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DOES THE TAX INJUNCTION ACT OF 1937 AFFECT STATE COURT JURISDICTION OVER STATE TAX CHALLENGES UNDER SECTION 1983 OF THE CIVIL RIGHTS ACT OF 1871?

The Tax Injunction Act of 1937 (the Act) prohibits federal courts from hearing challenges to state taxes when a state court can provide to the challenger a plain, speedy, and efficient remedy.¹ Although the Act forces challengers of state taxes into state courts, the challengers often attempt to plead violations of section 1983 of the Civil Rights Act (section 1983).²

1. See Tax Injunction Act, 28 U.S.C. § 1341 (1982). The Tax Injunction Act provides that:

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

Id.

2. See, e.g., *Zizka v. Water Pollution Control Auth.*, 195 Conn. 682, —, 490 A.2d 509, 510 (1985) (plaintiff challenged under § 1983 town formula for sewer assessment); *State Tax Comm'n v. Fondren*, 387 So. 2d 712, 714 (Miss. 1980) (plaintiff brought action under Mississippi Constitution, fourteenth amendment of United States Constitution, and § 1983, challenging county *ad valorem* tax assessment), *cert. denied sub nom*, *Redd v. Lambert*, 450 U.S. 1040 (1981); *Bung's Bar & Grille, Inc. v. Florence Township Council*, 206 N.J. Super. 432, 438, 502 A.2d 1198, 1201 (1985) (plaintiff challenged under New Jersey law and § 1983 local improvement assessment).

Section 1983 provides that any person who, while acting under state authority, deprives another person of his federal constitutional or statutory rights, is liable to the injured person. 42 U.S.C. § 1983 (1982). Originally, Congress enacted section 1983 as part of section 1 of the Civil Rights Act of 1871. See 42 U.S.C.A. § 1983 (Historical Note, Codification) (West 1981) (stating that R.S. § 1979 is from Act of April 20, 1871, c. 22, § 1, 17 Stat. 13); *Carter v. Dist. of Columbia*, 795 F.2d 116, 120 n.2 (D.C. Cir. 1986) (discussing history of § 1983). Congress intended section 1983, commonly known as the Ku Klux Klan Act, to protect black citizens' federal constitutional and statutory rights that the Klan was violating. CONG. GLOBE, 42nd Cong., 1st Sess. 166-67 (1871); see *Monroe v. Pape*, 365 U.S. 167, 174 (1961) (discussing Congressional intent behind § 1983). Congress believed that, although no states were passing laws that discriminated specifically against black citizens, states were either unwilling or unable to control the Klan activity. CONG. GLOBE, 42nd Cong., 1st Sess. 244 (1871); see *Monroe*, 365 U.S. at 176 (discussing Congressional intent behind § 1983). In enacting section 1983, Congress provided an effective cause of action to the victims of Klan activity. *Monroe*, 365 U.S. at 176. In *Monroe v. Pape* the United States Supreme Court extended the section 1983 remedies beyond racial discrimination cases to all constitutional violations. *Id.* at 172. In *Fair Assessment in Real Estate Association v. McNary* the Supreme Court further extended the section 1983 remedies to taxpayers or anyone else who can prove constitutional or federal rights violations by any state official acting under state law. *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 115 (1981); see *infra* notes 115-23 and accompanying text (discussing United States Supreme Court's holding in *Fair Assessment*).

Congress intended section 1983 to do three things. *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 503-07 (1982). First, Congress wanted to insure that plaintiffs who had section 1983 claims had immediate access to federal courts. See *id.* at 503 (discussing Congress' intent in enacting § 1983). Second, Congress recognized that state courts might not be as independent

When successful in a challenge to state taxes, a state court litigant routinely requests that the defendant municipal officer pay the litigant's reasonable attorneys' fees.³ The Civil Rights Attorneys' Fees Awards Act of 1976 (section 1988)⁴ permits a plaintiff bringing a section 1983 claim to seek attorneys' fees.⁵ Often the damages that a successful state tax challenger

as federal courts in their assessment of claims against state officials. *Id.* at 505. Therefore, Congress provided plaintiffs with an independent fact finder, the federal court. *Id.* Finally, Congress wanted to allow civil rights plaintiffs to choose between federal and state forums. *Id.* at 506.

Federal courts have recognized that section 1983 does not create any substantive federal rights. *See, e.g.,* *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980) (holding that § 1983 creates no substantive rights); *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 617 (1979) (finding that § 1983 did not provide to plaintiff any substantive rights); *Garcia v. Wilson*, 731 F.2d 640, 650 (10th Cir. 1984) (holding that § 1983 is solely procedural statute that does not grant plaintiff any substantive rights). Rather, section 1983 guarantees a forum to an individual when a state official, acting under color of state law, violates the individual's federal constitutional or statutory rights. *Thiboutot*, 448 U.S. at 4. The rights that plaintiffs seek to vindicate through section 1983 actions are not found in section 1983, but are found in the federal constitution or statutes. *Id.* The section 1983 remedy is supplemental to state law remedies, although section 1983 does not require a plaintiff to exhaust available state remedies before the plaintiff may pursue his section 1983 claim in federal court. *Monroe*, 365 U.S. at 183.

Generally, plaintiffs pleading violations under section 1983 have immediate access to a federal court. *See Fair Assessment*, 454 U.S. at 104 (discussing § 1983's federal forum provision). The Tax Injunction Act separates state tax section 1983 claims from other section 1983 claims by precluding federal jurisdiction over state tax challenges. *See id.* at 107 (explaining that Act's preclusion of federal forum and § 1983's provision of federal forum conflict); *infra* notes 115-23 and accompanying text (discussing United States Supreme Court's explanation in *Fair Assessment* of conflict between § 1983 and Act).

3. *See* *Bung's Bar & Grille, Inc. v. Florence Township Council*, 206 N.J. Super. 432, 439, 502 A.2d 1198, 1200 (1985) (plaintiff requested counsel fees and costs after prevailing on challenge to local improvement assessment); *Spencer v. South Carolina Tax Comm'n*, 281 S.C. 492, 493, 316 S.E.2d 386, 387 (1984) (same), *aff'd by an equally divided court*, 471 U.S. 82 (1985) (per curiam).

4. *See* Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. § 1988 (1982). The Civil Rights Attorneys' Fees Awards Act of 1976 provides, in part, that:

In any action . . . to enforce . . . section 1983 . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs.

Id.

5. Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. § 1988 (1982). Congress enacted the Civil Rights Attorneys' Fees Awards Act of 1976 in response to the United States Supreme Court's decision in *Alyeska Pipeline Service Company v. Wilderness Society*. *See* *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 269 (1975) (holding that successful plaintiff is not entitled to attorneys' fee award); S. REP. NO. 1011, 94th Cong., 2d Sess. 1, reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS 5908, 5909 (stating that *Alyeska* was impetus behind enacting § 1988). In *Alyeska* the United States Supreme Court explained that only Congress can create exceptions to the American rule governing attorneys' fees. *Alyeska*, 421 U.S. at 247. Under the American rule a prevailing party in a lawsuit ordinarily may not recover attorneys' fees from the losing party. *Id.* Congress recognized that awards of attorneys' fees were essential to the effective enforcement of the federal statutes to which section 1988 applies. S. REP. NO. 1011, *supra*, at 6, 1976 U.S. CODE CONG. & ADMIN. NEWS at 5913. The Senate Committee on the Judiciary noted that many citizens who sue to vindicate

receives are less than the cost of the litigation.⁶ Although a state law may remedy an unfair tax, when a plaintiff can plead a section 1983 claim in conjunction with his state law claim, the possibility of recouping the attorneys' fees under section 1988 makes the state tax challenge economically feasible.⁷ Therefore, a state court's refusal to hear a plaintiff's section 1983 claim, and the court's refusal to award attorneys' fees under section 1988, effectively can prevent the plaintiff from pursuing state tax litigation and force the plaintiff to continue to pay an unfair tax.⁸

The United States Supreme Court has held that a state court has jurisdiction to hear general section 1983 claims.⁹ State courts, however, have reached different decisions on the question of whether the state courts' jurisdiction over general section 1983 claims extends to state tax section 1983 lawsuits.¹⁰ A majority of state courts that have addressed the issue of state court jurisdiction over state tax section 1983 claims have held that the Act precludes state courts and federal courts from entertaining plaintiffs'

their civil rights cannot afford the costs of litigation. *Id.* at 2, 1976 U.S. CODE CONG. & ADMIN. NEWS at 5910. Thus, when civil rights litigants were unable to recover from a defendant reasonable attorneys' fees, the litigants' did not pursue the litigation and state officials continued to violate the litigants' civil rights. *Id.*

6. See Taylor, *Section 1983 in State Court: A Remedy for Unconstitutional State Taxation*, 95 YALE L.J. 414, 417 (1985) (discussing need for state courts to hear § 1983 state tax challenges).

7. See, Taylor, *supra* note 6, at 417 (discussing need for state courts to hear § 1983 state tax challenges). State law remedies available to victims of unfair state taxation do not provide taxpayers with any economic incentive for vindicating their federal rights. *Id.* at 415 n.8. Often, courts award to victims of unconstitutional taxation money damages of a much lower amount than the attorneys' fees that the victims actually incur in challenging the tax. *Id.* at 417. If the victims' attorneys' fees will exceed the tax refund that the victim hopes to recover through litigation, the victim will not pursue the litigation. *Id.* Thus, the availability of attorneys' fees to state tax challengers can make the difference between protecting the federal rights of the taxpayers and allowing violations of taxpayers' rights to go unredressed. *Id.*

8. *Id.*

9. See *Martinez v. California*, 444 U.S. 277, 283 n.7 (1980) (holding that state courts possess jurisdiction concurrently with federal district courts over general § 1983 claims).

10. See *Zizka v. Water Pollution Control Auth.*, 195 Conn. 682, —, 490 A.2d 509, 513 (1985) (holding that state court can refuse to hear state tax § 1983 claim); *Backus v. Chilivis*, 236 Ga. 500, 505, 224 S.E.2d 370, 374 (1976) (holding that state court cannot hear state tax § 1983 claim); *Bung's Bar & Grille, Inc. v. Florence Township Council*, 206 N.J. Super. 432, 461, 502 A.2d 1198, 1214 (1985) (holding that state court should hear state tax § 1983 claim).

Several state courts have heard state tax section 1983 claims. See *Beverly Bank v. Board of Review*, 117 Ill. App. 3d 656, 660, 453 N.E.2d 96, 102 (1983) (finding that plaintiff's stated cause of action under § 1983 in challenge to state tax), *cert. denied*, 466 U.S. 951 (1984); *Dutoit v. Board of County Comm'rs*, 233 Kan. 995, —, 667 P.2d 879, 888 (1983) (holding that state tax litigant stated cause of action under § 1983); *Holden Arboretum v. Kirtland*, 19 Ohio App. 3d 125, 125, 483 N.E.2d 167, 168 (1984) (entertaining § 1983 claim against state admissions tax ordinance); *supra*, note 2 (discussing distinction between general § 1983 actions and state tax § 1983 actions).

section 1983 claims challenging state taxes.¹¹ Two state courts have held that the Act automatically does not preclude state court jurisdiction over state tax section 1983 actions, but rather provides a guideline for state courts to follow in evaluating the adequacy of state remedies.¹² These two courts determined that, if the state remedy is adequate, the state court should defer to the state remedy.¹³ The two courts further determined that, if the state remedy is inadequate, the state court should apply the federal remedy that would be available in a federal court because the Act does not bar federal jurisdiction when the state remedy is inadequate.¹⁴ Finally, one court has held that the Act encourages, if not requires, state courts to hear section 1983 claims against state tax officials and award attorneys' fees under section 1988.¹⁵ The legislative history of the Act, the United States Supreme Court's interpretation of the Act, and the Supremacy Clause of the United States Constitution, all suggest that, to afford taxpayers an adequate forum for their constitutional claims against state tax officials, state courts should entertain section 1983 suits challenging state taxes.¹⁶

11. See *Backus v. Chilivis*, 236 Ga. 500, 505, 224 S.E.2d 370, 374 (1976) (barring § 1983 challenge to *ad valorem* tax assessments because state created remedy was plain, speedy, and efficient); *Raschke v. Blancher*, 141 Ill. App. 3d 813, 817, 491 N.E.2d 1171, 1174 (1986) (barring § 1983 challenge to property reassessment because Act bars § 1983 challenge to state taxes in federal court); *State Tax Comm'n v. Fondren*, 387 So. 2d 712, 723 (Miss. 1980) (holding that state court has no jurisdiction to hear § 1983 challenge to *ad valorem* tax assessment because Act precludes federal court jurisdiction), *cert. denied sub nom*, *Redd v. Lambert*, 450 U.S. 1040 (1981); *Stufflebaum v. Panethiere*, 691 S.W.2d 271, 272 (Mo. 1985) (en banc) (holding that plain, adequate, and complete state law remedy bars state tax § 1983 claim); *Strain v. Baryla*, No. TSB-H-84(44)S (N.Y. State Tax Comm'n June 1, 1984) (LEXIS, Sttax library) (holding that Act bars state courts from entertaining state tax § 1983 claims); *Johnston v. Gaston County*, 71 N.C. App. 707, 713, 323 S.E.2d 381, 384 (1984) (dismissing plaintiffs' § 1983 claim in state court because state law remedy was plain, adequate, and complete); *Spencer v. South Carolina Tax Comm'n*, 281 S.C. 492, 497, 316 S.E.2d 386, 388-89 (1984) (taxpayer may not circumvent state remedies by invoking § 1983), *aff'd by an equally divided Court*, 471 U.S. 82 (1985) (per curiam).

