tax year – resulting in no change in assessed values -- unless there was new construction, addition or improvement on the property.

11. The fact that the reassessment for 2016 tax year was only completed for Mattoon Township resulted in an unconstitutionally disproportionate amount of taxes paid by Mattoon Township commercial and industrial landowners for 2016 tax year.

12. Based on the County's data for industrial and commercial properties within the School District, Mattoon Township pays $929,876.41 of the additional tax revenue collected of $957,106.54 on these properties.

13. According to the real estate tax statements for 2016 tax year for Mattoon School District, Mattoon Township pays 97% of the additional taxes of $957,106.54 collected from these properties for tax year 2016.

14. Mattoon's proportion of the taxes rose 5%. Whereas, the other large township in the Mattoon School District, Lafayette Township, had its proportion of taxes decreased by 5%.

15. The County's reassessment procedure led to at least 161 complaints being filed by Mattoon Township commercial and industrial property owners regarding the County's reassessment for the 2016 tax year.

16. The Coles County Chairman communicated to the Mattoon School District Superintendent that there were more tax protests than normal. (Exhibit #17)

17. The actions of Coles County under color of state law regarding real estate taxes, covering tax year 2016, unconstitutionally violate the Fourteenth Amendment's Equal Protection Clause placing a disproportionate tax on Mattoon Township commercial and industrial properties as opposed to commercial and industrial properties elsewhere in the Mattoon School District and in the County.

JURISIDICTION

18. The U.S. District Court has federal issue jurisdiction under 28 U.S.C. § 1331 and civil rights jurisdiction under 42 U.S.C. § 1983.

19. 42 U.S.C. § 1983 is a federal statute authorizing private persons to bring civil rights lawsuits against defendants who operate under state law and violate federal legal rights.

PARTIES

20. Robbie J. Perry and James Rex Dukeman own commercial and industrial parcels in the Mattoon Township.

21. Mr. Perry, with his spouse Linda S. Perry, owns parcel nos. 06-0-04766-000, 07-1-00961-002, 7-1-05119-000, 07-1-05254-000, 07-2-11754-000, 07-2-13856-000 within Mattoon Township, Coles County, Illinois. (App. 339, 454, 809, 823, 997, 1084).

22. Mr. Dukeman, with his spouse Charlene B. Dukeman, owns parcel no. 07-2-13801-000 within Mattoon Township, Coles County, Illinois.

23. The Defendant is Coles County, State of Illinois.

BACKGROUND

24. Illinois state law, 35 ICLS 200, et seq., covers property taxes in Illinois.

25. 35 ILCS 200, section 3-5, authorizes a County supervisor of assessments.

26. 35 ILCS 200, section 9-70 states "Local assessment officials shall assess all other property not exempted from taxation."

27. 35 ILCS 200, section 9-145 provides valuation procedures for assessments.

28. 35 ILCS 200, section 9-215, provides that general assessments be done in 1994, 1998, 2002, 2006, 2010, 2014 and every fourth year thereafter:

> General assessment years; counties of less than 3,000,000. Except as provided in Sections 9-220 and 9-225, in counties having the township form of government and with less than 3,000,000 inhabitants, the general assessment years shall be 1995 and every fourth year thereafter. In counties having the commission form of government and less than 3,000,000 inhabitants, the general assessment years shall be 1994 and every fourth year thereafter.

29. 35 ICLS 200, section 9-155 provides the method of valuation for every general assessment year including a requirement that the assessor actually view and determine the value of each property in that assessment year:

> Sec. 9-155. Valuation in general assessment years. On or before June 1 in each general assessment year in all counties with less than 3,000,000 inhabitants, and as soon as he or she reasonably can in each general assessment year in counties with 3,000,000 or more inhabitants, or if any such county is divided into assessment districts as provided in Sections 9-215 through 9-225, as soon as he or she reasonably can in each general assessment year in those districts, the assessor, in person or by deputy, shall actually view and determine as near as practicable the value of each property listed for taxation as of January 1 of that year, or as provided in Section 9-180, and assess the property at 33 1/3% of its fair cash value, or in accordance with Sections 10-110 through 10-140 and 10-170 through 10-200, or in accordance with a county ordinance adopted under Section 4 of Article IX of the Constitution of Illinois. The assessor or deputy shall set down, in the books furnished for that purpose the assessed valuation of properties in one column, the assessed value of improvements in another, and the total valuation in a separate column.

