NO. 21-1261

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

DEBORAH HOWARD, *et al.*,
Plaintiffs-Appellants

v.

CITY OF DETROIT, MI, *et al.*,
Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN AT DETROIT NO. 2:20-CV-10382-NGE

BRIEF OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. AND THE AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Federal Rule of Appellate Procedure and Sixth Circuit Rule 26.1, counsel for *amici curiae* certify that no *amicus curiae* is a subsidiary or affiliate of a publicly owned corporation and that no publicly owned corporation has a financial interest in this outcome of the appeal.

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STATEMENT OF INTEREST[1]

Amici curiae are: (1) the NAACP Legal Defense and Educational Fund, Inc. ("LDF"); and (2) the American Civil Liberties Union of Michigan ("ACLU of Michigan").

For the reasons more thoroughly set out in the concurrently filed motion for leave, LDF and the ACLU of Michigan have a strong interest in the issues presented by this appeal. Both organizations have a long history of protecting the constitutional rights of the people of Michigan, including the predominantly Black residents of the City of Detroit. Indeed, LDF and the ACLU of Michigan have co-counseled on several recent civil rights cases in Detroit. *See, e.g.*, *Henderson v. Vision Property Management*, No. 2:20-cv-12649 (E.D. Mich. filed Sept. 29, 2020); *Taylor v. Detroit*, No. 20-cv-11860 (E.D. Mich. filed July 9, 2020); *MorningSide Cmty. Org. v. Sabree*, No. 16-008807 (Mich. Cir. Ct. filed July 13, 2016).

[1] No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amici curiae* and their counsel contributed money that was intended to fund the preparation or submission of this brief.

INTRODUCTION

In Detroit, homeowners seeking to challenge their property tax assessments face an all-or-nothing decision: If they file a timely complaint with the local Board of Assessors, they can avail themselves of a rigid, sequential system of administrative and judicial review; if they do not, they are precluded from any review whatsoever. In 2017, following its first wholesale reappraisal of residential property in over 50 years, the City of Detroit deprived homeowners of the opportunity to make that important decision when it failed to notify them of their property tax assessments until mere days—if not hours—before the deadline for filing a complaint with the Board of Assessors. As a result, thousands of Detroit's predominantly Black homeowners were left with no avenue to challenge their assessments. Given that the City of Detroit has long admitted that its property assessments are inaccurate and overvalued, these homeowners were forced to choose between either paying more taxes than they likely owed or entering delinquency and risking the loss of their homes in property tax foreclosure. *See, e.g.*, *Morningside Cmty. Org. v. Wayne County Treasurer*, 2017 WL 4182985, at *1 (Mich. Ct. App. Sept. 21, 2017) (detailing allegations that the City of Detroit "has long admitted it overvalued homes in Detroit and thus assessed taxes that were inaccurate"); Christine MacDonald & Mark Betancourt, Detroit homeowners overtaxed $600 million, The Detroit News (Jan. 11, 2020),

https://www.detroitnews.com/story/news/local/detroit-city/housing/2020/01/09/detroit-homeowners-overtaxed-600-million/2698518001/ (last visited July 7, 2021).

Plaintiffs in this action are Detroit homeowners who allege that the City of Detroit's conduct in 2017 violated their due process rights. The district court dismissed Plaintiffs' claims as barred by the Tax Injunction Act, which prevents certain actions concerning state taxes from being filed in federal court when there is a "plain, speedy and efficient remedy" in state court. *See* 28 U.S.C. § 1341. Paradoxically, the district court reasoned that Plaintiffs could not bring their due process claims in federal court because they could have challenged their property tax assessments through the very system of review from which Plaintiffs allege they were completely and irrevocably shut out. To the contrary, federal court is—and has been since the moment the deadline for filing a complaint with the Board of Assessors passed—Plaintiffs' only opportunity to obtain review of their property tax assessments. In holding otherwise, the district court disregarded the unique facts of this case and misconstrued the scope and purpose of the Tax Injunction Act. If left uncorrected, this holding would force Plaintiffs, who were excluded from the state system of review through absolutely no fault of their own, to bear the consequences of the City of Detroit's mistakes.

Accordingly, this Court should reverse the district court's dismissal and remand this action so that Plaintiffs have a real opportunity to challenge their property tax assessments and thereby vindicate their due process rights.

STATUTORY AND FACTUAL BACKGROUND

I. Detroit Homeowners' Access to Review of Their Property Tax Assessments Hinges on Filing a Timely Complaint with the Board of Assessors.