12. See *Zizka v. Water Pollution Control Auth.*, 195 Conn. 682, —, 490 A.2d 509, 513 (1985) (holding that Act provides guidelines for state courts to follow in developing jurisdictional bar to state tax § 1983 claims in state court); *Linderkamp v. Bismarck School Dist. No. 1*, 397 N.W.2d 76, 79 (N.D. 1986) (same); see also *infra* notes 49-58 and accompanying text (discussing *Linderkamp* decision); *infra* note 60 (discussing *Zizka* decision).

13. *Linderkamp v. Bismarck School Dist. No. 1*, 397 N.W.2d 76, 79 (N.D. 1986); *Zizka v. Water Pollution Control Auth.*, 195 Conn. 682, —, 490 A.2d 509, 513 (1985).

14. *Linderkamp v. Bismarck School Dist. No. 1*, 397 N.W.2d 76, 79 (N.D. 1986); *Zizka v. Water Pollution Control Auth.*, 195 Conn. 682, —, 490 A.2d 509, 513 (1985).

15. See *Bung's Bar & Grille, Inc. v. Florence Township Council*, 206 N.J. Super. 432, 462, 502 A.2d 1198, 1214 (1985) (holding that state courts should hear § 1983 challenges to local improvement assessments and award § 1988 attorneys' fees); see also *Marx v. Truck Renting and Leasing Ass'n*, No. 57,130, slip op. at 2 (Miss. Sept. 30, 1987) (Robertson, J., concurring) (state court must accept and adjudicate state tax § 1983 claim); *infra* notes 46-52 and accompanying text (explaining *Bung's* court's reasoning in entertaining state tax § 1983 claim).

16. See *infra* notes 124-82 and accompanying text (analyzing purposes of Act and concluding that state courts have duty to hear state tax § 1983 claims).

Several state courts have considered the ability of plaintiffs challenging state taxes to bring section 1983 claims.¹⁷ Generally, state courts follow one of three approaches to this question.¹⁸ In *State Tax Commission v. Fondren (Fondren II)*¹⁹ the Mississippi Supreme Court determined that the Act precludes state courts from entertaining section 1983 suits (the preclusion approach).²⁰ In *Fondren v. State Tax Commission (Fondren I)* property owners in various Mississippi counties sought to enjoin the Mississippi State Tax Commission (Tax Commission) from approving the counties' assessment rolls until the Commission equalized assessments among the counties.²¹ The Chancery Court of Hinds County, Mississippi, sustained the Tax Commission's demurrer to the plaintiffs' complaint and the plaintiffs appealed the decision to the Mississippi Supreme Court.²² The Mississippi Supreme Court reversed and remanded the case, holding that the Mississippi statutes providing for an appeal of tax assessments did not afford the plaintiffs an adequate remedy at law.²³ After the supreme court's decision in *Fondren I*, property owners in twelve other Mississippi counties filed in the chancery court a similar complaint against the Tax Commission that also advanced a section 1983 claim that enabled the plaintiffs to further request attorneys'

17. See *supra* note 10 (listing courts that have ruled on state court jurisdiction over state tax § 1983 claims).

18. See *supra* notes 10-15 and accompanying text (discussing state court disagreement about state court jurisdiction over state tax § 1983 actions).

19. 387 So. 2d 712 (Miss. 1980) (*Fondren II*).

20. *State Tax Comm'n v. Fondren*, 387 So. 2d 712, 723 (Miss. 1980) (*Fondren II*), *cert. denied sub nom.*, *Redd v. Lambert*, 450 U.S. 1040 (1981).

21. *Fondren v. State Tax Comm'n*, 350 So. 2d 1329, 1330 (Miss. 1977) (*Fondren I*). In *Fondren I* the plaintiffs asserted that tax assessments in Mississippi were unequal among the counties. *Id.* The plaintiffs alleged that various sections of the Mississippi Code charged the State Tax Commission with the responsibility to equalize property assessments among Mississippi counties. *Id.*; Miss. CODE ANN. §§ 27-35-113 - 117 (1972). The plaintiffs alleged that section 112 of the Mississippi Constitution required that taxation be uniform and equal throughout the state, that the state adopt general laws and uniform rules for property assessment, and that the state assess taxes against property in proportion to the property's true value. *Fondren I*, 350 So. 2d at 1330; Miss. CONST. art. IV, § 112.

22. *Fondren I*, 350 So. 2d at 1332.

23. *Id.* In *Fondren I* the State Tax Commission claimed that the Mississippi statutory remedy barred the plaintiffs' suit in equity. *Id.* at 1333. The Mississippi remedy provided that if a Commission order assessing an *ad valorem* tax aggrieved any person, the aggrieved person could appeal to the Board of Tax Appeals the amount of the tax. *Id.* The Commission offered as evidence of the adequacy of the Mississippi statutory remedy Mississippi Code provisions that provided methods for determining the proper assessment of a piece of property. *Id.* The Mississippi Supreme Court noted that the plaintiff did not question the Commission's computation of the value of his property. *Id.* Rather, the plaintiff requested that the court enjoin the Commission from collecting taxes anywhere in the state until assessments throughout the state were equal in compliance with the Mississippi Constitution. *Id.* The court stated that the drafters of the Mississippi Code sections upon which the Commission relied intended the sections to provide a procedure for a taxpayer to appeal the amount of an assessment, and not to police the Commission's compliance with the Mississippi Constitution's requirement of equal taxation. *Id.*

fees pursuant to section 1988.²⁴ The chancery court consolidated the suits for trial (*Fondren II*).²⁵ The chancery court granted the plaintiffs the requested injunctive relief and attorneys' fees.²⁶ The Tax Commission appealed the chancery court's decision, asserting that the Tax Injunction Act precluded the award of plaintiffs' attorneys' fees.²⁷

In *Fondren II*, the Supreme Court of Mississippi reversed the chancery court's decision awarding attorneys' fees to the Mississippi property owners.²⁸ The supreme court rested its opinion on three premises.²⁹ First, the court assumed that a plain, speedy, and efficient state procedure for the appeal of state tax assessments satisfied the Act's requirement that an adequate remedy be available in state court.³⁰ The court noted that the

24. *Fondren II*, 387 So. 2d at 714. In *Redd v. State Tax Commission*, which the chancery court of Hinds County, Mississippi, consolidated with *Fondren I* for trial, the plaintiffs owned taxable property in 12 Mississippi counties. *Id.* The complaint sought to enjoin the Tax Commission's chairman and commissioners, and the Chiefs of the Ad Valorem and Equalization Divisions of the Commission, from approving any county's assessment roll until the Commission equalized the assessment rolls between the counties. *Id.* The *Redd* plaintiffs requested that the Chancellor require the defendants to pay all of complainants' costs and expenses, including attorneys' fees. *Id.*

25. *Id.*; see *Fondren v. State Tax Comm'n*, 387 So. 2d 713 (Miss. 1977) (*Fondren II*), cert. denied sub nom, *Redd v. Lambert*, 450 U.S. 1041 (1981).

26. *Id.* In *Fondren II* the chancery court issued an injunction prohibiting the defendants and their successors from accepting or approving the tax rolls or recapitulation reports of any county unless the commissioners valued and assessed all property subject to *ad valorem* taxation within the county at the property's true value. *Id.* Pursuant to section 1988 of the Civil Rights Act, the Chancellor awarded plaintiffs attorneys' fees of \$58,000. *Id.*; Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. § 1988 (1982).

27. *Fondren II*, 387 So. 2d at 722.

28. *Id.* at 723. In *Fondren II* the defendant appealed the Chancellor's decree on four grounds. *Id.* at 722. First, the Commission asserted that the Chancellor lacked the authority to require the Commission to equalize assessments between the counties of the state. *Id.* at 715. The Supreme Court of Mississippi held that the Mississippi Code charged the Commission with the responsibility to equalize assessments between counties. *Id.* at 719. The Mississippi Supreme Court held that the Chancellor could require that the Commission execute its legal duty to equalize assessments. *Id.* at 720. Second, the Commission argued that the law did not require that the Commission assess property at its true value for taxation. *Id.* The Mississippi Supreme Court rejected the Commission's argument and held that, although the assessed value of property may be a percentage of its true value, the true value of the property must be the basis of the Commission's assessment. *Id.* at 721. Third, the Commission asserted that the plaintiffs had no standing to maintain a suit challenging the *ad valorem* tax assessments, and that injunctive relief was not permissible. *Id.* at 723. The Mississippi Supreme Court held that the court's decision in *Fondren I* answered affirmatively these questions. *Id.*; *Fondren I*, 350 So. 2d 1329 (Miss. 1977). Finally, the Commission argued that the Act barred the Chancellor's award of attorneys' fees under section 1988 to the plaintiffs. *Fondren II*, 387 So. 2d 723. The Mississippi Supreme Court's consideration of the attorneys' fees award was the only part in which the court addressed a state court's jurisdiction over state tax section 1983 claims. *Id.* at 723.

29. *Fondren II*, 387 So. 2d at 722-23.

30. *Id.* at 723. In *Fondren II*, without discussing the provisions of the Mississippi remedy, the Mississippi Supreme Court noted that the procedural provisions of the Mississippi remedy were adequate. *Id.*

Mississippi appeal procedures for plaintiffs who challenge *ad valorem* tax assessments were adequate.³¹ Second, the *Fondren II* court asserted that, while state courts have concurrent jurisdiction with federal courts over section 1983 claims, state courts do not have superior jurisdiction over section 1983 claims.³² Last, the court explained that the Act requires a plaintiff challenging a state tax to exhaust state remedies before pursuing a section 1983 remedy.³³ Accordingly, the court found that, because the plaintiffs failed to exhaust their state created remedies, the Act precluded a federal court from hearing the plaintiffs' section 1983 claim.³⁴ Since a state court's jurisdiction does not extend beyond a federal court's jurisdiction, the court found that a state court could not entertain the plaintiffs' section 1983 claim.³⁵ Thus, the court held that the existence of an adequate state remedy precludes a plaintiff's section 1983 claim in both federal and state courts.³⁶ The court concluded that the Tax Injunction Act precluded the plaintiffs from bringing a section 1983 claim in state court and from recovering attorneys' fees under section 1988.³⁷

31. *Id.* at 723. In *Fondren II* the Mississippi Supreme Court, in holding adequate the Mississippi statutory remedy for plaintiffs challenging *ad valorem* tax assessments, relied on the decision of the United States Court of Appeals for the Fifth Circuit in *Bland v. McHann*. *Id.* at 723; *Bland v. McHann*, 463 F.2d 21, 28 (5th Cir. 1972). In *Bland* a group of black demonstrators in Edwards, Mississippi, filed suit in the federal district court alleging that state and local officials unfairly had assessed plaintiffs' properties for tax purposes. *Bland*, 463 F.2d at 23. The plaintiffs alleged that state and local tax officials overassessed the plaintiffs' properties in retaliation for the plaintiffs' peaceful demonstrations against local racial discrimination. *Id.* The United States District Court for the Southern District of Mississippi denied the plaintiffs all relief on the merits and noted that a valid remedy was available to the plaintiffs in state court. *Id.* The Mississippi remedy provided for notice to taxpayers that officials had equalized tax rolls, a forum for taxpayers to air their objections to the tax and for appeal to the Mississippi circuit court. *See id.* at 28 (discussing Mississippi statutory remedy available to plaintiffs challenging state tax); Miss. CONST. ART. 4, § 112; Miss. CODE ANN., §§ 1147, 1340 (1972); *id.*, §§ 3742-12, 3742-14, 3742-17 (1972). The United States Court of Appeals for the Fifth Circuit affirmed the district court's decision in part, reasoning that, because the Mississippi remedy was plain, speedy, and efficient, the Tax Injunction Act precluded the district court from entertaining the suit. *Bland*, 463 F.2d at 23.