30. Coles County did not conduct county-wide general assessments in 2002, 2006, 2010 and 2014 as required by state law.

31. Instead, Coles County failed for over 15 years to generally assess its commercial and industrial properties.

32. Each year, Coles County would use the assessment from the prior year.

33. Sometime prior to February 3, 2015, Coles County made the decision to reassess all commercial and industrial properties in the county under color of state law.

34. Coles County Regional Planning Executive Director Kelly Lockhart was a central figure in the planning of the reassessment.

35. Kelly's involvement cannot be understated as he was involved in several aspects of the process including: organizing and coordinating meetings between the taxing bodies of the county and the Coles County Board; recruiting the assessor Mr. Robert "Bob" Becker to do the reassessment work; IT related issues; purchase of the DEVNET assessment software upgrade; discussions with the Supervisor of Assessments Karen (Childress) Biddle on issues regarding the assessment process; and acting as a liaison for the county board.

36. Plaintiff does not understand why Mr. Lockhart was so actively involved in the planning of the real estate tax reassessment process or to what extent his official job description and duties required him, if at all, to be involved.

37. Sometime prior to February 4, 2015, administrators from the City of Charleston met with several other administrators and officials from various taxing bodies and organizations regarding the County's proposed commercial reassessment.

38. Emails state that the representatives of the taxing authorities met regarding "assessment issues."

39. It is unclear exactly what those "assessment issues" were and why there was a need for the City of Charleston to meet with other taxing bodies at this time.

40. However, related email communications between the City of Charleston's City Manager Scott Smith and Coles County Regional Planning Director Kelly Lockhart suggest that the City of Charleston, behind the scenes, was attempting to petition the various taxing bodies to arrange a meeting with the Coles County Board to address these "assessment issues."

41. Kelly Lockhart, acting as a liaison for the Coles County Board arranged a meeting between representatives of the taxing bodies and the County Board Office/Rules Committee.

42. As a show of solidarity, Scott Smith informs Kelly Lockhart that all of the officials the City of Charleston has met with regarding the "assessment issues" should be invited to the board meeting and be given the opportunity to present their concerns and/or issues to the board.

43. Kelly agrees to send official notice to the various taxing bodies and asks Scott Smith for their contact information. (Exhibit #1)

44. On Monday, February 9, 2015 Coles County Regional Planning Executive Director Kelly Lockhart exchanges email addresses with appraiser Robert Becker. (Exhibit #2)

45. On Monday, February 23, 2015 the Coles County Board Office/Rules Committee holds a special meeting at 10:00AM to discuss the commercial reassessment with select representatives of the taxing bodies of the county.

46. Invitations went out to the Charleston Superintendent of Schools James Littleford, Mattoon Superintendent of Schools, Larry Lilly, Mattoon Assistant Superintendent of Schools Tom Sherman, Lake Land College President Josh Bullock, Lakeland College VP of Business Services Ray Rieck, City of Mattoon Mayor Tim Gover, City of Mattoon City Administrator Kyle Gill, City of Charleston Mayor Larry Rennels, City of Charleston City Manager Scott Smith, City of Charleston City Planner Steve Pamperin, and City of Charleston City Comptroller Heather Kuykendall.

47. Also invited to this meeting was Coles County Supervisor of Assessments Karen (Childress) Biddle, Coles County Board Secretary Elaine Komada, Coles County Regional Planning Executive Director Kelly Lockhart, and the County Office/Rules Committee chaired by county board member Cory Sanders. (Exhibit #1 and Exhibit #19).

48. Presentations were given by the City of Charleston Comptroller Heather Kaykendall and Mattoon School District Assistant Superintendent Tom Sherman on the benefits of updating the current equalized assessed value (EAV) as it relates to the cities and school districts. Commenting on the issue were representatives from the City of Charleston and Lake Land College. (Exhibit #19)

49. This meeting was never publicized in accordance with the Open Meetings Act of Illinois as the agenda was not available for 48 continuous hours prior to the meeting, and happened without giving public notice to the commercial and industrial property owners/taxpayers of Coles County.

50. There was no record in the county archives on the website showing there was a meeting on this date (see Exhibit #18)

51. On February 24, 2015, the day after the Coles County Board special meeting with the taxing bodies, Coles County Regional Planning Executive Director Kelly Lockhart emails Coles County Supervisor of Assessments Karen (Childress) Biddle.