In Michigan, property taxes are based on property values which localities must assess annually (despite the City of Detroit's poor track record on this front). M.C.L. §§ 211.10(1), 211.24(1). Michigan homeowners are entitled to challenge their assessments through a rigid, sequential system of administrative and judicial review. M.C.L. §§ 205.731(a), 205.753(1). They are also entitled to individual, written notice of their assessments, which must be mailed to them at least 14 days before the deadline for filing such a challenge. M.C.L. § 211.24c(1), (4).[2]

In Detroit, unlike in other Michigan localities, homeowners must file a complaint with a local entity known as the Board of Assessors in order to challenge their property tax assessments. Detroit Code of Ordinances § 44-4-3(a). If the Board of Assessors issues an adverse decision, Detroit homeowners can appeal that decision to the Board of Review. Detroit Code of Ordinances § 44-4-6(b). However,

[2] M.C.L. § 211.24c(4) requires that assessment notices be mailed "not less than 14 days before the meeting of the [B]oard of [R]eview." However, as discussed further below, the City of Detroit is unique among Michigan localities in that it has established a Board of Assessors that reviews assessment challenges before the Board of Review. Accordingly, the City of Detroit has interpreted § 211.24c(4) to require that assessment notices be mailed not less than 14 days before the deadline for filing a complaint with the Board of Assessors. *See* City of Detroit's Motion to Dismiss, RE 15, Page ID # 116 (discussing "the 14 days prior notice required by state law" in the context of the deadline for filing a complaint with the Board of Assessors).

Detroit homeowners must have filed an initial complaint with the Board of Assessors as a prerequisite to any appeal to the Board of Review. *Id.*[3]

If the Board of Review also issues an adverse decision, Detroit homeowners can appeal that decision to the Michigan Tax Tribunal ("MTT"). M.C.L. § 205.731(a). Again, however, Detroit homeowners must appeal to the Board of Review—and therefore, they must have filed an initial complaint with the Board of Assessors—as a prerequisite to any appeal to the MTT. M.C.L. § 205.735a(3).[4]

If the MTT also issues an adverse decision, Detroit homeowners can appeal that decision to the Michigan Court of Appeals. M.C.L. § 205.753(1). But, once again, Detroit homeowners must appeal to the MTT—and therefore, they must have filed an initial complaint with the Board of Assessors and appealed to the Board of Review—as a prerequisite to any appeal to the Michigan Court of Appeals. M.C.L. § 205.731(a), (b).

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[3] Detroit Code of Ordinances § 44-4-6(b) unambiguously states, in relevant part: "*Any person who has previously complained to the Board of Assessors* as provided for in Section 44-4-3 of this Code, considering themselves aggrieved by the assessment of such person's property and the decision of the Board of Assessors with respect to the grounds specified by the complainant thereon, may appeal to the Board of Review in person or by such person's legal representative." (emphasis added).

[4] M.C.L. § 205.735a(3) unambiguously states, in relevant part: "Except as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, *the assessment must be protested before the [B]oard of [R]eview* before the [MTT] acquires jurisdiction of the dispute under subsection (6)." (emphasis added).

A Detroit homeowner's ability to challenge their property tax assessment thus hinges on filing a timely complaint with the Board of Assessors. In light of this all-or-nothing system of review, it is unsurprising that Michigan law requires localities to mail homeowners individual, written notice of their property tax assessments at least 14 days before the deadline for challenging the assessments. M.C.L. § 211.24c(1), (4). This notice requirement underscores the obvious: in this context, late notice is no notice at all.

II. In 2017, the City of Detroit's Belated Assessment Notices Deprived Detroit Homeowners of the Opportunity to Obtain Review of Their Property Tax Assessments.

In 2017, the City of Detroit provided belated notice to homeowners of their property tax assessments, depriving them of their ability to seek review of their assessments. That year, the City of Detroit completed its first wholesale residential reappraisal of property values and tax assessments in at least 50 years. Complaint, RE 1, Page ID # 3–4. Due to errors in those calculations, however, the City delayed sending the new assessments to homeowners. *Id.* at Page ID # 19–20.

On February 14, 2017, the City of Detroit mailed over 263,000 property tax assessment notices to Detroit homeowners. *Id.* at Page ID # 16. At a City Council meeting later that day, a city representative claimed that homeowners would receive their notices by February 18. *Id.* at Page ID # 20–21; Detroit City Council Evening Community Meeting, at 09:30 to 11:30 (Feb. 14, 2017) ("[Y]our assessment notice

will be coming in the mail. You should have it by Saturday [February 18].”), http://video.detroitmi.gov/CablecastPublicSite/show/4706?channel=1 (last visited July 7, 2021). Though the notices were sent on February 14 and expected by February 18, each notice stated that the deadline for filing a protest with the Board of Assessors was 4:30 pm on February 18. Complaint, RE 1, Page ID # 16–17, 20–21, 44. Thus, the City effectively notified homeowners that there was a review process that *they could not use*.