32. *Fondren II*, 387 So. 2d at 723.

33. *Id.* In *Fondren II* the Mississippi Supreme Court determined that the Act distinguishes state tax § 1983 cases from other § 1983 cases. *Id.* The court noted that generally, plaintiffs need not exhaust state remedies before seeking relief under section 1983 in federal court. *Id.*; *see Monroe v. Pape*, 365 U.S. 167, 183 (1961) (holding that § 1983 plaintiffs need not exhaust state remedies before bringing § 1983 action in federal court). However, the court reasoned that the Act's bar on federal court jurisdiction over state tax challenges, whether or not a plaintiff challenges a state tax under section 1983, required plaintiffs to exhaust state remedies. *Fondren II*, 387 So. 2d at 723.

34. *Fondren II*, 387 So. 2d at 723.

35. *Id.*

36. *Id.*

37. *Id.* The Mississippi Supreme Court recently held that the United States Supreme Court's decision in *Fair Assessment in Real Estate Association v. McNary* overruled *Fondren II*. *See Marx v. Truck Renting and Leasing Ass'n*, No. 57,130, slip op. at 8 (Miss. Sept. 30, 1987) (Robertson, J., concurring) (noting that majority of *Marx* court recognizes that *Fair*

In *Bung's Bar & Grille, Inc. v. Florence Township Council*³⁸ the Superior Court of New Jersey expressly refused to follow the *Fondren II* court's

Assessment decision essentially overrules *Fondren II* decision); see also *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981) (holding that although Act bars in federal court state tax § 1983 claim, plaintiffs can bring state tax § 1983 claim in Missouri court); *Fondren II*, 387 So. 2d at 723 (holding that Act precludes in state court state tax § 1983 claim). Although the Mississippi Supreme Court in *Marx* recognized that *Fair Assessment* overruled *Fondren II*, the *Fondren II* decision provides a clear illustration of the preclusion approach that some state courts have adopted in deciding whether state courts have jurisdiction over state tax section 1983 challenges. See *Fondren II*, 387 So. 2d at 723 (outlining preclusion approach that adequate state law remedy available to plaintiff precludes state tax § 1983 action in state court); see also *Backus v. Chilivis*, 236 Ga. 500, 505, 224 S.E.2d 370, 374 (1976) (holding that adequate remedy in state court precludes both state court and federal court jurisdiction over taxpayer's claim under § 1983); *Raschke v. Blancher*, 141 Ill. App. 3d 813, 817, 491 N.E.2d 1171, 1174 (1986) (holding that taxpayers must exhaust available state administrative remedies before bringing § 1983 action in state court). But see *Marx v. Truck Renting and Leasing Ass'n*, No. 57,130, slip op. at 8 (Miss. Sept. 30, 1987) (Robertson, J., concurring) (noting that majority of *Marx* court recognizes that *Fair Assessment* decision essentially overrules *Fondren II* decision).

In *Backus v. Chilivis* the plaintiffs instituted a class action suit challenging the validity of the 1974 county *ad valorem* tax digest. *Backus*, 236 Ga. at 500, 224 S.E.2d at 371. Count four of the plaintiffs' complaint sought money damages in tort from the company that prepared the maps upon which the Brunswick, Georgia, tax officials based the tax digest. *Id.* at 503, 224 S.E.2d at 373. The court noted that the plaintiffs' claim for money damages correctly alleged that the digest lacked the uniformity which the United States Constitution requires. *Id.* at 503, 224 S.E.2d at 371. The court found, however, that the plaintiffs could appeal the assessment of their property under the tax digest to the county board of tax equalization, which could correct the tax digest. *Id.* The court held that the appeal process was plain, speedy, and efficient, and therefore, the Act precluded federal court jurisdiction over the plaintiffs' action. *Id.* at 505, 224 S.E.2d at 374.

In *Raschke v. Blancher* the taxpayers, who were farmers, brought a class action suit against the tax officials in Henry County, Illinois, seeking damages under section 1983. *Raschke*, 141 Ill. App. 3d at 814, 491 N.E.2d at 1172. The plaintiffs alleged that, in reassessing the plaintiffs' farmland, farm improvements, and farm dwellings, the defendants violated the plaintiffs' rights to equal protection under the laws which the federal Constitution guarantees. *Id.* at 815, 491 N.E.2d at 1172. The court noted that section 1983 does not require a plaintiff to exhaust other legal remedies, for example, state remedies, before pursuing a section 1983 suit in federal court (the nonexhaustion doctrine). *Id.* (citing *Monroe v. Pape*, 365 U.S. 167 (1961)). The court explained, however, that the United States Supreme Court, in *Fair Assessment in Real Estate Association v. McNary*, held that application of the nonexhaustion doctrine would be highly intrusive to state tax systems because the doctrine would enable plaintiffs to pursue in federal court section 1983 challenges to state taxes without first having exhausted state remedies for unfair tax assessments. *Id.* at 817, 491 N.E.2d at 1174; see *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 114 (1981). The *Raschke* court noted, therefore, that the Court in *Fair Assessment* held that the nonexhaustion doctrine was inapplicable to suits challenging state taxes under section 1983. *Raschke*, 141 Ill. App. 3d at 817, 491 N.E.2d at 1174; see *Fair Assessment*, 454 U.S. at 114. Accordingly, in *Raschke* the Illinois Court of Appeals held that, if the plaintiffs could not maintain in federal court a section 1983 action alleging constitutional violations, the plaintiffs could not maintain in state court a section 1983 action without first exhausting state remedial procedures for challenging tax assessments. *Raschke*, 141 Ill. App. 3d at 817, 491 N.E.2d at 1174.

38. 206 N.J. Super. 432, 502 A.2d 1198 (1985).

preclusion approach.³⁹ In *Bung's* landowners in Florence, New Jersey, successfully challenged under state law and section 1983 a local improvement assessment.⁴⁰ In setting aside the Township's assessment and reassessing the plaintiffs' property, the court relied on New Jersey statutory and case law, which allows taxpayers to appeal assessments for local improvements.⁴¹ As prevailing parties in the section 1983 challenge to the sewer assessment, the plaintiffs moved that the court award attorneys' fees to the plaintiffs pursuant to section 1988 and a New Jersey court rule, permitting a court to award to the prevailing party attorneys' fees when a statute permits courts to award counsel fees.⁴² The defendant argued that, because an adequate remedy was available to the plaintiffs under state law, the Act precluded the plaintiffs' section 1983 claim.⁴³ The defendants argued further that, if the Act prohibited the plaintiffs' section 1983 claim, the New Jersey court rule could not resurrect the section 1983 claim and permit a section 1988 attorneys' fee award.⁴⁴ The Superior Court of New Jersey, however, rejected the defendants' preclusion argument and awarded the plaintiffs reasonable attorneys' fees under section 1988.⁴⁵

39. *Bung's Bar & Grille, Inc. v. Florence Township Council*, 206 N.J. Super. 432, 458, 502 A.2d 1198, 1213 (1985); see *supra* notes 19-37 and accompanying text (discussing the Mississippi Supreme Court's preclusion approach).

40. *Bung's*, 206 N.J. Super. at 438, 502 A.2d at 1200. In *Bung's* the defendant adopted a local improvement ordinance that appropriated money for the construction of water and sewer improvements. *Id.* at 438, 502 A.2d at 1201. The ordinance provided that the landowners benefitting from the proposed sewer improvements would pay for the improvements through property assessments. *Id.* Upon completion of the improvements, the township clerk certified the costs of the project to the assessment commission. *Id.* The assessment commission determined the amounts that the town council would assess against the owners of the improved properties for the sewer improvements. *Id.* The assessment commission submitted its proposed assessments to the town council for approval. *Id.* The town council, however, remanded the proposed assessments to the assessment commission because the total amount of the assessments exceeded the amount that the improvement ordinance had appropriated for the improvements. *Id.* After conducting hearings to determine a fair assessment, the assessment commission submitted a new assessment proposal to the town council. *Id.* The town council approved the new sewer assessments. *Id.* The plaintiffs challenged these assessments on statutory and constitutional grounds. *Id.*

41. *Id.* at 439, 502 A.2d at 1201. In *Bung's* the New Jersey Superior Court did not address the plaintiffs' federal civil rights claims in setting aside the Township's assessments of the plaintiffs' property. *Id.* The court based its decision on New Jersey statutory law that provided for taxpayers' appeals from assessments for local improvements and on New Jersey case law. *Id.*; see *McNally v. Teaneck*, 132 N.J. Super. 442, 458-59, 334 A.2d 67, 76 (1975) (holding that township's special assessment for street improvements violates statutory requirements unless commissioners determine that total cost will not exceed total enhancement value and cost is fairly apportioned among property owners), *modified*, 75 N.J. 33, 379 A.2d 446 (1977); N.J. STAT. ANN. § 40-56-54 (West 1982) (providing taxpayers procedure under which to appeal local assessments).

42. *Bung's*, 206 N.J. Super. at 438, 502 A.2d at 1201; see N.J. STAT. ANN. § 4:42-9(a)(8) (1982).

43. *Bung's*, 206 N.J. Super. at 439, 502 A.2d at 1213.

44. *Id.*

45. *Id.* at 466, 502 A.2d at 1218.

In rejecting the preclusion approach, the New Jersey Superior Court noted that the legislative history of the Act demonstrated that Congress intended the Act to limit federal court jurisdiction over state tax challenges.⁴⁶ The court discerned nothing in the legislative history of the Act, however, suggesting that Congress intended the Act similarly to limit state court jurisdiction.⁴⁷ The court observed that the preclusion approach closes all forums to a taxpayer with a civil rights claim in a state tax challenge.⁴⁸ The court reasoned, furthermore, that a state remedy is not plain, speedy, and efficient unless the remedy permits a state court to hear a plaintiff's federal and state claims.⁴⁹ The court explained that, because the New Jersey remedy allowed the plaintiffs to recover attorneys' fees, the New Jersey remedy was an adequate remedy for the Act purposes.⁵⁰ Although the court granted the plaintiffs relief based on a New Jersey state created remedy, rather than on the plaintiffs' section 1983 claim, the court awarded the plaintiffs reasonable attorneys' fees pursuant to section 1988.⁵¹ Thus, the *Bung's* court held that

46. *Id.* at 458, 502 A.2d at 1214. In *Bung's* the New Jersey Superior Court reasoned that the *Fondren II* court's preclusion approach rule prevented a taxpayer from obtaining relief under § 1983 in a state tax challenge. *Id.*

47. *Id.* at 458, 502 A.2d at 1213. In *Bung's* the New Jersey Superior Court noted that the Act had its roots in equity practice and in recognition of a state's need to administer its own fiscal operations. *Id.* at 458, 502 A.2d at 1213-14 (citing *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 522-23 (1981)). The court noted that the Act was a vehicle for drastically limiting federal district court jurisdiction over important local concerns such as the collection of state taxes. *Id.* at 458, 502 A.2d at 1214; see *infra* notes 64-84 and accompanying text (discussing legislative history of Act). The *Bung's* court observed that Congress' denial of jurisdiction to federal district courts did not similarly deny state courts jurisdiction over state tax § 1983 claims. *Bung's*, 206 N.J. Super. at 458, 502 A.2d at 1214. The court believed that Congress intended to place all state tax challenges in state court by denying jurisdiction to federal courts. *Id.* Because New Jersey had not limited state court jurisdiction over state tax cases, the *Bung's* court concluded that New Jersey courts had jurisdiction over § 1983 claims. *Id.*

48. *Bung's*, 206 N.J. Super. at 460, 502 A.2d at 1214.

49. *Id.* at 460, 502 A.2d at 1215.

