IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

A.F. MOORE & ASSOCIATES, INC.; J. EMIL ANDERSON & SON, INC.; PRIME GROUP REALTY TRUST; AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS; ERLING EIDE; and FOX VALLEY/RIVER OAKS PARTNERSHIP, and SIMON PROPERTY GROUP (Delaware), INC.,	)	
Plaintiffs,	)	
vs.	)	**Civil Action No.**
MARIA PAPPAS, Cook County Treasurer and Ex Officio County Collector, JOSEPH BERRIOS, Cook County Assessor, and the COUNTY OF COOK,	)	
Defendants.	)	

COMPLAINT

The plaintiffs, A.F. Moore & Associates, Inc.; J. Emil Anderson & Son, Inc.; Prime Group Realty Trust; American Academy of Orthopaedic Surgeons; Erling Eide, and Fox Valley/River Oaks Partnership, and Simon Property Group (Delaware), Inc. (collectively, or individually as the context requires, "Taxpayers"), by their attorneys O'Keefe, Lyons & Hynes, LLC, for their complaint against defendants Maria Pappas, Treasurer and Ex Officio County Collector of Cook County, Illinois ("Collector"), Joseph Berrios, Assessor of Cook County, Illinois ("Assessor"), and the County of Cook, state as follows:

NATURE OF THE ACTION

1. This is an action pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief to enforce the Taxpayers' rights under the Fourteenth Amendment to the United States Constitution, and under the Illinois Constitution and laws, regarding the assessment and collection of taxes upon their properties pursuant to the Illinois Property Tax Code ("Property Tax Code").

These Taxpayers' cases are part of a larger group originally filed and consolidated for discovery in the Circuit Court of Cook County ("Cook County Court"), in which relief from unconstitutional and illegal taxes was sought for certain tax years beginning in 2000 through tax objection complaints under the Property Tax Code. The cases remain in discovery despite active litigation for more than a decade. Pretrial motions and other proceedings have made it evident that a plain, speedy and efficient remedy for plaintiffs' federal constitutional claims is not available, despite the best efforts of the Cook County Court, because of the uncertainty and inadequacy of procedures under the Property Tax Code. Plaintiffs seek a declaratory judgment for violation of their federal constitutional and state constitutional and legal rights by the Assessor and Collector, an injunction against enforcement of unconstitutional provisions of the Property Tax Code, and an injunction requiring the Collector to refund the excessive taxes resulting from the violations of plaintiffs' rights.

JURISDICTION

2. This action arises under the Fourteenth Amendment to the United States Constitution as is more fully set forth below. The Court therefore has jurisdiction under 28 U.S.C. §§ 1331 and 1343, and plaintiffs' related state claims are within the Court's pendent jurisdiction. Jurisdiction is not precluded by the Tax Injunction Act, 28 U.S.C. § 1341, and the doctrine of federal-state comity, because a "plain, speedy and efficient remedy" for the violation of plaintiffs' federal constitutional rights is not available in the courts of Illinois.

VENUE

3. Venue is proper in the Northern District of Illinois because defendants have their offices and reside, and the events giving rise to the plaintiffs' claims all occurred, in this district.

PARTIES AND SUBJECT PROPERTIES

4. At all times relevant to this complaint, each of the plaintiffs held an interest in certain real property as set forth below. Each plaintiff was responsible for payment of taxes on its property and is entitled to receive any tax refund. Each property was identified on the tax records of Cook County by the property index number(s) ("PIN(s)") listed on the attached Exhibit A; taxes as originally billed were paid timely and in full for each property in the amounts and for the tax years for each PIN shown on Exhibit A. Each plaintiff exhausted available administrative remedies and perfected its right to seek judicial review of its property tax assessment pursuant to the Property Tax Code.

5. Plaintiffs and their subject properties:

a. A. F. Moore & Associates, Inc., an Illinois corporation, held an interest in the property commonly known as 8908 South Harlem Avenue, Bridgeview, Illinois ("8908 South Harlem"), for tax year 2008. The 8908 South Harlem property was improved with an industrial building.

b. J. Emil Anderson & Son, Inc., an Illinois corporation, held an interest in the property commonly known as 7510-40 North Caldwell Avenue, Niles, Illinois ("7510 North Caldwell"), for tax years 2007-2008. The 7510 North Caldwell property was improved with an industrial building.

c. Prime Group Realty Trust, a real estate investment trust, held an interest in the property commonly known as 1701 Golf Road, Rolling Meadows, Illinois ("1701 Golf Road") for tax years 2004-2009. The 1701 Golf Road property was improved with a multi-tenant office building.

d. American Academy of Orthopaedic Surgeons, an Illinois not-for-profit corpora-

tion, held an interest in the property commonly known as 6300 North River Road, Rosemont, Illinois ("6300 North River Road"), for tax years 2007-2008. The 6300 North River Road property was improved with a surgical training facility and office building.

e. Erling Eide held an interest in the property commonly known as 1001 Skokie Boulevard, Northbrook, Illinois ("1001 Skokie Boulevard"), for tax years 2004-2008. The 1001 Skokie Boulevard property was improved with a retail store.

f. Fox Valley/River Oaks Partnership, an Illinois general partnership, and Simon Property Group (Delaware), Inc., a Delaware corporation, held interests in the property commonly known as River Oaks Mall, located at 159th Street and Torrence Avenue, Calumet City, Illinois for tax years 2005-2014. River Oaks Mall was a regional shopping center.