Moreover, the City of Detroit explicitly instructed homeowners that this expired process was the exclusive avenue for challenging the assessment. *Id.* at Page ID # 20. Each Detroit homeowner received a notice declaring that a protest to the Board of Assessors was “required to protect [their] right to appear before the March Board of Review” and that a protest at the March Board of Review was “necessary to protect [their] right to further appeal to the Michigan Tax Tribunal.” *Id.* at Page ID # 14–15, 44–45. In this way, homeowners were simultaneously informed that they were too late to seek review through the state’s process and that there was no alternative to that process.

Recognizing that this arrangement ran contrary to law and logic, the City of Detroit purported to extend the deadline to file a complaint with the Board of Assessors to February 28, 2017, and to waive the requirement of an initial complaint with the Board of Assessors to appeal to the Board of Review. *Id.* at Page ID # 18–

19. However, the City failed to provide adequate notice of these purported changes to the 260,000 Detroit homeowners who had been informed to the contrary. Even though the February 14 notices expressly disavowed an extension of the deadline for or alternatives to the Board of Assessors complaint process, no subsequent notice was mailed to homeowners notifying them of the ostensible changes to the contrary. *Id.* at Page ID # 19–20. Instead, a representative of the City mentioned the extension—but not the waiver—in a brief announcement during the sparsely-attended February 14th City Council meeting, and some news articles mentioned the changes. *Id*. The individualized notices were not updated to reflect those changes, nor were they corrected by a later mailing.[5] *Id*.

Because of this convoluted process, over 260,000 Detroit homeowners were simultaneously given notice of their new property assessment and told that it was too late for them to participate in the only available process for challenging that assessment.[6] As a result, Plaintiffs and many others were effectively precluded from accessing the review process. *Id.* at Page ID # 28–32.

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[5] In addition to being so poorly communicated that they failed to rectify the initial notice failures, these changes offered little protection to Detroit homeowners. Because they were both unofficially and arbitrarily imposed, it is unclear whether they could be revoked by the City or subsequently enforced by Plaintiffs. Complaint, RE 1, Page ID # 21.

[6] In their Motion to Dismiss, Defendants claimed that nearly 2,200 homeowners still managed to protest their assessment to the Board of Assessors by the extended deadline. City of Detroit Motion to Dismiss, RE 15, Page ID # 116. This is less than one percent of the more than 260,000 Detroit homeowners who receive a notice of assessment. It is also difficult to put that number in context given that (1) this was

III. The District Court Dismissed Plaintiffs' Due Process Challenge, Disregarding the Unique Facts of this Case and Misconstruing the Scope and Purpose of the Tax Injunction Act.

Plaintiffs in this action are several of the thousands of Detroit homeowners who, for the reasons set forth above, were deprived by the City of Detroit of the opportunity to obtain review of their 2017 property tax assessments. Complaint, RE 1, Page ID # 4–5. Plaintiffs allege that this deprivation violated their due process rights and seek various forms of relief to remedy that violation. *Id.* The district court dismissed Plaintiffs' claims as barred by the Tax Injunction Act, 28 U.S.C. § 1341, which precludes from federal court certain actions concerning state taxes where there is a "plain, speedy and efficient remedy" in state court. District Court Opinion, RE 33, Page ID # 587.

In dismissing Plaintiffs' claims, the district court reasoned that "Michigan law provides a comprehensive scheme of administrative and judicial review that Plaintiffs could have pursued to challenge the underlying property tax assessments." *Id.* at Page ID # 586. The court acknowledged Plaintiffs' argument that "deficient assessment notices" rendered Michigan state-court remedies "virtually inaccessible," but was not persuaded. *Id.* Instead, the court emphasized that "to hold that this deficiency renders available state remedies inadequate would open the door

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the first time in decades that all Detroit homeowners received a new assessment and (2) Defendants did not offer data from other years to serve as a comparison.

to federal courts handling tax disputes whenever a party claims to have received inadequate notice," which "would run contrary to the congressional intent evinced by the TIA to 'limit drastically' federal court interference with state tax systems." *Id.*

ARGUMENT

I. The Tax Injunction Act Does Not Bar Plaintiffs' Claims from Federal Court Because Defendants' Property Tax Assessment Process Did Not Provide a "Plain, Speedy and Efficient" Remedy in This Instance.