52. In the email exchanges Kelly Lockhart states he is “Trying to figure out how to divide this up using the numbers from our GIS.” He suggests reassessing the City of Mattoon in the first year.

53. Karen Biddle says that the law requires they “...have to follow township lines,...” and Kelly responds that “...Champaign County pulled out the City of Champaign out for year 4.”

54. To which Karen responds”...they did didn’t they...” This email suggests that the City of Mattoon was targeted because of the large number of parcels and in particular Mattoon Township and possibly by unknown concerns expressed in the previous day’s county board meeting with the taxing bodies from Mattoon Township (i.e. Mattoon School District). (Exhibit #3)

55. On March 10, 2015, the Coles County Board passes a resolution establishing the division of Coles County into four assessment districts. (Exhibit #4)

56. On Saturday March 14, 2015, an article in the Times Courier, a local newspaper, informs the public that the county plans on reassessing all commercial and industrial property. It also states that the last time commercial property was reassessed was the year 2001.

57. Kelly Lockhart says in the article "he's trying to locate someone to do the reassessment and get an estimate on the projects costs." (Exhibit #5)

58. On Monday, March 16, 2015, an email communication between City of Charleston City Manager Scott Smith and City of Mattoon Mayor Tim Gover commented about the March 14 Times Courier article and the February 23, 2015 County Board meeting:

> Scott Smith: ...I think our meeting may have finally brought the importance of this matter to the County Board and.....
>
> Tim Gover: ...Let's see if something REALLY happens. We've heard that before.

(Exhibit #6)

59. On March 30, 2015, Mr. Robert "Bob" Becker submits a bid proposal to the Coles County Board for his services to reassess the commercial and industrial properties in the county.

60. Mr. Becker outlined contingencies and conditions in his bid proposal which were not met after he was hired by the Cole County Board.

61. One of the contingencies was that the county would purchase and switch to DEVNET a Computer Assisted Mass Appraisal (CAMA) software vendor. Mr. Becker's commission was to start in August of 2015 contingent upon a fully functioning DEVNET CAMA software.

62. As of June of 2016 (10 months after his hiring), DEVNET was still not functional due to problems with data conversion from the PROVAL software the county had been using (Exhibit #7, Exhibit #8, Exhibit #9)

63. Mr. Becker also stated in his bid proposal that he had no experience conducting mass appraisals of commercial and industrial properties. In fact, the current reassessment of Coles County commercial and industrial properties is Mr. Becker's first experience in mass appraisals.

64. Mr. Becker admits in his bid submitted to the county board that he is not qualified to conduct such a mass appraisal. These quotes come directly from the bid proposal:

> My experience has been limited to single property analysis…
>
> To ensure competency in mass appraisal development I will attend two classes offered by the International Association of Assessing Officers (IAAO) and read the Fundamentals of Mass Appraisal. I believe this to be sufficient to adapt single property appraisal methodology to mass appraisal.

65. Mr. Becker finished the reassessment of Mattoon Township in mid October 2016. He admitted in a March 29, 2017 email obtained via FOIA request that he never completed the courses on mass appraisal outlined in the bid proposal. (Exhibit #10).

66. Mr. Becker states in his proposal that:

> I currently own two properties which will be the subject of this reassessment. I have talked with Ms. Childress and she will provide the reassessment on them.

67. FOIA requests show that the Supervisor of Assessments Karen Biddle admitting the Sales Comp Spreadsheet submitted by Bob Becker was used for comparable sales of his own property.

68. In essence, Becker assessed his own property! (Exhibit #11)

69. On May 12, 2015, the Coles County Board officially hires Mr. Becker to do the reassessment. (Exhibit #12)

70. The Coles County Board NEVER had the legal authority under Illinois state law to hire Mr. Becker to do the job of the Supervisor of Assessments Karen Biddle. (Exhibit #13)

71. In June of 2015, the Mattoon School District had to implement a deficit reduction plan to the Illinois State Board of Education because tax revenues anticipated in fiscal year 2015 were not going to be received until fiscal year 2016.(Exhibit #14)

72. At a June 30, 2015 Special Board Meeting of the Mattoon School Board, the Mattoon School District acknowledges that they may not get General State Aid from Illinois and that they will be receiving property tax money late.