50. *Id.* at 461, 502 A.2d at 1215. In *Bung's* the New Jersey Superior Court relied on the United States Supreme Court's decisions in *Rosewell v. LaSalle National Bank* and *Fair Assessment in Real Estate Association v. McNary* in asserting that the availability in state court of a plain, speedy, and efficient remedy requires joinder in state court of federal and state law claims. *Id.*; see *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1980) (noting that, while Act precludes federal court jurisdiction over plaintiff's state tax § 1983 claim, plaintiff can pursue federal claims in state proceeding); *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981) (noting that state supreme court had held that plaintiffs could bring state tax § 1983 claims in state courts); *infra* notes 90-105 and accompanying text (explaining *Rosewell* decision); *infra* notes 115-23 and accompanying text (discussing *Fair Assessment* decision). The New Jersey court noted that neither the *Fair Assessment* decision nor the *Rosewell* decision required a state court to permit joinder of federal and state law claims. *Bung's*, 206 N.J. Super. at 461, 502 A.2d at 1215. The New Jersey court stated, however, that nonjoinder of claims conflicted with the New Jersey rule of procedural efficiency. *Id.*

51. *Bung's*, 206 N.J. Super. at 462, 502 A.2d at 1216. A federal court has held that courts may award attorneys' fees to a prevailing plaintiff pursuant to section 1988 when the plaintiff brings an action under section 1983 but prevails on a claim other than his section

the Act encourages courts to entertain section 1983 cases challenging state taxes and, when appropriate, to award attorneys' fees pursuant to section 1988.⁵²

In *Linderkamp v. Bismarck School District No. 1*⁵³ the Supreme Court of North Dakota considered and rejected both the preclusion approach and the *Bung's* approach.⁵⁴ The *Linderkamp* plaintiffs challenged the defendant school district's practice of transferring money from the general fund to a building fund and the district's use of "judgment funding" to levy additional taxes to pay judgments in condemnation actions.⁵⁵ The plaintiffs advanced a section 1983 claim asserting that the defendants' transfers violated the plaintiffs' substantive due process rights by excessively and unlawfully taxing the plaintiffs.⁵⁶ The District Court of Burleigh County, North Dakota, granted the plaintiffs' motion for summary judgment on the issue of the constitutionality of the transfers, but denied the plaintiffs' request under section 1988 for attorneys' fees.⁵⁷ The plaintiffs appealed the trial court's denial of attorneys' fees to the Supreme Court of North Dakota.⁵⁸

In *Linderkamp* the Supreme Court of North Dakota noted that the Tax Injunction Act prohibits federal courts from hearing requests for injunctions against state tax collection.⁵⁹ In rejecting the preclusion approach of *Fondren II* and the *Bung's* approach, the court held that, although the Act does not

1983 claim. See *Kimbrough v. Arkansas Activities Ass'n*, 574 F.2d 423, 426 (8th Cir. 1978) (finding footnote in House report on § 1988 that permits award of attorneys' fees when court does not reach § 1983 issue). The House Judiciary Committee report on section 1988 explained that, if a plaintiff prevailed on a nonconstitutional claim, the plaintiff could request the court to determine whether the plaintiff would have prevailed on the plaintiff's constitutional claim. H.R. REP. NO. 1558, 94th Cong., 2d Sess. 4 n.7 (1976). If the court determines that the plaintiff would have prevailed on the constitutional claim, the court may award to the plaintiff reasonable attorneys' fees. *Id.* In *Kimbrough v. Arkansas Activities Association* the United States Court of Appeals for the Eighth Circuit held that, when a plaintiff's section 1983 claims and his nonconstitutional claims arise out of a common nucleus of operative fact, a court may award a prevailing plaintiff attorneys' fees even if the court declines to enter judgment on the plaintiff's section 1983 claim. *Kimbrough*, 574 F.2d at 426.

52. *Bung's*, 206 N.J. Super. at 457-66, 502 A.2d at 1213-18.

53. 397 N.W.2d 76 (N.D. 1986).

54. *Linderkamp v. Bismarck School Dist. No. 1*, 397 N.W.2d 76, 79 (N.D. 1986); see *supra* notes 28-37 and accompanying text (discussing preclusion approach, which states that Act precludes state courts from hearing § 1983 challenges to state taxes); *supra* notes 46-52 and accompanying text (discussing *Bung's* approach, which states that Act encourages state courts to hear state tax § 1983 claims).

55. *Linderkamp*, 397 N.W.2d at 77.

56. *Id.*

57. *Id.* at 78. In *Linderkamp* the District Court of Burleigh County, North Dakota, enjoined the defendant district school board, from using judgment funding and transferring general funds to a building fund in the future. *Id.* The trial court solely based the decision on the North Dakota Declaratory Judgment Act. *Id.* Because the trial court based its holding on a state statute and not on section 1983, the trial court held that the plaintiffs could not recover attorneys' fees under section 1988. *Id.*

58. *Id.*

59. *Id.*

expressly preclude state courts from entertaining section 1983 actions challenging state taxes, the provisions of the Act should guide state courts in exercising discretion to hear state tax section 1983 actions (the discretionary approach).⁶⁰ The court stated that a policy of federal deference to state remedial procedures underlies the Act.⁶¹ Therefore, the North Dakota Supreme Court determined that, when an adequate state remedy is available to a plaintiff a state court should defer to state remedial procedures and refuse to hear a section 1983 challenge to state taxes.⁶²

Although state courts interpreting the Act have reached different conclusions on whether the Act permits taxpayers to challenge in state court state taxes under section 1983, a review of the Act's legislative history, the

60. *Id.*; see *Zizka v. Water Pollution Control Auth.*, 195 Conn. 682, ___, 490 A.2d 509, 513 (1985) (holding Act provides guidelines for state courts to follow in evaluating state tax § 1983 claims). In *Zizka v. Water Pollution Control Authority* the Supreme Court of Connecticut considered and rejected the *Fondren II* court's preclusion approach. *Zizka*, 195 Conn. at ___, 490 A.2d at 513. In *Zizka* the defendant Water Pollution Control Authority used a formula to calculate a sewer benefit assessment against all property within the sewer district. *Id.* at ___, 490 A.2d at 510. The plaintiffs, property owners in Windham, Connecticut, claimed that the benefit assessment violated the plaintiffs' rights to equal protection and due process of law under the federal constitution. *Id.* at ___, 490 A.2d at 510. Accordingly, the plaintiffs sought relief in a Connecticut court under section 1983. *Id.* at ___, 490 A.2d at 510. The plaintiffs alleged that the defendants' violations of the plaintiffs' federal constitutional rights were actionable under section 1983 and requested damages, injunctive relief, and attorneys' fees. *Id.* at ___, 490 A.2d at 510. The trial court dismissed the plaintiffs' claim because Connecticut law provided an exclusive administrative method for plaintiffs to challenge sewer assessments and the Act precluded state court from entertaining a section 1983 claim challenging a state or local tax. *Id.* at ___, 490 A.2d at 512. The Supreme Court of Connecticut affirmed the trial court's decision. *Id.* at ___, 490 A.2d at 512.

In affirming the trial court's dismissal of the plaintiffs' claim, the supreme court rejected the preclusion approach and held that, rather than an absolute jurisdictional bar, the Act's remedial standard is a guideline for state courts to follow in determining whether the availability of a state remedy precludes a plaintiff's section 1983 claim. *Id.* at ___, 490 A.2d at 513. The court assumed that a plain, speedy, and efficient state procedure for the appeal of taxes satisfied the Act's requirement that an adequate remedy be available in state court. *Id.* at ___, 490 A.2d at 513; see *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 512 (1981) (holding that state remedy must meet minimal procedural criteria to trigger Act's federal jurisdictional bar). The *Zizka* court stated that the Act reflects the policy that federal courts should not interfere with state tax collection. *Zizka*, 195 Conn. at ___, 490 A.2d at 513. Thus, the court reasoned that state courts should determine the adequacy of state remedies that are available to plaintiffs challenging state taxes. *Id.* at ___, 490 A.2d at 513. The court evaluated the Connecticut procedure for challenging state taxes and found that the remedy was plain, speedy, and efficient. *Id.* at ___, 490 A.2d at 514. Accordingly, the court concluded that the state remedy precluded a section 1983 action in state court. *Id.* at ___, 490 A.2d at 514. The *Zizka* court fashioned a discretionary approach for a state court to follow in considering the applicability of the Act to state court jurisdiction over state tax section 1983 claims. *Id.* at ___, 490 A.2d at 513. Under the discretionary approach, if a state court finds that the state law remedy available to a plaintiff challenging state taxes is plain, speedy, and efficient, the state court should exercise its discretion and choose not to hear plaintiff's state tax section 1983 claim. *Id.* at ___, 490 A.2d at 514.

61. *Linderkamp v. Bismarck School Dist. No. 1*, 397 N.W.2d. 76, 80 (N.D. 1986).

62. *Id.*

United States Supreme Court's interpretation of the Act and the Supremacy Clause of the United States Constitution suggests that, to afford taxpayers an adequate forum for their constitutional claims against state tax officials, state courts should hear state tax section 1983 actions.⁶³ The legislative history of the Act illustrates that Congress based the Act upon deference to state courts, in accordance with the policies of federalism and comity.⁶⁴ In 1937, Senator Bone of Washington introduced Senate Bill 1551,⁶⁵ which limited the jurisdiction of federal district courts in lawsuits relating to state tax collection.⁶⁶ By limiting federal injunctions against state tax collection, Congress hoped to prevent nonresident taxpayers from avoiding or reducing state tax liability.⁶⁷ Congress subsequently adopted Senate Bill 1551 as the Tax Injunction Act.⁶⁸ Congress passed the Act for three reasons.⁶⁹ First, Congress passed the Act to limit federal courts' authority to issue injunctions against state tax collection.⁷⁰ After qualifying for federal diversity jurisdiction in its challenge to state tax assessments, a foreign corporation could

63. See *infra* notes 64-131 and accompanying text (discussing legislative history of Act, federal courts and United States Supreme Court's interpretation of Act, and Supremacy Clause of United States Constitution).

64. *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 522 (1981) (noting that Act has roots in recognition of states' need to administer its own fiscal operations); see S. REP. NO. 1035, 75th Cong., 1st Sess. 2 (1937) (explaining need for Act); H.R. REP. NO. 1503, 75th Cong., 1st Sess. 2 (1937) (same).

65. S. 1551, 75th Cong., 1st Sess. § 1. Senate Bill 1551 was a proposed amendment to section 24 of the Judicial Code. See 2569 CONG. REC. 1415 (1937).

66. S. 1551, 75th Cong., 1st Sess. § 1. Congress based the Tax Injunction Act upon section 16 of the Judiciary Act of 1789. See Hendricks, *Federal Jurisdiction to Enjoin Assessment of State Taxes under the Tax Injunction Act*: *Rosewell v. LaSalle National Bank*, 35 TAX LAW 500, 500 (1982). The Judiciary Act barred federal courts from entertaining suits in equity when a plaintiff could avail himself of a "plain, adequate and complete" remedy at law. The Judiciary Act, 28 U.S.C. § 384 (repealed June 25, 1948). Cases that addressed section 16 stressed that, in applying extraordinary remedies for state tax systems, federal courts should defer to state courts. See *Matthews v. Rodgers*, 284 U.S. 521, 525 (1932) (admonishing federal courts to refrain from interfering with state tax systems); *Boise Artesian Hot and Cold Water Co. v. Boise City*, 213 U.S. 276, 282 (1909) (same). In *Matthews v. Rodgers* the United States Supreme Court held that federal courts should have a scrupulous regard for state government independence and should be reluctant to interfere with state fiscal operations. *Matthews*, 284 U.S. at 525. The Court held that, when ordinary procedures could preserve a plaintiff's federal rights, federal courts should deny injunctive relief. *Id.*; see *Boise Artesian Hot and Cold Water Co.*, 213 U.S. at 282 (affirming *Matthews* admonition that federal courts not interfere with state fiscal operations).

67. See 2569 CONG. REC. 1416 (1937) (explaining that Act aimed at nonresident taxpayers', especially foreign corporations, avoidance of state tax liability).

68. S. 1551, 75th Cong., 1st Sess. § 1 (1937).

69. See S. REP. NO. 1035, 75th Cong., 1st Sess. 2 (1937) (outlining Congress' reasons for passing Act); H.R. REP. NO. 1503, 75th Cong., 1st Sess. 2 (1937) (same); see *supra* notes 64-69 and accompanying text (discussing Congress' rationale for passage of Act); *infra* notes 70-84 (same).