The Tax Injunction Act ("TIA") bars from federal court certain actions concerning state taxes, but only if there is a "plain, speedy and efficient remedy" in state court. *See* 28 U.S.C. § 1341. Here, the City of Detroit's belated property tax assessment notices prevented Plaintiffs from filing a timely complaint with the Board of Assessors and thereby deprived Plaintiffs of the only available state-court remedy. Although the City attempted to cure its deficient notices, it did so in a manner that was unlikely to actually reach affected homeowners, each of whom had been explicitly and unambiguously told that there were no alternative means of challenging their property tax assessments. And Defendants' arguments made in this litigation that Plaintiffs could have bypassed the process altogether by pursuing an action before the MTT or in state court are without merit, as those avenues were barred by state law and, at best, of speculative availability. Accordingly, this Court should reverse the district court's dismissal of Plaintiffs' due process claims, which was based on an erroneous interpretation of Congress's intent in enacting the TIA.

To hold otherwise would fault Plaintiffs for the City of Detroit's multiple, avoidable mistakes during the 2017 property tax assessment process.[7]

A. The Tax Injunction Act Does Not Bar Federal Jurisdiction When the State Fails to Provide a "Plain, Speedy and Efficient" Remedy.

The TIA bars actions seeking to "enjoin, suspend or restrain" the "assessment, levy or collection" of state taxes from federal court, so long as the state provides a "plain, speedy and efficient remedy." 28 U.S.C § 1341.[8] The state's remedy must meet "certain minimal *procedural* criteria." *Rosewell v. LaSalle Nat. Bank*, 450 U.S. 503, 512 (1981) (emphasis in original). If the state fails to provide a "full hearing and judicial determination at which the taxpayer may raise any federal constitutional objections," the state has not offered a "plain, speedy and efficient remedy" and the TIA does not prevent the taxpayer from seeking relief in federal court. *Islamic Ctr. of Nashville v. Tennessee*, 872 F.3d 377, 385 (6th Cir. 2017) (quotation omitted); *see also Rosewell*, 450 U.S. at 514. Similarly, a state-court remedy that is "uncertain or

[7] This brief does not address whether the TIA does not bar Plaintiffs' claims for other reasons, such as whether Plaintiffs' claims, if successful, would "enjoin, suspend or restrain the assessment, levy or collection" of state taxes for purposes of the TIA.

[8] Like the TIA, the common-law principle of comity, upon which the district court also relied in dismissing Plaintiffs' claims, cautions against federal review of a state tax process when the state offers a remedy that is "plain, adequate, and complete." *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 n.8 (1981). Although the principle of comity "stands on its own bottom" and is "substantially broader" than the TIA, both the Supreme Court and this Court have held that there is "no significant difference" between a remedy that is "plain, speedy and efficient" and one that is "plain, adequate, and complete." *Chippewa Trading Co. v. Cox*, 365 F.3d 538, 541–42 (6th Cir. 2004) (quoting *Fair Assessment*, 454 U.S. at 116 n.8). Therefore, all arguments that Defendants failed to provide an appropriate remedy under the TIA are equally applicable to the principle of comity.

speculative is not adequate to bar federal jurisdiction." *Franchise Tax Bd. of Cal. v. Alcan Aluminum Ltd.*, 493 U.S. 331, 340 (1990).

Importantly, even if a state offers an apparently adequate remedy on paper, courts do not "elevate form over substance." *Id.* at 339. Instead, courts inquire into how the remedy functioned in practice, particularly when there is an issue of procedural adequacy. *See Rosewell,* 450 U.S. at 516-18 (analyzing whether the state's remedy is "speedy" by assessing how long the remedy takes to resolve when compared to similar cases); *Colonial Pipeline Co. v. Collins*, 921 F.2d 1237, 1244-45 (11th Cir. 1991) (remanding to determine if alleged procedural defects denied appellants a state remedy). The Sixth Circuit recognizes that the factual nature of the inquiry permits—and indeed requires—courts to rule based on the "unique facts" of the case, and not just the state's statutory remedy as a whole. *See Nw. Airlines, Inc. v. Tenn. State Bd. of Equalization*, 11 F.3d 70, 73 (6th Cir. 1993) (holding that the "unique facts" of the case posed "an issue of procedural, rather than substantive, adequacy" that prevented the TIA from barring federal jurisdiction).

B. Defendants' Belated Notices Denied Plaintiffs Access to a "Plain, Speedy and Efficient" Remedy for Correcting Their Property Overassessments.

The City of Detroit's complete mismanagement of the 2017 property assessment process denied Plaintiffs a "plain, speedy and efficient remedy" for challenging their property tax assessments.