73. This forced the Mattoon School District to seek approval for Tax Anticipation Warrants to make sure they can meet their financial obligations. (Exhibit #15)

74. On July 14, 2015, Mattoon School Assistant Superintendent Tom Sherman crafts a letter to be sent out to all Coles County Board members.

75. The letter is first sent to Mattoon Superintendent Larry Lilly for approval. The letter is sent to all Coles County Board members. In the letter, Tom Sherman expresses his concerns that he hopes "...that this delay in the property tax cycle does not occur next summer as well" and that "[i]t also causes the school district concern as we look forward to fiscal year 2016 and 2017 if this lateness in the property tax cycle were to continue." (Exhibit #16)

76. Communications continue between the Coles County Board and the Mattoon School District into 2016 and through 2017.

77. In an email, dated Wednesday March 30, 2016, from Coles County Board Chairman Stan Metzger to Mattoon Assistant Superintendent Tom Sherman, Stan Metzger explains that property tax bills for 2016 will be delayed one month. Metzger also goes on to state that "Our target for next year is to get the publishing done on or before December 1, 2016. This should push us forward sixty days next year..." (Exhibit #17)

78. All along, the plan stated by Coles County Board Chairman Stan Metzger was to get the reassessment of Mattoon Township done and publish the notice so the taxes would get out 60 days earlier.

79. The County accomplished the earlier date as the tax bills were mailed out for the first time in the month of May, earlier than anyone can ever remember.

80. This is why the County Board refused to take the "legal way out" that they said they would to make it fair.

81. The County Board Chairman Stan Metzger was not interested in being fair and equitable with the reassessment.

82. The County Board Chairman was more concerned with appeasing the Mattoon School District than he was with doing what was right for the taxpayers of the county.

83. Mr. Metzger wanted the commercial property owners to pay for the county's mistakes of failing to get the tax bills out on time the past two years and failing to generally assess the commercial properties for over 15 years.

84. The fact that the assessment for 2016 tax year was only completed for Mattoon Township resulted in an unconstitutionally disproportionate amount of taxes paid by Mattoon Township commercial and industrial landowners.

85. Based on the data available, the following chart for commercial and industrial properties shows by township within the Mattoon School District the different taxes for tax year 2015 and tax year 2016:

Lafayette 2015 Total	Lafayette 2016 Total	Difference Between Tax Year 2015 and Tax Year 2016
$3,067,340.59	$3,082,067.77	$14,727.18
Mattoon 2015 Total	Mattoon 2016 Total	Difference Between Tax Year 2015 and Tax Year 2016
$4,035,118.61	$4,964,995.02	$929,876.41
North Okaw 2015 Total	North Okaw 2016 Total	Difference Between Tax Year 2015 and Tax Year 2016
$4,732.62	$31,159.32	$26,426.70
Paradise 2015 Total	Paradise 2016 Total	Difference Between Tax Year 2015 and Tax Year 2016
$248,761.39	$233,947.90	($14,813.49)
2015 Grand Total (whole dollars)	2016 Grand Total	Difference Between Tax Year 2015 and Tax Year 2016
$7,355,953.21	$8,312,170.02	$956,216.80

86. True and correct copies of the 2016 tax year statements for the commercial and industrial properties within Mattoon Township and a summary of the difference in taxes paid for 2015 and 2016 tax years is attached hereto as Exhibit 20.

87. For tax year 2016, Mattoon Township pays $929,876.41 of the additional tax revenue collected of $956,216.80.

88. That means that Mattoon Township pays 97% of the additional revenues collected for tax year 2016.

89. For illustration purposes, the following chart presents the percentages that the townships pay of the total tax revenues collected from the commercial and industrial land owners.

	2015	2016	Difference
Mattoon	55%	60%	5%
Lafayette	42%	37%	(5%)
Paradise	3%	3 %	0%
North Okaw	< 1%	< 1%	0%

Mattoon's proportion of the taxes rose 5%. Whereas, the other large township, Lafayette Township, had its proportion of taxes decrease by 5%.

90. For 2016 tax year, Mattoon Township commercial and industrial property owners have been treated differently than similarly situated property owners in the County.

91. Coles County, under color of state law, has violated the Fourteenth Amendment's Equal Protection Clause in its unlawful, intentional, arbitrary and discriminatory assessment actions against Plaintiffs for tax year 2016.