70. See 2569 CONG. REC. 1416 (1937) (explaining need for Act); see Taylor, *supra* note 6, at 430 n.88 (explaining that Congress passed Act to curtail federal courts' enjoining state tax collection).

obtain an injunction prohibiting the state from collecting the taxes during the pendency of the lawsuit.⁷¹ Federal injunctions prohibiting state tax collection imposed a financial burden on states and municipalities because the injunctions permitted the foreign corporations to delay payment of their state taxes.⁷² Thus, by enjoining state tax collection, federal courts imposed a financial burden on state and local governments and forced them to accept reduced tax payments rather than become embroiled in protracted litigation.⁷³

Second, Congress passed the Act to equalize the treatment of residents and nonresidents challenging state taxes.⁷⁴ Nonresident taxpayers challenging state taxes had an advantage over resident taxpayers challenging state taxes because nonresident taxpayers qualified for diversity jurisdiction and could elect to sue in federal court, while resident taxpayers had to challenge state taxes in state courts because they did not qualify for diversity jurisdiction.⁷⁵ Under the law of most states, taxpayers challenging state taxes had to pay the tax first and then sue for a refund.⁷⁶ Nonresident taxpayers relying on federal diversity jurisdiction, however, could obtain federal injunctions prohibiting states from collecting the nonresidents' taxes during the federal litigation of their claims.⁷⁷

Finally, Congress passed the Act to establish state courts as the primary forum for lawsuits challenging state taxes.⁷⁸ Congress noted that challengers

71. See 2569 CONG. REC. 1415 (1937) (statement of Sen. Bone) (explaining procedure that diverse plaintiffs challenging state taxes followed in federal court).

72. See *infra* note 73 (explaining burden that federal injunctions imposed on states and municipalities).

73. 2569 CONG. REC. 1415 (1937) (statement of Sen. Bone). In the Senate debate of the Act, Senator Bone of Washington State illustrated the financial problems resulting from federal court injunctions preventing state tax collection, by explaining the case of the Northern & Pacific Railway Company. *Id.* at 1416. Senator Bone explained that, in 1935 the Northern & Pacific Railway Company owed the State of Washington \$1,401,549.00 in taxes. *Id.* The railway company refused to pay the tax and challenged \$618,087.00 of the tax assessment in a federal district court proceeding under diversity jurisdiction. *Id.* The federal court granted the railway company an injunction prohibiting the state from collecting the railway company's taxes while the suit was pending. *Id.* The state ultimately prevailed in the litigation. *Id.* The railway, however, challenged the state tax assessment every year. *Id.* Each lawsuit could last several years. *Id.* During the pendency of the railway company's 1935 suit, injunctions prevented the state from collecting several millions of dollars of tax revenues. *Id.* The delay in collection of state taxes imposed a financial burden on the state, which resulted in the state's accepting an unfavorable settlement of tax assessments for the subsequent years, rather than the full amount of the tax after several years of litigation. *Id.*

74. *Id.* at 1416-17.

75. *Id.*

76. See S. REP. NO. 1503, 75th Cong., 1st Sess. 2 (1937) (noting that most states require taxpayers to pay tax under protest before suing for refund).

77. S. REP. NO. 1035, 75th Cong., 1st Sess. 2 (1937).

78. *Id.*; see 2569 CONG. REC. 1417 (1937) (explaining need for state courts to be primary forum for state tax challenges). In his introductory remarks about the Act, Senator Bone read certain sections of the reports that the Committee on the Judiciary prepared for the Johnson Act because he thought that the issues underlying both the Johnson Act and the Tax Injunction

to state taxes were often in federal court because of diversity jurisdiction rather than federal question jurisdiction.⁷⁹ The legislators reasoned that, if a remedy available in state court were adequate to preclude federal jurisdiction under the Act, the state court remedy was adequate to protect a plaintiff's federal rights.⁸⁰ Congress noted that the United States Supreme Court, on appellate review, could insure the protection of a plaintiff's federal rights when reviewing the state decision on appeal.⁸¹ The legislative reports to the Act emphasize that if the state court is unable to protect a plaintiff's rights, the Act provides that the plaintiff can pursue his claim in a federal forum.⁸² Congress believed that the language of the Act guaranteed to a plaintiff challenging a state tax a full hearing and judicial determination of the controversy.⁸³ Therefore, in enacting the Act, Congress merely codified the federal courts' policy of deferring to state courts in challenges to state taxes when the state courts adequately can protect plaintiffs' constitutional rights.⁸⁴

The federal courts that have interpreted the Act explicitly have not considered what effect the Act has upon state court jurisdiction over section 1983 challenges to state taxes.⁸⁵ Federal courts have interpreted the Act, however, mandatorily to foreclose a federal court from granting any relief when an adequate remedy is available in state court.⁸⁶ Additionally, federal courts have expanded the scope of the Act to preclude federal jurisdiction over a case in which the plaintiff challenges state taxes and requests relief

Act were the same. *Id.* The Judiciary Committee's Johnson Act reports advocated permitting state courts to try controversies arising under state laws, instead of permitting people who happen not to be state citizens to petition federal courts. *Id.* The reports noted that challenges to state taxes generally arise entirely out of controversies under state laws. *Id.* The reports reasoned that, because challengers to state taxes raised issues of state law, state courts would be the best forum to decide the issues. *Id.*; see *Matthews v. Rodgers*, 284 U.S. 521, 525 (1932) (holding that federal courts should deny relief when state court could preserve plaintiff's federal right).

79. 2569 CONG. REC. 1417 (1937).

80. *Id.* at 1416.

81. S. REP. NO. 1035, 75th Cong., 1st Sess. 2 (1937).

82. *Id.*; H.R. REP. NO. 1503, 75th Cong., 1st Sess. 2 (1937).

83. See *id.* (stating that plain, speedy, and efficient state court remedy adequately would protect plaintiff's rights in state tax challenges); H.R. REP. NO. 1503, 75th Cong., 1st Sess. 2 (1937) (same).

84. 2569 CONG. REC. 1416 (1937).

85. See *Fair Assessment in Real Estate Ass'n. v. McNary*, 454 U.S. 100, 116 (1981) (holding only that Missouri plaintiff could not pursue § 1983 claim for refund in federal court because Missouri law provided adequate remedy).

86. See, e.g., *Miller v. Bauer*, 517 F.2d 27, 32 (7th Cir. 1975) (holding that to be adequate, state remedy must protect plaintiffs' federal rights, but state remedy need not be on parity with federal remedy); *Bland v. McHann*, 463 F.2d 21, 29 (5th Cir. 1972) (holding that Act does not require state remedy to be as good as federal remedy), *cert. denied*, 410 U.S. 966 (1973); *First United Methodist Church of Syracuse v. City of Syracuse*, 489 F. Supp. 185, 188 (N.D.N.Y. 1980) (holding that state court remedy need not be perfect to preclude federal jurisdiction).

other than an injunction.⁸⁷ In interpreting the Act, the United States Supreme Court has emphasized that the Act requires state court remedies to meet certain procedural, rather than substantive, criteria.⁸⁸ The Supreme Court also has noted that the principles of federalism and comity, the bases of the Act, coupled with the Act's jurisdictional bar, cause a conflict between section 1983's guarantee of a federal forum and the Act's preclusion of a federal forum.⁸⁹

In *Rosewell v. LaSalle National Bank*⁹⁰ the United States Supreme Court emphasized the procedural focus of the Tax Injunction Act.⁹¹ In *Rosewell*, the Court considered what type of remedy constitutes a plain, speedy, and efficient remedy for the purposes of the Act.⁹² The plaintiff, a landowner in Cook County, Illinois, sued the defendants, Cook County tax officials, in the United States District Court for the Northern District of Illinois, claiming that the defendant overassessed plaintiff's property for property tax purposes.⁹³ The plaintiff claimed that, by unequally assessing property in Cook County, the defendants deprived the plaintiff of her rights of equal protection and due process, which the fourteenth amendment to the United

87. See *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 300 (1943) (holding that Act prohibits federal courts from granting declaratory judgment in state tax challenge).

88. See *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 522 (1981) (holding that state remedies must meet certain procedural criteria to invoke Act's jurisdictional bar); see *infra* notes 90-105 and accompanying text (discussing United States Supreme Court's decision in *Rosewell*).

89. See *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981) (holding that doctrine of comity and Act bar federal jurisdiction in state tax § 1983 claims); *infra* notes 115-23 and accompanying text (discussing United States Supreme Court's decision in *Fair Assessment*).

90. 450 U.S. 503 (1981).

91. *Id.* at 527.

92. *Id.* at 505.

93. *Id.* at 506. In *Rosewell* the plaintiff was the trustee of a land trust for Patricia Cook, the beneficial owner of a 22-unit apartment complex in a low-income area of Cook County, Illinois, and the defendants were the Cook County treasurer and assessor. *Id.* at 505, 510 n.11. In *Rosewell* the plaintiff alleged that Cook's apartment complex in Cook County, Illinois, had a fair market value of \$46,000 as of January 1, 1977. *Id.* at 506. A Cook County ordinance required that, for tax purposes, the county assess property at 33% of the fair market value. *Id.* In 1977 the county assessor assessed the value of Cook's apartment complex at \$52,150, which resulted in a tax liability for Cook of \$6,106. *Id.* at 507. The plaintiff claimed that 33% of the fair market value of Cook's property was \$15,180, which resulted in a tax liability of \$1,775. *Id.* The plaintiff further alleged that the county assessor knowingly adopted assessment policies that resulted in assessments within the county from 3% to 973% of the fair market value of property. *Id.* Finally, the plaintiff alleged both that the assessor knew that the plaintiff had appealed her tax assessments in 1974, 1975, and 1976, and that the assessor, in retaliation for the plaintiff's appeals, had targeted Cook's property for an overassessment of fair market value. *Id.*

Before instituting the federal lawsuit, the plaintiff appealed unsuccessfully to the Cook County Board of Appeals for a reduction of the tax assessment, thus exhausting her administrative remedies. *Id.* at 508. The plaintiff's only recourse was to pay the tax and to sue for a refund in state court. *Id.* The plaintiff refused to pay the tax because of the state's two year delay in refunding a taxpayer's tax. *Id.*

States Constitution secures.⁹⁴ The plaintiff claimed further that the Illinois statutory remedy available to a taxpayer appealing an assessment, which resulted in a two year delay in the taxpayer's receipt of the refund, with no accrual of interest, was not plain, speedy, and efficient.⁹⁵ Thus, the plaintiff argued, that the state law remedy did not meet the plain, speedy, and efficient requirement of the Tax Injunction Act, and the Act did not foreclose the federal district court's jurisdiction to hear the plaintiff's claim.⁹⁶

The defendants in *Rosewell* moved to dismiss the plaintiff's claims, arguing that the Illinois procedure for the appeal of tax assessments provided the plaintiff a plain, speedy, and efficient remedy.⁹⁷ The defendants further argued that, because the state remedy was plain, speedy, and efficient, the Act barred the federal district court's jurisdiction.⁹⁸ The district court agreed with the defendants and dismissed the plaintiff's complaint explaining that under the Act, the court lacked jurisdiction over the plaintiff's claims.⁹⁹ On appeal, the United States Court of Appeals for the Seventh Circuit reversed the district court's decision, finding that the Act did not bar federal jurisdiction over the plaintiff's claims because the Illinois procedure for taxpayers to recover wrongly collected taxes was not plain, speedy, and efficient.¹⁰⁰

The United States Supreme Court reversed the Seventh Circuit's decision in *Rosewell* and held that, if a state statute provides a taxpayer the opportunity to raise in a state forum his federal constitutional objections to a state tax, then the state provides a plain, speedy, and efficient remedy.¹⁰¹

94. *Id.* at 508, n.7 & 510. In *Rosewell* the plaintiff contended that, by requiring the plaintiff to pay three and one half times the amount of taxes that plaintiff legally owed the state, the defendant had deprived the plaintiff of her rights of equal protection and due process, which the fourteenth amendment to the United States Constitution secures. *Id.* at 510; U.S. CONST. amend. XIV, § 1.

95. *Rosewell*, 450 U.S. at 510. In *Rosewell* the plaintiff claimed that the two year delay in the refund process already had cost the plaintiff a large amount of money in the previous three tax appeals that the plaintiff had filed against the assessor. *Id.*

96. *Id.* at 510.

97. *Id.* at 510-11.

98. *Id.* at 511.