1. Defendants' Late Notices Precluded Plaintiffs from Participating in the State's Review Process.

Plaintiffs were not given adequate notice to protest their assessments to the Board of Assessors. Under Michigan law, localities must mail homeowners assessment notices at least 14 days prior to the deadline for challenging the assessments. *See* M.C.L. § 211.24c(4). Here, the City missed that two-week deadline by about two weeks. Instead of receiving notice of an available remedy, Plaintiffs were notified of a review process in which it was too late to participate.

It is undisputed that the City of Detroit mailed around 263,000 property tax assessment notices on February 14, 2017 and that each notice instructed homeowners that the deadline for submitting a protest to the Board of Assessors was February 18. Complaint, RE, 1, Page ID # 16–17, 20–21. Unfortunately for Detroit homeowners, February 18 was also the date by which they were expected to receive the notices themselves. Detroit City Council Evening Community Meeting, at 09:30 to 11:30 (Feb. 14, 2017)("[Y]our assessment notice will be coming in the mail. You should have it by Saturday [February 18]."), http://video.detroitmi.gov/CablecastPublicSite/show/4706?channel=1 (last visited July 7, 2021).

At best, some homeowners may have received the notice with a day or so to prepare a challenge to their assessments. For many, the same-day notice would have left only hours to file a complaint with the Board of Assessors. Others still may not

have received the notice until around *or after* the 4:30 PM deadline or in the days that followed. Regardless of when the notices were received, mailing notice on February 14 for the February 18 deadline effectively denied Detroit homeowners a real chance to obtain review from the Board of Assessors.

Defendants' late notices placed Plaintiffs in an untenable position. It is unreasonable to expect homeowners to keep vigil in anticipation of contesting inaccurate taxation with only a few hours' notice. Indeed, Defendants do not dispute that the notices mailed on February 14 did not provide sufficient time for Plaintiffs to meet the February 18 deadline for protesting to the Board of Assessors. In fact, they would be ill-positioned to make such an argument, given that they extended the Assessors review period to "provide the 14 days prior notice required by state law." City of Detroit's Motion to Dismiss, RE 15, Page ID # 116.

2. Defendants Failed to Correct Their Belated Notices or Inform Plaintiffs That an Alternative Remedy was Available.

This case is unique: Not only did the City of Detroit fail to inform Plaintiffs that it had purportedly provided ad hoc alternatives to obtain review of their assessments, the notices Plaintiffs did receive stated that alternative remedies were unavailable. The City's alternatives did not offer a "plain, speedy and efficient remedy," because the City did not adequately notify Plaintiffs that those alternatives were available.

At the outset, when inquiring into the sufficiency of notice, the Supreme Court has held that "notice must be such as is reasonably calculated to reach the interested parties." *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 315, 318 (1950) ("The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."); *see Jones v. Flowers*, 547 U.S. 220, 229 (2006) (inquiring into what "a person who actually desired to inform" the relevant party would do). In *Mullane*, the Supreme Court held that a trustee's efforts to notify beneficiaries through publication in the newspaper was insufficient when the trustee had the names and addresses of those affected. *Mullane*, 547 U.S. at 317-20. Because the trustee's method of notice failed "to reach those who could easily be informed by other means at hand," the Supreme Court held that the provided notice was inadequate. *Id.* at 319.

This Court conducted a similar inquiry in *Chippewa Trading Co. v. Cox*, when it was asked whether potential notice defects in a Michigan tax law rendered state-court remedies inadequate. 365 F.3d 538, 543 (6th Cir. 2004). There, property owners had a short window to appeal seizure of their property, even though written notice regarding the seized property was only due to the person from whom the property was seized and not the property's owner. *Id.* But because it was "extremely likely" that the owner would be notified, either by the person from whom the property was seized or after reasonable inquiry upon realizing their property was

missing, this Court held that the peculiar notice procedure did not prevent the appellants from accessing an adequate state remedy. *Id.* at 543-44.

Here, the City's attempt to salvage the 2017 review process did not provide a "plain, speedy and efficient" remedy because homeowners were not likely to receive notice of these alternatives. Recognizing that their late notices violated law and logic, the City attempted to correct the error by extending the deadline to protest to the Board of Assessors to February 28 and by waiving the requirement that an assessment be challenged before the Board of Assessors prior to any appeal to the Board of Review. Complaint, RE 1, Page ID # 18–19. But the City failed to communicate those changes in a way that was "reasonably calculated" to reach those affected. As a result, Plaintiffs never received notice of the alternatives. Worse still, the notices Plaintiffs did receive from the City instructed them to the contrary—that their right to seek review was entirely contingent on compliance with the February 18 deadline. *Id.* at Page ID # 20.