CLASS ACTION ALLEGATIONS

92. Plaintiffs restate and reallege all previous paragraphs as if fully stated herein.

93. Plaintiffs bring this class action on behalf of themselves and all others similarly situated as Mattoon Township commercial and industrial property owners under Rule 23 of the Federal Rules of Civil Procedure.

94. The Proposed Class Plaintiffs seek to represent is composed of: All property owners of Mattoon Township commercial and industrial property for tax year 2016.

95. Plaintiffs specifically exclude from the Class employees or authorized representatives of Defendants Coles County, and any or all of its employees, affiliates, legal representatives, heirs, successors, and assignees.

96. Plaintiffs also specifically exclude the persons responsible for the County appraisal and assessments, their employees, representatives, successors, affiliates, and assignees from the Class.

97. Plaintiffs also specifically exclude from the Class the U.S. District Court Judge assigned to this case, and any member of their immediate families.

98. As set forth below, this class action satisfies all requirements under Rule 23 of the Federal Rules of Civil Procedure, including, but not limited to, the elements commonly known as numerosity, commonality, typicality, adequacy, and superiority.

a. The Proposed Class is so numerous that joinder of all members is impracticable. The Class is believed to exceed 500 members.

b. The claims of the Proposed Class share common questions of law or fact. Defendant has engaged in a common course of misconduct toward Plaintiffs and members of the Proposed Class

by fostering a disproportionate share of tax for the 2016 tax year to be paid by Plaintiffs. The common course of misconduct and resultant injury to Plaintiffs and the other members of the Class and the commonality of remedies available demonstrate the propriety of class certification.

c. The claims of the proposed Class Representatives are typical of the class. Each Plaintiff is being charged by Defendant, for tax year 2016, a disproportionate share of taxes. Plaintiffs' individual claims arise out of the same misconduct perpetrated by Defendant against each Plaintiff and other members of he Class. Thus, Plaintiffs' theories and evidence will be practically identical to those underlying the claims of the other members of the Class.

d. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs have no adverse or conflicting interests, and have retained experienced and competent counsel to adequately litigate this class action.

e. In addition, adjudication by individual members of the Class would create a risk of inconsistent adjudications with respect to individual members of the class, and as a practical matter, would be dispositive of the interests of other members not parties to the

adjudications. If Plaintiffs prevailed against Defendants, the claims of the other members of the Class would be substantially affected.

f. Further, the common questions of law or fact predominate over any questions affecting individual members, and the class action is superior to other available methods, considering the amount in controversy. Adjudication of this class action in a single forum would obviate the potential for inconsistent results for Class members. Plaintiffs are not aware of any difficulties likely to be encountered in managing this litigation as a class action.

g. Proper and sufficient notice of this action may be provided to the Class members through actual notice to the Mattoon Township commercial and industrial property owners who are identified in the County's real estate tax documents.

h. Plaintiffs and other members of the Class have suffered damages as a result of Defendants' unconstitutional conduct. Absent representative action, the members of the Class will continue to suffer losses if Defendants' violations of the law are allowed to continue.

COUNT I
42 U.S.C. § 1983 civil rights action
based on the U.S. Constitution Fourteenth Amendment
Equal Protection Clause

99. All of the above paragraphs are incorporated herein as if they were stated in their entirety.

100. The actions of Coles County regarding real estate taxes, covering tax year 2016, unconstitutionally violate the Fourteen Amendment's Equal Protection Clause placing a disproportionate tax on Mattoon Township commercial and industrial properties as opposed to commercial and industrial properties elsewhere in the Mattoon School District and in the County.

101. 42 U.S.C. § 1983 provides persons a federal cause of action based on state violations of federal law:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

102. The Fourteenth Amendment does not require precise equality or uniformity in taxation, or prohibit inequality in taxation which results from mere mistake or error in judgment of tax officials.

103. However, the Fourteenth Amendment does secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.

104. Stated differently, the Fourteenth Amendment protects only against taxation which is palpably arbitrary or grossly unequal in its application to the persons concerned.

105. As detailed above, the Mattoon Township commercial and industrial property owners are paying a palpably arbitrary and grossly unequal amount of taxes for tax year 2016.

106. As illustrated in the chart above, Mattoon Township is pay $929,876.41 in 2016 tax year; whereas, the neighboring Lafayette Township is only paying $14,727.18 more in 2016 tax year.

107. As illustrated in the chart above, Mattoon's proportion of the taxes rose 5%. Whereas, the other large township in the Mattoon School District, Lafayette Township, had its proportion of the taxes decreased by 5%.