99. *Id.*

100. *Id.* In *Rosewell* the United States Supreme Court evaluated the adequacy of the Illinois state law remedy available to plaintiffs who wanted to challenge a state property tax. *Id.* at 508 n.6. To challenge a property tax assessment, a Cook County property owner first had to file a written complaint with the county assessor. *Id.*; see ILL. REV. STAT. ch. 120, §§ 578, 594(1), 596-99, 675, 716 (1977) (outlining procedure available to taxpayers challenging property tax assessment). After filing the written complaint, the taxpayer was entitled to a hearing before the county assessor. *Rosewell*, 450 U.S. at 508 n.6. If the hearing afforded no relief to the taxpayer, the taxpayer could appeal for the correction of the assessment to the Board of Appeals of Cook County. *Id.* The Illinois law required that a taxpayer exhaust all available administrative remedies before the taxpayer could seek a legal remedy in court. *Id.* (citing *People ex rel Korzen v. Fulton Mkt. Cold Storage Co.*, 62 Ill. 2d 443, 446-47, 343 N.E.2d 450, 452, cert. denied, 429 U.S. 833 (1976)). Finally, under Illinois law the taxpayer was required to pay the tax under protest and sue for a refund. *Id.* at 508 n.7.

101. *Rosewell*, 450 U.S. at 514. In *Rosewell* the United State Supreme Court noted that

The Court decided that the Act requires a procedural analysis, rather than a substantive analysis, of remedies.¹⁰² The Court noted that the Act creates minimal procedural criteria that the state remedy must meet to trigger the Act's bar of federal jurisdiction over a plaintiff's state tax claim.¹⁰³ The Court held that as long as state court procedures for the appeal and refund of wrongly collected taxes are plain, speedy, and efficient, the Act precludes a federal court from hearing a suit challenging a state tax.¹⁰⁴ Thus, the Court concluded that, because the Illinois tax appeals procedures permitted the plaintiff to pursue her section 1983 claim in an Illinois forum, the Illinois procedure was plain, speedy, and efficient and barred the Seventh Circuit from hearing the plaintiff's claim.¹⁰⁵

Less than one year after *Rosewell*, in *Fair Assessment in Real Estate Association v. McNary*¹⁰⁶ the United States Supreme Court recognized the conflict between the immediate provision of a federal forum under section 1983 and the prohibition of a federal forum under the Act.¹⁰⁷ In *Fair Assessment* the Court addressed the issue of whether a plaintiff who under protest pays a local tax can maintain a refund suit and a section 1983 damages action against state tax officials in a federal court.¹⁰⁸ The plaintiffs, two real property owners and a nonprofit corporation comprised of taxpayers in St. Louis County, Missouri, claimed that the defendants, state and municipal tax officials, unequally assessed real property in St. Louis County.¹⁰⁹ The plaintiffs claimed that the defendants' unequal assessments

the Illinois procedures for refunds of illegally collected state taxes allowed a taxpayer to raise all constitutional objections to the tax that a taxpayer might have. *Id.* The Court also stated that a taxpayer could appeal the initial determination of his tax liability to higher Illinois courts, and that review by the United States Supreme Court ultimately was available. *Id.*

102. *Id.* at 513. In *Rosewell* the United States Supreme Court looked closely at the legislative history of the Act. *Id.* In examining the legislative history, the Court noted that the House and Senate reports both emphasized that the Act assured that a plaintiff who raised a constitutional question, such as a violation of equal protection actionable under section 1983, would get a full hearing and judicial determination of his dispute. *Id.* Furthermore, the Court noted that, in passing the Act, Congress emphasized that an appeal to the United States Supreme Court was available to plaintiffs who raised a constitutional question in challenging state taxes. *Id.*

103. *Id.*

104. *Id.* at 516.

105. *Id.* Previous federal court decisions interpreting the Act supported the Court's holding in *Rosewell v. LaSalle National Bank* that a plaintiff could assert any federal right in a state court proceeding. See, e.g., *Bland v. McHann*, 463 F.2d 21, 24 (5th Cir. 1972) (holding that taxpayer may assert federal rights in state court), *cert. denied*, 410 U.S. 966 (1973); *Advertiser Co. v. Wallace*, 446 F. Supp. 677, 681 (M.D. Ala. 1978) (holding that taxpayer can file in state court § 1983 action raising all claims that taxpayer could raise in federal court); *Czajkowski v. Illinois*, 460 F. Supp. 1265, 1272 (N.D.Ill. 1977) (holding that, although taxpayer asserts federal statutory or constitutional rights, taxpayer must challenge state tax in state court), *aff'd*, 588 F.2d 839 (1978).

106. 454 U.S. 100 (1981).

107. *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 101 (1981).

108. *Id.*

109. *Id.* at 105-06. In *Fair Assessment* the plaintiffs challenged the assessment practices

of county property violated the plaintiffs' federal constitutional rights of equal protection and due process of law.¹¹⁰ The plaintiffs paid the tax under protest and filed a lawsuit in federal court seeking a refund of the tax and requesting damages under section 1983 for the defendants' alleged violations of the plaintiffs' constitutional rights.¹¹¹ The United States District Court for the Eastern District of Missouri held that the Act and the principle of comity barred a federal court from hearing the plaintiffs' claims for a tax refund and damages under section 1983.¹¹² The United States Court of Appeals for the Eighth Circuit, in an equally divided decision, affirmed the district court's decision against the plaintiffs.¹¹³ The plaintiffs appealed the decision of the Eighth Circuit to the United States Supreme Court.¹¹⁴

In *Fair Assessment* the United States Supreme Court affirmed the Eighth Circuit's decision and held that the Act and the principle of comity preclude a federal court from hearing a plaintiff's section 1983 damages action.¹¹⁵ The Court analyzed the conflict between the jurisdictional provisions of the Act and section 1983.¹¹⁶ The Court noted that section 1983 gives a civil rights litigant immediate access to federal courts, without requiring that the litigant exhaust his state remedies before instituting a lawsuit in federal court.¹¹⁷ The Court then discussed the pre-Act policy of federal court noninterference with state tax systems, and the post-Act expansion of the Act to cover more than just injunctive relief.¹¹⁸ The Court stated that the federal noninterference policy and the Act, both of which are based upon the principle of comity, protect state tax systems from federal court inter-

of the county tax assessors, supervisors, director of revenue, and members of the Missouri Tax Commission. *Id.* at 106. The plaintiffs alleged that, while the defendants assessed properties with new improvements at 33% of current market value, the defendants assessed properties without new improvements at only 22% of current market value. *Id.* Additionally, the plaintiffs asserted that the defendants specifically targeted for reassessment property owners who successfully had appealed property assessments. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* at 101-02.

113. *Id.* at 102.

114. *Id.*

115. *Id.* at 107. In *Fair Assessment* the United States Supreme Court specifically reserved the question whether the Act precluded federal jurisdiction over state tax section 1983 claims. *Id.*

116. *Id.* at 102.

117. *Id.* at 103-04; see *McNeese v. Board of Educ.*, 373 U.S. 668, 674 (1963) (holding that plaintiffs filing § 1983 claims are entitled to federal forum); *Monroe v. Pape*, 365 U.S. 167, 183 (1961) (holding that § 1983 authorizes immediate access to federal courts for civil rights plaintiffs).

118. *Fair Assessment*, 454 U.S. at 107. Before Congress passed the Act, federal courts followed a policy of equitable restraint in state tax matters. *Id.* at 108; see *supra* note 66 (discussing pre-Act federal court policy of equitable restraint). Because the policy of federal court restraint did not prevent federal courts from interfering with state tax systems by granting injunctive relief to challengers of state taxes, Congress passed the Tax Injunction Act. See *supra* notes 28-37 and accompanying text (explaining Congressional intent underlying Act).

ference with state tax collection.¹¹⁹ The Court reasoned that Congress intended the Act to permit state tax systems to operate with minimal interference from federal courts.¹²⁰ The Court believed, however, that permitting the plaintiffs to bring their section 1983 claim in federal court would require nearly every taxing official in the state to appear in federal court, and thus would be no less disruptive of the Missouri tax system than an injunction preventing state tax collection.¹²¹ Therefore, the Court held that the principle of comity and the purposes of the Act override section 1983's immediate provision of a federal forum to taxpayers asserting civil rights claims against state officials.¹²² The Court found that the Missouri remedy was adequate to redress the plaintiffs' injuries and that the plaintiffs could assert a section 1983 claim in the Missouri state courts.¹²³

In addition to the Act's legislative history's implication that the Act is a tool to put all state tax claims in state court and the United States Supreme Court's assumption that, in precluding under the Act federal jurisdiction over state tax section 1983 claims, the plaintiffs can bring a section 1983 claim in state court, the Supremacy Clause of the United States Constitution may require state courts to entertain state tax section 1983 claims.¹²⁴ The Supremacy Clause requires state judges to uphold the federal constitution and laws.¹²⁵ The United States Supreme Court has held that state courts have a duty to enforce federally created rights.¹²⁶ Therefore, if a plaintiff bases a state law claim and a federal law claim upon the same

119. *Fair Assessment*, 454 U.S. at 112.

120. *Id.*

121. *Id.* at 113-14. In *Fair Assessment* the United States Supreme Court explained that a federal court section 1983 claim would require the defendants, who were nearly every tax official in St. Louis County, Missouri, to appear in federal court every time a taxpayer appealed an assessment. *Id.* at 114. Furthermore, the Court noted that the tax policies which the plaintiffs challenged were probably beyond the control of any one tax official. *Id.* The Court decided that holding an individual official liable for an unconstitutional assessment effectively would suspend state tax collection. *Id.* at 115. The Court concluded that, by forcing plaintiffs to assert their state tax section 1983 claims in state, rather than federal courts, the Act prevented the suspension of state tax collection. *Id.*

122. *Id.* at 116.

123. *Id.*

124. See *Marx v. Truck Renting & Leasing Ass'n*, No. 57,130, slip op. at 2-3 (Miss. Sept. 30, 1987) (Robertson, J., concurring) (arguing that Supremacy Clause requires state courts to entertain § 1983 claims); Taylor, *supra* note 6, at 421 (stating that Supremacy Clause requires state courts to entertain § 1983 claims); see *infra* notes 125-31 (discussing Supremacy Clause).

125. See U.S. CONST. art. VI, cl. 2. The Supremacy Clause of the United States Constitution provides that the federal Constitution and laws are the supreme law of the land and that state judges are bound to uphold the federal Constitution and laws, notwithstanding any conflict with state law. *Id.*

126. See *Testa v. Katt*, 330 U.S. 386, 394 (1947) (overruling Rhode Island Supreme Court's affirmation of trial court's refusal to entertain plaintiff's action under federal Emergency Price Control Act); *McKnett v. St. Louis & S.F. Ry.*, 292 U.S. 230, 234 (1934) (holding that state may not discriminate against federal rights); *Mondou v. New York, N.H. & H. R.R.*, 223 U.S. 1, 57 (1912) (rejecting under Supremacy Clause state court's contention that state court could choose not to entertain federal cause of action that conflicted with state policy).

facts and the claims encompass similar issues, if the state court has jurisdiction under local law to hear the state action, the state court may not refuse to hear the federal claim.¹²⁷ The Supreme Court suggests that, absent a procedural or jurisdictional reason for refusing to entertain a section 1983 claim, a state court may not refuse to hear the claim.¹²⁸ When a state court hears a plaintiff's nonfederal state tax claims, essentially, the state court admits that it has jurisdiction adequate to dispose of state tax claims.¹²⁹ Thus, unless state courts that refuse to hear state tax section 1983 actions are correct in claiming that the Act provides state courts with a neutral jurisdictional ground for refusing to hear state tax section 1983 claims, state courts must hear these claims.¹³⁰ The United States Supreme Court, however, has reserved the question whether state courts must entertain section 1983 claims.¹³¹

Although the legislative history, the judicial interpretation of the Act, and the Supremacy Clause of the United States Constitution indicate that state courts must hear section 1983 claims, the question remains whether the Act affects state court jurisdiction over state tax section 1983 challenges. State courts that rely on the preclusion approach deny a forum to plaintiffs who raise constitutional claims about state taxes, do not further the policies underlying the Act, and frustrate the reasoning behind the United States Supreme Court's interpretation of the Act.¹³² In passing the Act, Congress intended to protect state tax systems from federal interference and insure equal treatment of resident and nonresident taxpayers challenging local

127. See *Testa v. Katt*, 330 U.S. 386, 394 (1947) (overruling Rhode Island Supreme Court's affirmation of trial court's refusal to entertain plaintiff's action under federal Emergency Price Control Act); *McKnett v. St. Louis & S.F. Ry.*, 292 U.S. 230, 234 (1934) (holding that state may not discriminate against rights arising under federal laws); *Mondou v. New York, N.H. & H. R.R.*, 223 U.S. 1, 57 (1912) (rejecting under Supremacy Clause state court's contention that state court could choose not to entertain federal cause of action that conflicted with state policy); see also *Marx v. Truck Renting & Leasing Ass'n*, No. 57,130, slip op. at 7-8 (Miss. Sept. 30, 1987) (Robertson, J., concurring) (arguing that state courts must hear state tax § 1983 claims); Taylor, *supra* note 6, at 421 (analyzing United States Supreme Court decisions to require state court jurisdiction over general § 1983 claims).