As in *Mullane*, the City neglected to provide individual notice, failing "to reach those who could easily be informed by other means at hand." 547 U.S. at 319. Instead of notifying each affected homeowner, either by including the new procedures in the February 14 notice or by sending a subsequent notice to homeowners to rectify the February 14 notice, the City made an announcement at a single City Council meeting and relied on scattered news coverage by independent

outlets to inform homeowners of the process changes. Complaint, RE 1, Page ID # 18–20.[9]

Unlike the circumstances in *Chippewa*, individual homeowners were not "extremely likely" to learn of the alternative paths for obtaining review. *First*, neither the City Council announcement nor the press coverage had any meaningful reach. The City Council announcement was brief, made at a sparsely attended meeting held on the evening of Valentine's Day without the opportunity for questions, and it failed to even mention the waiver of the requirement to protest to the Board of Assessors. *Id.* at Page ID # 19–20. And by their very nature, scattered press mentions do not make it likely, much less "extremely likely" that homeowners would learn of the purported deadline change. As the Supreme Court noted in *Mullane*, "chance alone" brings a reader's attention to a newspaper clipping intended to give publication notice; direct mail, when available, is the superior method for providing notice to affected parties. 547 U.S. at 315, 319-20 ("In weighing its sufficiency on the basis of equivalence with actual notice we are unable to regard [a recurring newspaper clipping] as more than a feint.").

[9] This choice is particularly puzzlingly given that the announcement at the City Council meeting was made the same day that the 260,000 notices were mailed. Complaint, RE 1, Page ID # 16, 19–20. And even more so given that some of the news coverage about the extension predates the sending of the notices. *Id.* at Page ID # 19.

Second, the assessment notices were not simply silent on whether homeowners had remedies other than those specified—they expressly told each Detroit homeowner that such alternatives were *not* available. The only individualized communication that Detroit homeowners received from the City was the February 14 notice that the deadline to lodge a protest with the Board of Assessors was February 18 and that a protest to the Board of Assessors was "required to protect [their] right to appear before the March Board of Review." Complaint, RE 1, Page ID # 16–17. This is detrimental to the Plaintiffs twice over. Not only does it provide information that expressly denies the availability of alternatives, but it offers a definitive, targeted statement from the City that chills the likelihood that Plaintiffs would subsequently seek out additional information about potential alternatives. In this way, the City not only failed to give Plaintiffs directions to the alternative remedies purportedly available, but it pointed Plaintiffs in the exact opposite direction.[10]

[10] It is unclear why the City did not choose to send a notice that described the review process it purportedly offered to each homeowner. In their Motion to Dismiss, Defendants offer the rationale that "[a] second mailing to all taxpayers of the extended dates would not have served to provide 14 days' notice prior to the Assessors review." City of Detroit's Motion to Dismiss, ECF 15, Page ID # 116. But this reasoning fails to explain the decision. First, the initial, incorrect mailing on February 14 was sent under similar circumstances. Second, the updated mailing still would have informed Plaintiffs that the Board of Assessors step was waived entirely.

Unfortunately, the City failed to communicate its ad hoc alternative remedies as effectively as it communicated that no alternatives were available. As a result, Plaintiffs were left to believe what the City told them: the February 18 deadline was final and they had missed their chance for review. Even if some homeowners were fortunate enough to obtain review through the adjusted process, their success does not negate the broader issue that the City failed to select a method of notice "reasonably calculated" to correct their own misinformation. *Mullane*, 339 U.S. at 318. To hold that Plaintiffs had access to an alternative remedy that they were expressly told by the City did not exist would place "form over substance" and penalize Plaintiffs for the sole act of believing what the City told them. *Franchise Tax Bd. of Cal.*, 493 U.S. at 339.

3. Plaintiffs Have No "Plain, Speedy And Efficient" Alternative to the Foreclosed Review Process Because the Alternative Procedures Identified by Defendants Were Barred by Michigan Law and Entirely Speculative.

In a last-ditch effort to exclude Plaintiffs from federal court, Defendants argued to the district court that Plaintiffs could have challenged their property tax assessments in Michigan courts by bypassing the Board of Assessors and Board of Review altogether. Specifically, Defendants argued that Plaintiffs could have instead filed a direct petition to the MTT or a complaint under 42 U.S.C. § 1983 ("Section 1983") in state court. Yet neither of these purported pathways to review constitutes

a "plain" remedy under the TIA because both were, at best, of uncertain and speculative availability, and more likely were precluded under state law.