108. The Defendants' actions under color of state law have violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

109. The Defendants' violative actions have caused damages to Plaintiffs for tax year 2016 in an amount of $929,876.41 plus pre-judgment interest and post-judgment interest.

COUNT II
DECLARATORY JUDGMENT

110. All of the above paragraphs are incorporated herein as if they were stated in their entirety.

111. The Court has inherent and statutory authority to issue declaratory judgments.

112. Based on the above facts, the Court should issue a declaratory judgment that the County under color of state law has violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Plaintiffs are entitled to $929,876.41 from the County as a refund of the violative property taxes.

COUNT III
INJUNCTION

113. The paragraphs above are incorporated herein by reference.

114. Per the resolution establishing the division of Coles County into four assessment districts (Ex. 4), the other townships of the county will not be assessed until 2017, 2018 and 2019.

115. For example, Lafayette Township which is within the Mattoon School District will not be assessed until 2018.

116. Under these circumstances, to mitigate the harm to Plaintiffs, Plaintiffs seek an injunction which requires Coles County to immediately do all the assessments county-wide including re-doing the assessments of Mattoon Township used for tax year 2016.

DEMAND FOR JURY TRIAL

117. A jury trial is demanded.

PRAYER FOR RELIEF

The Plaintiffs Robbie J. Perry and James Rex Dukeman pray for the following relief:

1. a 42 U.S.C. § 1983 judgment awarding damages against Defendants in an amount of $929,876.41 for tax year 2016 and additional damages for future years plus pre-judgment and post-judgment interest;
2. a declaratory judgment declaring that Plaintiffs' constitutional rights under the Equal Protection Clause of the Fourteenth Amendment have been violated;
3. an award under 42 U.S.C. § 1988 and other applicable laws against Defendant for attorney's fees, costs, witness fees, expenses, etc.;
4. an injunction which requires Coles County to immediately do all the assessments county-wide including re-doing the assessments of Mattoon Township used for tax year 2016; and
5. any other legal or equitable relief which the Court awards.

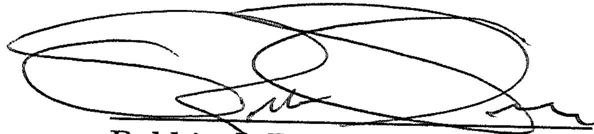
Dated: August 3, 2017

/s/Erick G. Kaardal
Erick G. Kaardal, 229647
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, Minnesota 55402
Telephone: 612-341-1074
Facsimile: 612-341-1076
Email: kaardal@mklaw.com

VERIFICATION OF COMPLAINT

I declare that the foregoing is true and correct to the best of my knowledge.

Dated: August 3, 2017



Robbie J. Perry

VERIFICATION OF COMPLAINT

I declare that the foregoing is true and correct to the best of my knowledge.

Dated: August 3, 2017

James Rex Dukeman

E-FILED
Friday, 09 June, 2017 03:46:30 PM
Clerk, U.S. District Court, ILCD

State of Illinois)
)ss.
County of Coles)

COPY

RESOLUTION ESTABLISHING THE DIVISION OF COLES COUNTY INTO FOUR ASSESSMENT DISTRICTS

WHEREAS, pursuant to 35 ILCS 200/12-10, the Supervisor of Assessments of each county is required to assess the value of each property listed for taxation as of January 1st of that, in the general assessment year, and to publish notice of all assessments in a newspaper or newspapers published in the county; and

WHEREAS, pursuant to 35 ILCS 200/9-225, the county board of any county may authorize the assessing of the property in the county into four (4) equal parts, each assessment district to be established following township lines, and with assessment as required by 55 ILCS 200/9-155 to be completed for Assessment District 1 in 2016, Assessment District 2 in 2017, Assessment District 3 in 2018, and Assessment District 4 in 2019; and

WHEREAS, the Coles County Supervisor of Assessments has requested the County Board's approval and authorization to divide Coles County into four (4) assessment districts pursuant to the authority granted in 35 ILCS 200/9-225.