128. See *Testa v. Katt*, 330 U.S. at 394 (holding that state court with jurisdiction under local law adequate to hear state law actions similar to federal action cannot refuse to enforce federal action); *McKnett v. St. Louis & S.F. Ry.*, 292 U.S. 230, 234 (1934) (holding that state courts cannot discriminate against federal causes of action); *Mondou v. New York, N.H. & H. R.R.*, 223 U.S. 1, 57 (1912) (holding that state courts must enforce federal claims even when federal claim conflicts with state policy); see Taylor, *supra* note 6, at 423 & n.51 (describing conditions under which state court can refuse to hear general § 1983 claim).

129. See Taylor, *supra* note 6, at 435 (explaining that state courts hearing state tax challenges under state law admit competence to hear state tax § 1983 claim).

130. See Taylor, *supra* note 6, at 423, 435 (arguing that state courts hearing state law challenges to state taxes must accept jurisdiction over state tax § 1983 claims).

131. *Martinez v. California*, 444 U.S. 277, 283 n.7 (1980); *Maine v. Thiboutot*, 448 U.S. 1, 3 n.1 (1980).

132. See *infra* notes 133-50 and accompanying text (analyzing preclusion approach in context of legislative history of Act, United States Supreme Court's interpretation of Act, and Supremacy Clause).

taxes.¹³³ The preclusion approach neither furthers nor hinders these two purposes. State courts that follow the preclusion approach, however, undermine one of Congress' reasons for passing the Act.¹³⁴ Congress' third reason for passing the Act was to make state courts the principle forum for state tax challenges, while guaranteeing that a plaintiff's claim receives a full hearing.¹³⁵ A plaintiff's section 1983 claim is an important part of a plaintiff's state tax challenge.¹³⁶ Because the tax refund that a plaintiff would receive may be nominal, the availability of a section 1983 claim and the possibility of recovering attorneys' fees under section 1988 often make the challenge to state taxes feasible.¹³⁷ Because the Act prevents state tax plaintiffs from pursuing a section 1983 claim in federal court, the preclusion approach denies state tax plaintiffs a full hearing of their state tax challenge.¹³⁸ Thus, by reading the Act to prevent a state court from adjudicating a plaintiff's section 1983 claim, preclusion approach courts undermine Congress' intent to guarantee that plaintiff's tax claims receive a full hearing.¹³⁹

The courts adhering to the preclusion approach also frustrate the reasoning behind the United States Supreme Court's interpretation of the Act in *Rosewell* and *Fair Assessment*.¹⁴⁰ In *Rosewell*, the Supreme Court held that, if state tax appeal procedures adequately protect a plaintiff's

133. See 2569 CONG. REC. 1415-16 (1937) (explaining that purpose of Act is to prevent nonresident taxpayers' use of federal injunctions to manipulate state tax systems); *supra* notes 64-84 and accompanying text (discussing Congressional intent to protect integrity of state tax system).

134. See 2569 CONG. REC. 1415-16 (1937) (stating Congress passed Act to make state courts principal state tax challenge forum); *infra* notes 132-50 and accompanying text (analyzing preclusion approach).

135. See 2569 CONG. REC. 1416 (1937) (explaining need to make state courts principal forum for state tax challenges); *supra* notes 78-84 and accompanying text (discussing Congressional intent in passing Act).

136. See Taylor, *supra* note 6, at 427 (discussing need for state courts to hear state tax § 1983 claims); *supra* notes 6-8 and accompanying text (discussing need for state court jurisdiction over state tax § 1983 claims).

137. See *supra* notes 6-8 and accompanying text (discussing need for attorney's fees in state tax litigation).

138. See Taylor, *supra* note 6, at 417 (arguing that result of state court denial of state tax § 1983 claims is denial of full hearing to state tax § 1983 claims).

139. See Taylor, *supra* note 6, at 414 (discussing need for state courts to hear state tax § 1983 claims); *supra* notes 6-8 and accompanying text (discussing need for state court jurisdiction over state tax § 1983 claims); *supra* notes 133-35 and accompanying text (discussing legislative intent behind Act).

140. See *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1981) (holding that, while Act precludes federal court jurisdiction over plaintiff's state tax § 1983 claim, plaintiff can pursue state tax § 1983 claim in state proceeding); *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981) (same); *supra* notes 101-05 and accompanying text (discussing United States Supreme Court's holding in *Rosewell*); *supra* notes 115-23 and accompanying text (discussing United States Supreme Court's holding in *Fair Assessment*); see also *infra* notes 141-50 and accompanying text (discussing how preclusion approach contradicts United States Supreme Court's assumptions in *Rosewell* and *Fair Assessment*).

federal rights, the state tax remedy is plain, speedy, and efficient.¹⁴¹ Preclusion approach courts first evaluate the adequacy of state tax procedures.¹⁴² If the procedures are plain, speedy, and efficient, preclusion approach courts hold that a plaintiff cannot pursue in state court his section 1983 claim.¹⁴³ Typically, if a plaintiff cannot pursue in state court his section 1983 claim and recover attorneys' fees under section 1988, the plaintiff cannot afford to bring his state tax claim.¹⁴⁴ Thus, by barring state court jurisdiction over a plaintiff's section 1983 claim, preclusion approach courts effectively prevent a plaintiff from pursuing in state court his state tax claims.¹⁴⁵ In *Fair Assessment* the Supreme Court held that the principle of comity and the Act preclude federal court jurisdiction in state tax section 1983 lawsuits.¹⁴⁶ Under the principle of comity, which is the basis of the Act, the federal government, out of deference to state governments, recognizes that a state should administer state governmental affairs, such as tax systems.¹⁴⁷ Thus, courts following the preclusion approach undermine the principle of comity and the purposes of the Act by interpreting the Act to prevent state courts from adjudicating state tax section 1983 claims.¹⁴⁸ In *Rosewell* and *Fair Assessment*, the Court assumed that a plaintiff could

141. *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1981); *supra* notes 101-05 and accompanying text (discussing *Rosewell* definition of plain, speedy, and efficient).

142. *See Backus v. Chilivis*, 236 Ga. 500, 505, 224 S.E.2d 370, 374 (1976) (holding state procedure, which allowed plaintiffs to appeal tax assessments to county board of appeals, was plain, speedy, and efficient); *Raschke v. Blancher*, 141 Ill. App. 3d 813, 817, 491 N.E.2d 1171, 1174 (1986) (holding that plaintiff must exhaust state remedial procedures before instituting § 1983 action); *State Tax Comm. v. Fondren*, 387 So. 2d 712, 723 (Miss. 1980) (*Fondren II*) (holding that state tax appeal procedures are plain, speedy, and efficient), *cert. denied sub nom*, *Redd v. Lambert*, 450 U.S. 1040 (1981); *supra* note 31 (discussing *Fondren II* court's analysis of Mississippi remedy); *supra* note 37 (discussing *Backus* and *Raschke* courts' reasoning in developing discretionary approach).

143. *See Fondren II*, 387 So. 2d at 723 (holding that plain, speedy, and efficient state court remedy precludes plaintiff's pursuit of state tax § 1983 claim); *see* notes 28-37 and accompanying text (explaining *Fondren II* court's reasoning in precluding state tax § 1983 claim in state court).

144. *See Taylor*, *supra* note 6, at 416-17 (explaining that inability to recoup attorney's fees prevents plaintiffs from bringing state tax challenges); *supra* notes 6-8 and accompanying text (explaining need for § 1988 attorneys' fees awards in state tax challenges).

145. *See Taylor*, *supra* note 6, at 416-17 (explaining need for courts to award § 1988 attorneys' fees in state tax litigation); *supra* notes 6-8 and accompanying text (demonstrating that state tax challenges are feasible only if plaintiff can recover attorneys' fees).

146. *See Fair Assessment in Real Estate Ass'n v. McNary* 454 U.S. 100, 107 (1981) (holding that doctrine of comity and Act preclude federal jurisdiction over state tax § 1983 claims); *supra* notes 115-23 and accompanying text (discussing Supreme Court's holding in *Fair Assessment*).

147. *See BLACK'S LAW DICTIONARY* 242 (5th ed. 1979) (defining comity); *Fair Assessment*, 454 U.S. at 112 (citing *Younger v. Harris*, 401 U.S. 37, 44-45 (1971)) (holding that equitable restraint bars federal courts from enjoining pending state criminal prosecutions except under extraordinary circumstances).

148. *See supra* notes 117-23 and accompanying text (explaining how comity and Act's basis in federalism allow state courts to decide all aspects of state tax challenges).

bring his state tax section 1983 claim in a state court.¹⁴⁹ Preclusion approach courts fail to take advantage of the Supreme Court's recognition of the independence of state courts and state courts' competence to adjudicate section 1983 actions.¹⁵⁰

Another possible approach that state courts can adopt in analyzing the Act's impact on state court jurisdiction over state tax section 1983 claims is the discretionary approach.¹⁵¹ Although the discretionary approach recognizes the independence and competence of state courts more than does the preclusion approach, the discretionary approach also misinterprets the purposes of the Act.¹⁵² Discretionary approach courts recognize that the Act does not preclude state courts from hearing a plaintiff's section 1983 claims.¹⁵³ Discretionary approach courts interpret the Act, however, as giving state courts the discretion to determine whether to exercise jurisdiction over a plaintiff's section 1983 claim.¹⁵⁴ If state law provides a plain, speedy, and efficient remedy in state courts, discretionary approach courts hold that state courts should defer to state remedies and refuse to hear section 1983 claims.¹⁵⁵ Under the Act, a plaintiff may not assert in federal court a state

149. *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1981); *Fair Assessment*, 454 U.S. at 116; see *supra* note 105 and accompanying text (discussing United States Supreme Court's assumption in *Rosewell* that plaintiff could bring state tax § 1983 action in state forum); *supra* notes 121-23 and accompanying text (discussing United States Supreme Court's assumption in *Fair Assessment* that plaintiff can pursue state tax § 1983 claim in state forum).

150. See *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1981) (holding that state court is competent to hear plaintiff's state tax § 1983 claim); *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981) (holding that plaintiff may pursue state tax § 1983 claim in state court); see *supra* notes 105 and accompanying text (discussing United States Supreme Court's holding in *Rosewell* that plaintiff could bring state tax § 1983 claim in state court); see *supra* notes 121-23 and accompanying text (discussing United States Supreme Court's holding in *Fair Assessment* that federal courts should defer to state courts in state tax matters).

151. See *supra* notes 53-62 and accompanying text (discussing discretionary approach).

152. See *infra* notes 153-66 and accompanying text (analyzing discretionary approach).

153. See *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, —, 490 A.2d 509, 513 (1985) (explaining that state courts should use Act as guideline in determining whether to entertain state tax § 1983 challenges); *Linderkamp v. Bismarck School Dist. No. 1*, 397 N.W.2d 76, 79 (N.D. 1986) (holding that Act provides guideline for state courts in fashioning jurisdictional bar similar to Act); *supra* notes 53-62 and accompanying text (discussing discretionary approach).

154. See *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, —, 490 A.2d 509, 513 (1985) (holding that state courts can exercise discretion in deciding whether to entertain state tax § 1983 claims); *Linderkamp v. Bismarck School Dist. No. 1*, 397 N.W.2d 76, 79 (N.D. 1986) (holding that Act provides guideline for state courts in fashioning jurisdictional bar similar to Act); *supra* notes 53-62 and accompanying text (discussing discretionary approach).