As previously discussed, the TIA "require[s] a state-court remedy that meets certain minimal procedural criteria." *Rosewell*, 450 U.S. at 512 (emphasis omitted). One of the requisite criteria is that the remedy be "plain," which is defined as "clear" or "manifest." *Id.* at 516 (quotation omitted). Accordingly, "uncertainty" surrounding a state-court remedy, such as "speculative" or "discretionary" availability, "lifts the bar to federal-court jurisdiction." *Id.* at 516–17 & n.21 (quotation omitted); *see also Hibbs v. Winn*, 542 U.S. 88, 108 n.10 (2004); *Franchise Tax Bd. of Cal.*, 493 U.S. at 340. Indeed, this Court has previously held that a state-court remedy is not plain "where entry to the State court system is not assured." *Aluminum Co. of Am. v. Dep't of Treasury of State of Mich.*, 522 F.2d 1120, 1125 (6th Cir. 1975).

Plaintiffs could not have filed a direct petition to the MTT. As previously discussed, an initial complaint with the Board of Assessors and an initial appeal to the Board of Review are both prerequisites to an appeal to the MTT. Detroit Code of Ordinances § 44-4-6(b); M.C.L. § 205.735a(3). In particular, the vast majority of Michigan courts have held that Michigan Compiled Laws section 205.735a(3) imposes a jurisdictional prescription that cannot be waived, forfeited, or otherwise excused. *See, e.g.*, *Szymanski v. City of Westland*, 362 N.W.2d 224, 226 (Mich.

1984) (interpreting M.C.L. § 205.735, the predecessor statute to M.C.L. § 205.735a); *McLaren Health Care Corp. v. Grand Blanc Twp.*, 2021 WL 1583171, at *4 (Mich. Ct. App. Apr. 22, 2021) ("[I]t is clear that, to invoke the [MTT's] jurisdiction over an assessment dispute, one must [first] file a protest before the [B]oard of [R]eview . . . ."); *Jehovah Shalom Church of God v. City of Detroit*, 2020 WL 1963987, at *3 (Mich. Ct. App. Apr. 23, 2020) (explaining that "in order for the [MTT] to have subject-matter jurisdiction," one "first ha[s] to protest the assessments before the [B]oard of [R]eview"). The district court observed that "some Michigan courts" have held that the MTT "may retain jurisdiction over an appeal absent a prior protest before the Board of Review." District Court Opinion, RE 33, Page ID # 586. However, this observation misses the mark. To the extent that there is some uncertainty on this point, such uncertainty cannot bar federal jurisdiction because the alternative is not clear enough to be a "plain" remedy under the TIA. *Rosewell*, 450 U.S. at 516–17 & n.21.

Plaintiffs also could not likely have filed a Section 1983 complaint in state court. Both the Michigan Supreme Court and the Michigan Court of Appeals have held that when a property owner challenges the validity of a property tax assessment, even if the challenge includes a constitutional claim related to the method of assessment, the claim cannot be brought in state court because exclusive jurisdiction lies with the MTT. *See, e.g.*, *Wikman v. City of Novi*, 322 N.W.2d 103, 114 (Mich.

1982); *Johnston v. City of Livonia*, 441 N.W.2d 41, 44 (Mich. Ct. App. 1989) ("[I]t is clear that any claim alleged by plaintiff that defendants failed to follow a statutory procedure for assessment falls within the scope of the [MTT's] jurisdiction . . . and should have been brought in that forum.").[11] Indeed, Michigan law directs that matters "subject to the [MTT's] jurisdiction . . . shall proceed only before the tribunal" and expressly forecloses bringing such matters before the "circuit court of this state." M.C.L. § 205.741. Again, such an uncertain remedy is not "plain" under the TIA and does not bar federal jurisdiction. *Rosewell*, 450 U.S. at 516–17. Indeed, this Court has expressly held that federal jurisdiction is not barred where "entry to the State court system is not assured." *Aluminum Co. of Am.*, 522 F.2d at 1125. Even if Defendants' purported pathways to bypass the Board of Assessors have worked for a handful of fortunate plaintiffs, scattered exceptions to well-recognized rules cannot possibly render access to state-court remedies "assured."

[11] *See also MorningSide Cmty. Org. v. Sabree*, No. 16-008807 (Mich. Cir. Ct. filed July 13, 2016) (October 16, 2016 order) (dismissing the plaintiffs' Fair Housing Act claim because "[w]here it is evident that a plaintiff seeks to challenge a property tax assessment, jurisdiction lies with the [MTT] regardless of the 'label' attached to the claim," despite the plaintiffs' arguent that they were challenging tax foreclosures rather than the underlying assessments). In contrast, the court in *MorningSide* permitted the plaintiffs' procedural due process claim regarding Detroit's poverty exemption process to proceed because "the only relief sought" was "constitutionally valid process"—*i.e.*, an opportunity to retroactively seek an exemption—as opposed to "a ruling that they are actually entitled … to a poverty exemption for any tax year." *Id.* (September 2, 2016 oral argument transcript). Here, Plaintiffs seek *both* to retroactively appeal their property tax assessments *and* damages for over-assessment. *See* Complaint, RE 1, at 39–40.