NOW, THEREFORE BE IT RESOLVED by the County Board of Coles County, Illinois, that pursuant to 35 ILCS 200/9-225, the division of Coles County into four (4) assessment districts is approved as follows:

ASSESSMENT DISTRICT 1 - to be assessed in 2016 and every 4th year thereafter -
Mattoon Township
Total parcels - approximately 7,568

ASSESSMENT DISTRICT 2 - to be assessed in 2017 and every 4th year thereafter -
Charleston Township
Total parcels - approximately 7,142

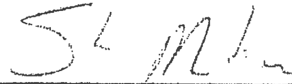
ASSESSMENT DISTRICT 3 - to be assessed in 2018 and every 4th year thereafter -
Lafayette Township
North Okaw Township
Humboldt Township
Paradise Township
Total parcels - approximately 5,352

ASSESSMENT DISTRICT 4 - to be assessed in 2019 and every 4th year thereafter -

Ashmore Township
East Oakland Township
Hutton Township
Pleasant Grove Township
Seven Hickory Township
Morgan Township

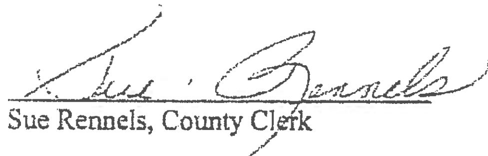
Total parcels - approximately 6,004

Adopted this 6th day of March, 2015.



Stan Metzger, Chairman
Coles County Board

ATTEST:



Sue Rennels, County Clerk

21,25,APPEAL,CLOSED,REFER

U.S. District Court
CENTRAL DISTRICT OF ILLINOIS (Urbana)
CIVIL DOCKET FOR CASE #: 2:17–cv–02133–CSB–EIL

Perry et al v. Coles County
Assigned to: Judge Colin Stirling Bruce
Referred to: Magistrate Judge Eric I. Long
Demand: $900,000
Cause: 42:1983 Civil Rights Act

Date Filed: 06/09/2017
Date Terminated: 12/04/2017
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Robbie J Perry
on behalf of themselves and others similarly situated as Mattoon Township (Coles County, Illinois) commerical and industrial property owners

represented by **Erick G Kaardal**
MOHRMAN KAARDAL & ERICKSON PA
Suite 3100
150 South Fifth Street
Minneapolis, MN 55402
612–341–1074
Fax: 612–341–1076
Email: kaardal@mklaw.com
ATTORNEY TO BE NOTICED

Plaintiff

James Rex Dukeman
on behalf of themselves and others similarly situated as Mattoon Township (Coles County, Illinois) commerical and industrial property owners

represented by **Erick G Kaardal**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Coles County

represented by **Keith Eric Fruehling**
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217–344–0060
Fax: 344–9295
Email: kfruehling@heylroyster.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Benjamin C Ford
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301 North Neil Street
Champaign, IL 61820

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ATTORNEY TO BE NOTICED

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Email: bsmith@heylroyster.com
ATTORNEY TO BE NOTICED

Date Filed	#	Page	Docket Text
06/09/2017	1		COMPLAINT *Verified* against Coles County (Filing fee $ 400 receipt number 0753–2594776.), filed by Robbie J Perry, James Rex Dukeman. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20 part 1, # 21 Exhibit 20 part 2, # 22 Exhibit 20 part 3, # 23 Exhibit 20 part 4, # 24 Exhibit 20 part 5, # 25 Exhibit 20 part 6, # 26 Exhibit 20 part 7, # 27 Exhibit 20 part 8, # 28 Exhibit 20 part 9, # 29 Exhibit 20 part 10, # 30 Exhibit 20 part 11, # 31 Exhibit 20 part 12, # 32 Exhibit 21, # 33 Text of Proposed Order Proposed Summons, # 34 Civil Cover Sheet)(Kaardal, Erick) (Entered: 06/09/2017)
06/09/2017	2		Summons Issued as to Coles County and mailed to the attorney for the Plaintiff for service. (JMB, ilcd) (Entered: 06/09/2017)
07/10/2017	3		NOTICE of Appearance of Attorney by Keith Eric Fruehling on behalf of Coles County (Fruehling, Keith) (Entered: 07/10/2017)
07/10/2017	4		NOTICE of Appearance of Attorney by Brian Michael Smith on behalf of Coles County (Smith, Brian) (Entered: 07/10/2017)
07/10/2017	5		NOTICE of Appearance of Attorney by Benjamin C Ford on behalf of Coles County (Ford, Benjamin) (Entered: 07/10/2017)
07/10/2017	6		MOTION for Extension of Time to File Answer re 1 Complaint,,, by Defendant Coles County. Responses due by 7/24/2017 (Fruehling, Keith) (Entered: 07/10/2017)
07/11/2017	7		ORDER setting Rule 16 Scheduling Conference entered by Magistrate Judge Eric I. Long on 7/11/2017. Rule 16 Scheduling Conference set for 9/6/2017 at 10:30 AM in Courtroom B in Urbana before Magistrate Judge Eric I. Long. See written Order.(DS, ilcd) (Entered: 07/11/2017)
07/11/2017			TEXT ORDER entered by Magistrate Judge Eric I. Long on 7/11/2017. Defendant's Motion for Extension of Time to File Responsive Pleading 6 is GRANTED. Defendant's deadline to file a responsive pleading is extended to August 7, 2017. (DS, ilcd) (Entered: 07/11/2017)