155. See *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, —, 490 A.2d 509, 513 (1985) (holding that state courts should refuse to entertain state tax § 1983 claims in deference to adequate state remedies); *Linderkamp v. Bismarck School Dist. No. 1*, 397 N.W.2d 76, 80 (N.D. 1986) (holding that state courts should impose limitations under state law upon state tax § 1983 actions even though Act does not preclude state court jurisdiction); *supra* notes 53-62 and accompanying text (discussing *Linderkamp* and *Zizka* courts' reasoning in adopting discretionary approach).

tax claim, even if the plaintiff asserts a section 1983 claim in conjunction with the state tax claim.¹⁵⁶ By thus prohibiting federal jurisdiction over state tax claims, Congress established state courts as the primary forum for state tax challenges.¹⁵⁷ Congress believed that a plaintiff would be able to bring both his federal and state claims in state court.¹⁵⁸ Thus, discretionary approach courts that develop jurisdictional bars to state tax section 1983 claims prevent a plaintiff from asserting all of his state tax claims in state courts, thereby undermining the Congressional intent underlying the Act.¹⁵⁹

Courts following the discretionary approach also ignore the United States Supreme Court's reasoning in *Rosewell* and *Fair Assessment*.¹⁶⁰ In *Rosewell* the Supreme Court determined that the existence of adequate state procedures for the appeal of tax assessments prevents a plaintiff from bringing a section 1983 claim in federal court.¹⁶¹ In evaluating the adequacy of the state remedy, the Court noted that the plaintiff could pursue his state tax section 1983 claim in state court.¹⁶² In *Fair Assessment* the Supreme Court held that, when the state remedy is adequate, allowing federal courts to exercise jurisdiction over a state tax section 1983 refund suit would interfere with state tax systems equally as would allowing federal courts to issue injunctions against state tax collection.¹⁶³ In both situations, a federal court's exercise of jurisdiction over the state tax case hales state tax officials

156. See *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 113 (1981) (explaining conflict between Act and § 1983); *supra* notes 115-23 and accompanying text (discussing Supreme Court's reasoning in *Fair Assessment* that Act overrides § 1983's immediate provision of federal forum).

157. See S. REP. NO. 1035, 75th Cong., 1st Sess. 2 (1937) (discussing Congress' reasons for making state courts primary forum for state tax challenges); *supra* notes 78-84 and accompanying text (discussing Congress' intention to establish state courts as primary forum for state tax challenges).

158. See *id.* (explaining Congressional belief that Act assures plaintiff full hearing of state tax claims).

159. See *supra* notes 78-84 and accompanying text (discussing legislative history of Act and Congressional intent to make state court primary forum for state tax challenges).

160. See *Zizka v. Water Pollution Control Auth.*, 195 Conn. 682, —, 490 A.2d 509, 513 (1985) (barring plaintiff's state tax § 1983 claim because of adequate state law remedy); *Linderkamp v. Bismarck School Dist. No. 1*, 397 N.W.2d 76, 80 (N.D. 1986) (barring plaintiff's state tax § 1983 claim in state court); see also *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1980) (noting that plaintiff could pursue state tax § 1983 claim in state court); *Fair Assessment*, 454 U.S. at 116 (finding state court competent to hear plaintiff's state tax § 1983 claim); *supra* note 105 and accompanying text (discussing United States Supreme Court's assumption in *Rosewell* that plaintiff could bring state tax § 1983 action in state forum); *supra* notes 121-23 and accompanying text (discussing United States Supreme Court's assumption in *Fair Assessment* that plaintiff can pursue state tax § 1983 claim in state court).

161. *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1980); see *supra* notes 100-05 and accompanying text (discussing United States Supreme Court's holding in *Rosewell*).

162. *Rosewell*, 450 U.S. at 514; see *supra* notes 90-105 and accompanying text (noting United States Supreme Court's statement in *Rosewell* that plaintiff could pursue state tax § 1983 claim in state court).

163. *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 113 (1981); see *supra* note 121 and accompanying text (discussing how federal court, by exercising jurisdiction over state tax § 1983 claims, interferes with state tax systems).

into federal court, thus interfering with state tax systems in violation of the principle of comity.¹⁶⁴ The Court in *Fair Assessment* held, however, not that section 1983 was too intrusive to state tax collection, but rather that plaintiffs could bring a section 1983 action in state court.¹⁶⁵ Therefore, state courts that develop jurisdictional bars to state tax section 1983 claims invalidate the Supreme Court's assumptions about the availability of state courts to the plaintiffs in *Rosewell* and *Fair Assessment*.¹⁶⁶

The New Jersey Superior Court approach in *Bung's* to state tax section 1983 claims is the approach that best carries out the purposes of the Tax Injunction Act.¹⁶⁷ In *Bung's* the New Jersey Superior Court held that a state court remedy is plain, speedy, and efficient only if the remedy permits joinder of federal and state claims.¹⁶⁸ Congress passed the Act believing that state courts should adjudicate all aspects of state tax challenges.¹⁶⁹ Congress believed that the Act's requirement of a plain, speedy, and efficient state law remedy would insure that every plaintiff receives a full hearing of his claim.¹⁷⁰ When a plaintiff raises both federal and state claims in a state tax challenge, the New Jersey court's approach allows state courts to adjudicate the entire controversy.¹⁷¹ The New Jersey court reasoned that state courts should not interpret the Act to deny civil rights plaintiffs a

164. See *Fair Assessment*, 454 U.S. at 115-16 (explaining that state tax § 1983 damages actions and federal injunctions against state tax collection equally are intrusive to state tax systems).

165. *Fair Assessment*, 454 U.S. at 116; see *supra* notes 121-23 and accompanying text (discussing United States Supreme Court's assumption in *Fair Assessment* that plaintiff could bring state tax § 1983 claim in state court).

166. See *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1981) (noting that plaintiff can bring state tax § 1983 claim in state court even though Act barred claim in federal court); *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981) (noting state court availability for plaintiff's state tax § 1983 claim in holding that Act barred plaintiff's claim); see *supra* note 105 and accompanying text (discussing United States Supreme Court's assumption in *Rosewell* that plaintiff could bring state tax § 1983 action in state forum); *supra* notes 121-23 and accompanying text (discussing United States Supreme Court's assumption in *Fair Assessment* that plaintiff can pursue state tax § 1983 claim in state forum).

167. See *infra* notes 168-77 and accompanying text (discussing how New Jersey court's interpretation of Act's affect on state court jurisdiction best follows Congressional intent in enacting Act and United States Supreme Court's interpretation of Act).

168. *Bung's Bar & Grille, Inc. v. Florence Township Council*, 206 N.J. Super. 432, 460, 502 A.2d 1198, 1215 (1985); see *supra* notes 46-52 and accompanying text (discussing *Bung's* court's decision to hear state tax § 1983 claim).

169. See S. REP. NO. 1035, 75th Cong., 1st Sess. 2 (1937) (explaining Congress' intent in passing Act was to make state courts principal forum for state tax challenges); *supra* notes 78-84 and accompanying text (discussing Congress' intention to make state court primary state tax challenge forum).

170. See S. REP. NO. 1035, 75th Cong., 1st Sess. 2 (1937) (insuring that Act will deprive no plaintiff of equitable right or full hearing of claim).

171. See *Bung's*, 206 N.J. Super. at 460, 502 A.2d at 1215 (explaining how New Jersey state courts required to hear federal claims to insure full hearing of controversy); *supra* notes 46-52 and accompanying text (discussing *Bung's* court's recognition of need for joinder of federal and state claims in state court).

forum for their state tax claims.¹⁷² Accordingly, the New Jersey court's approach promotes Congress' reasons for passing the Act, establishing state courts as the principal forum for state tax challenges while guaranteeing plaintiffs a forum for their claims.

The New Jersey court's approach in *Bung's* also best conforms to the expectations of the United States Supreme Court in *Rosewell* and *Fair Assessment*.¹⁷³ In both *Rosewell* and *Fair Assessment* the Supreme Court held that plaintiffs could not maintain a state tax section 1983 claim in federal court partly because the plaintiffs could pursue the section 1983 claim in state forums.¹⁷⁴ The New Jersey court's approach allows plaintiffs, whom the Act prevents from petitioning federal courts for relief, to obtain relief in state courts.¹⁷⁵ The New Jersey court held that, when a state remedy does not permit plaintiffs to adjudicate their state and federal claims in one proceeding, the state remedy is not adequate.¹⁷⁶ Thus, by allowing state tax plaintiffs to raise all claims in a state tax forum, the New Jersey court validates the United States Supreme Court's assumptions in *Rosewell* and *Fair Assessment*.¹⁷⁷

The Tax Injunction Act is a limitation on federal jurisdiction only and encourages state courts to exercise jurisdiction over state tax section 1983

172. See *Bung's*, 206 N.J. Super. at 460, 502 A.2d at 1215 (reasoning that purpose of Act could not be to deny civil rights plaintiffs forum for their claims); *supra* notes 46-52 and accompanying text (discussing *Bung's* court's reasoning in hearing state tax § 1983 claim).

173. See *Fair Assessment in Real Estate v. McNary*, 454 U.S. 100, 116 (1981) (noting that state law allows plaintiff to pursue state tax § 1983 claim in state court); *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1980) (stating that plaintiff can pursue state tax § 1983 claim in state court); see *supra* note 105 and accompanying text (discussing United States Supreme Court's assumption in *Rosewell* that plaintiff could bring state tax § 1983 action in state forum); *supra* notes 121-23 and accompanying text (discussing United Supreme Court's assumption in *Fair Assessment* that plaintiff can pursue state tax § 1983 claim in state forum).

174. *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981); *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1980); see *supra* note 105 and accompanying text (discussing United States Supreme Court's assumption in *Rosewell* that plaintiff could bring state tax § 1983 action in state forum); *supra* notes 121-23 and accompanying text (discussing United Supreme Court's assumption in *Fair Assessment* that plaintiff can pursue state tax § 1983 claim in state forum).

175. See *supra* notes 47-50 and accompanying text (explaining that approach of New Jersey court guarantees to plaintiffs forum for their state tax § 1983 claims).

176. *Bung's Bar & Grille, Inc. v. Florence Township Council*, 206 N.J. Super. 432, 461, 502 A.2d 1198, 1215 (1985); see *supra* notes 46-52 and accompanying text (discussing *Bung's* court's reasoning in hearing state tax § 1983 claim and problem of adequate state remedy).

177. See *Bung's*, 206 N.J. Super. at 459, 502 A.2d at 1214 (allowing state tax plaintiffs to raise both federal and state challenges to state tax in state court); see also *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1981) (noting that plaintiff could pursue state tax § 1983 claim in state forum); *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981) (finding that state court available for plaintiff's state tax § 1983 claim); *supra* notes 46-52 and accompanying text (discussing New Jersey court's provision of forum to state tax § 1983 claims); *supra* note 105 and accompanying text (discussing United States Supreme Court's assumption in *Rosewell* that plaintiff could bring state tax § 1983 action in state court); *supra* notes 121-23 and accompanying text (discussing United Supreme Court's assumption in *Fair Assessment* that plaintiff can pursue state tax § 1983 claim in state forum).

claims.¹⁷⁸ A state tax plaintiff's ability to challenge in state court an allegedly unconstitutional state tax often hinges on the plaintiff's prospects of recovering attorneys' fees under section 1988.¹⁷⁹ State courts that refuse to hear state tax section 1983 claims effectively prevent these plaintiffs from challenging unconstitutional taxation.¹⁸⁰ The Tax Injunction Act does not limit or suggest a limit on a state court's jurisdiction over state tax section 1983 claims.¹⁸¹ Accordingly, the Act is not a neutral jurisdictional reason for state courts to refuse state tax section 1983 claims.¹⁸² Thus, state courts have a duty, pursuant to the Supremacy Clause of the United States Constitution, to hear state tax section 1983 claims and award section 1988 attorneys' fees to successful plaintiffs.

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178. See *supra* notes 78-84 and accompanying text (discussing Congress' intent, in name of federalism, to make state courts primary state tax forum); *supra* notes 115-23 and accompanying text (discussing United States Supreme Court's analysis in *Fair Assessment* of Act's basis in federalism and comity); *supra* notes 167-177 and accompanying text (analyzing New Jersey court's approach in light of legislative history of Act and case law).

179. See Taylor, *supra* note 6, at 427 (discussing need for mandatory state court jurisdiction over state tax § 1983 claims); *supra* notes 6-8 and accompanying text (same).

180. See Taylor, *supra* note 6, at 416-17 (discussing need for availability of attorneys' fees in state tax litigation to offset prohibitive cost of litigation); *supra* notes 6-8 and accompanying text (same).

181. See *supra* notes 167-77 and accompanying text (discussing New Jersey court's approach, which reads Act to encourage state court jurisdiction over state tax § 1983 claims).

182. See Taylor, *supra* note 6, at 423 (stating conditions under which state court can refuse to hear general § 1983 claim); *supra* notes 123-31 and accompanying text (explaining United States Supreme Court's interpretation of Supremacy Clause and state courts' discretion to refuse to adjudicate federal claims).

*To commemorate his retirement from the United States Supreme Court,
the Editorial Board of the Washington and Lee Law Review respectfully
dedicates this issue to Justice Lewis F. Powell, Jr.*



JUSTICE LEWIS F. POWELL, JR.