Moreover, even if the City believes that these alternative remedies exist, it instructed homeowners in 2017, *and continues to instruct homeowners today*, that they do not. The assessment notices mailed to Plaintiffs unequivocally stated that protest at the Board of Review was "necessary to protect [the] right to further appeal to the [MTT]." Complaint at Exhibit 1, RE 1, Page ID # 44. Even now, the City of Detroit's website for "Property Assessment Appeal Information" currently states that "[p]rotest at the Board of Review is necessary to protect [the] right to further appeals to the [MTT]." *See* City of Detroit, Property Assessment Appeal Information, https://detroitmi.gov/departments/office-chief-financial-officer/ocfo-divisions/office-assessor/property-assessment-appeal-information (last visited July 7, 2021). Accordingly, Defendants' newly proposed alternatives do not constitute a "plain" remedy under the TIA and therefore do not bar federal court jurisdiction.

C. Allowing Plaintiffs' Claims to be Heard in Federal Court Would Not Undermine Congressional Intent in Enacting the Tax Injunction Act.

In dismissing Plaintiffs' claims, the district court did not deny that Plaintiffs had received deficient assessment notices. Instead, the court emphasized that "to hold that [deficient notice] renders available state remedies inadequate would open the door to federal courts handling tax disputes whenever a party claims to have received inadequate notice," which "would run contrary to the congressional intent evinced by the TIA to 'limit drastically' federal court interference with state tax

systems." District Court Opinion, RE 33, Page ID # 586. However, this reasoning misunderstands the scope and purpose of the TIA.

First, the district court's concern is not actually supported by the congressional intent underlying the TIA. As this Court recently observed, "Congress did not enact the TIA 'to prevent federal-court interference with all aspects of state tax administration,' but instead 'to stop litigants from using federal courts to circumvent States' pay without delay, then sue for a refund regimes.'" *Freed v. Thomas*, 976 F.3d 729, 734–35 (6th Cir. 2020) (quotation omitted). Indeed, the Supreme Court has explicitly recognized that "[n]owhere does the legislative history [of the TIA] announce a sweeping congressional direction to prevent 'federal-court interference with all aspects of state tax administration.'" *Hibbs*, 542 U.S. 105.

Second, Congress explicitly included an exception to the TIA's jurisdictional bar for cases where plaintiffs are without a "plain, speedy and efficient remedy" in state court. For the reasons previously articulated, this is one such case. Accordingly, allowing Plaintiffs' claims to be heard in federal court would be entirely consistent with the purpose of the TIA.

Third, there is little risk that applying the exception will somehow swallow the rule. To invoke this exception, plaintiffs must plausibly allege that any procedural defects were substantial enough to deny them access to a "plain, speedy and efficient" remedy. And in doing so, plaintiffs cannot rely on "conclusory

allegations or legal conclusions masquerading as factual allegations." *Willman v. Att'y Gen. of United States*, 972 F.3d 819, 823 (6th Cir. 2020) (quotation omitted). Further, because the TIA is a jurisdictional statute, the court can dismiss a case if such allegations are not substantiated by discovery. *Hanover Am. Ins. Co. v. Tattooed Millionaire Ent.*, LLC, 974 F.3d 767, 780 n.8 (6th Cir. 2020) ("Jurisdictional issues can of course be raised at any time.").

It bears emphasizing just how unique this case is. Fully aware of its all-or-nothing system of assessment review, the City failed to provide homeowners with notice of their assessments until it was too late to file a complaint with the Board of Assessors. The City compounded this error by telling homeowners in no uncertain terms that if they did not file a timely complaint with the Board of Assessors, they would be left with no recourse. Congress expressly legislated a solution for such circumstances by lifting the TIA's jurisdictional bar when plaintiffs have nowhere else to go. On these facts, it is the district court's conclusion that runs contrary to congressional intent. To hold otherwise would leave Plaintiffs in this action with no state-court remedy and no ability to vindicate their rights in federal court through no fault of their own. That cannot possibly be what Congress intended when enacting the TIA.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the district court and remand this action for further proceedings.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6,471 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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I certify that on July 7, 2021, the foregoing document was filed electronically through the Court's CM/ECF system, which caused a true and correct copy to be served on:

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