07/21/2017	8		SUMMONS Returned Executed by Robbie J Perry, James Rex Dukeman. Coles County served on 6/19/2017, answer due 8/7/2017. (Kaardal, Erick) (Entered: 07/21/2017)
08/03/2017	9		AMENDED COMPLAINT *Verified* against Coles County, filed by Robbie J Perry, James Rex Dukeman.(Kaardal, Erick) (Entered: 08/03/2017)
08/09/2017	10		CERTIFICATE *of Compliance/Affidavit of Service of Plaintiffs' Initial Disclosures*. (Kaardal, Erick) (Entered: 08/09/2017)
08/17/2017	11		MOTION to Dismiss for Lack of Jurisdiction by Defendant Coles County. Responses due by 8/31/2017 (Fruehling, Keith) (Entered: 08/17/2017)
08/17/2017	12		MEMORANDUM in Support re 11 MOTION to Dismiss for Lack of Jurisdiction filed by Defendant Coles County. (Fruehling, Keith) (Entered: 08/17/2017)
08/30/2017	13		DISCOVERY PLAN – PROPOSED/Report of Rule 26(f)Planning Meeting by Coles County. (Fruehling, Keith) (Entered: 08/30/2017)
08/31/2017			TEXT ORDER entered by Magistrate Judge Eric I. Long on 8/31/2017. This Court has reviewed the parties' Report of Rule 26(f) Planning Meeting 13 and pursuant to the Order 7 scheduling this matter for a Rule 16 hearing conference by personal appearance on September 6, 2017, at 10:30 a.m., the matter is hereby converted from personal appearance to telephone conference on the same date at the same time. The Court will initiate the call. (DS, ilcd) (Entered: 08/31/2017)
08/31/2017	14		MEMORANDUM in Opposition re 11 MOTION to Dismiss for Lack of Jurisdiction filed by Plaintiffs James Rex Dukeman, Robbie J Perry. (Kaardal, Erick) (Entered: 08/31/2017)
09/06/2017			TEXT ORDER entered by Magistrate Judge Eric I. Long on 9/6/17. The Rule 16 Scheduling Conference set for today, 9/6/17, at 10:30 is VACATED. The Rule 16 Scheduling Conference will be reset, if needed, at a later date. (KM, ilcd) (Entered: 09/06/2017)
12/04/2017	15	6	ORDER entered by Judge Colin Stirling Bruce on 12/4/2017. Defendant's Motion to Dismiss 11 is GRANTED. Plaintiffs' Amended Complaint 9 is hereby DISMISSED. See written order. (KE, ilcd) (Entered: 12/04/2017)
12/04/2017	16	13	JUDGMENT entered. (KE, ilcd) (Entered: 12/04/2017)
12/22/2017	17	4	NOTICE OF APPEAL as to 15 Order on Motion to Dismiss/Lack of Jurisdiction by James Rex Dukeman, Robbie J Perry. Filing fee $ 505, receipt number 0753–2734793. (Kaardal, Erick) (Entered: 12/22/2017)

APPELLANT COUNSEL'S AFFIRMATIVE STATEMENT

I, Erick G. Kaardal, affirm that I have complied with Circuit Court Rule 30(a) and (b) to the best of my knowledge.

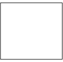
/s/Erick G. Kaardal
Erick G. Kaardal

CERTIFICATE OF SERVICE

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on January 31, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Erick G. Kaardal



CERTIFICATE OF SERVICE

Certificate of Service When Not All Case Participants Are CM/ECF Participants

I hereby certify that on ____________________, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:	address:

s/ ______________________________