6. Defendant Maria Pappas is and has been, at all times relevant to this complaint, the duly elected and acting Treasurer and Ex Officio County Collector of Cook County. The Collector has the duties pursuant to the Illinois Constitution and the Property Tax Code to issue tax bills and to collect taxes extended against assessments of all taxable property in the county, and to pay refunds of such taxes, with interest, that have been overpaid or collected upon incorrect, illegal or unconstitutional assessments. The Collector is sued in her official capacity.

7. Defendant Joseph Berrios is the duly elected and acting Assessor of Cook County. As of December 1, 2010, Mr. Berrios became the successor in office to James M. Houlihan, the Assessor during the tax years 2000-2008 to which this action primarily relates. The office of Assessor is continuous regardless of the person who holds it at any one time. The Assessor has the duties pursuant to the constitution, the Property Tax Code, and the Cook County Real Property

Assessment Classification Ordinance, to assess all taxable properties in Cook County for purposes of taxation based on their actual market values, at uniform assessment levels within each property class. The Assessor is sued in his official capacity.

8. The defendant County of Cook ("County") is a body politic and corporate and is the Illinois county responsible for funding the offices of the Assessor and Collector. The County is responsible to pay any monetary judgment against the Assessor or Collector in their official capacities (as distinct from refunds of taxes to be paid by the Collector from other sources as provided by statute), and it is a necessary party to an action for such a judgment pursuant to *Carver v. Sheriff of LaSalle County*, 324 F.3d 947 (7th Cir. 2003). The County is named a defendant solely with respect to the attorney's fees and costs sought in Counts I and II pursuant to 42 U.S.C. § 1988.

FACTUAL BACKGROUND: ALLEGATIONS APPLICABLE TO ALL COUNTS

A. General Outline of the Cook County Property Tax System

9. Illinois law provides for a system of *ad valorem* property taxation governed first by the state constitution, which limits property tax classifications as follows:

> Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. * * *

Ill. Const. 1970, Art. IX, § 4(b). The permission granted by § 4(b) to "continue to classify" ratified an administrative practice prior to 1970 of *de facto* classification by which the Cook County Assessor assessed various properties at different percentages of market value, creating different effective rates of taxation. This *de facto* classification practice continued through 1973.

10. Effective January 1, 1974, the Illinois General Assembly outlawed *de facto* classification:

> Where property is classified for purposes of taxation in accordance with Section 4 of Article IX of the Constitution and with such other limitations as may be prescribed by law, the classification must be established by ordinance of the county board. If not so established, the classification is void.

35 ILCS 200/9-150, added by P.A. 78-700. As of the same date, the Cook County Board of Commissioners enacted the first version of the Cook County Real Property Assessment Classification Ordinance, now codified in the Code of Ordinances of Cook County, § 74-60 et seq. (the "Classification Ordinance").

11. At all times relevant to this complaint: "Class 2" under the Classification Ordinance comprised all single-family residential property including condominiums and cooperatives, and multi-unit residential property of six or fewer units; "Class 5a" comprised most property not in other classes, primarily commercial property; and "Class 5b" comprised most industrial property. "Class 4" comprised property of not-for-profit entities that would otherwise be classified as, e.g., Class 5a commercial. See Code of Ord. § 74-63.

12. Prior to its amendment by Ordinance No. 08-O-51, adopted September 17, 2008, effective January 1, 2009, at all other times relevant to this complaint, the Classification Ordinance provided that:

> The Assessor shall assess . . . real estate in the various classes at the following percentages of market value:
>
> * * *
>
> Class 2 [single family residential]: 16 percent.
>
> * * *
>
> Class 4 [not-for-profit]: 30 percent
> Class 5a [commercial]: 38 percent.
> Class 5b [industrial]: 36 percent.

Code of Ord. § 74-64. "Market value" has been defined by the Classification Ordinance, at all

times relevant to this complaint, as "that value, estimated at the price [the property] would bring at a fair voluntary sale." Code of Ord. § 74-62(b).

13. The Property Tax Code requires all Cook County assessments to be made by the Assessor. 35 ILCS 200/3-50 and related sections. At all relevant times the county has been divided into three assessment districts, each of which is entirely reassessed once every three years. 35 ILCS 200/9-220(b). One district consists of the City of Chicago; another, the county outside Chicago and north of State Route 64 (North Avenue); the third, the county outside Chicago and south of Route 64. *Id*. Most property is valued only once every three years with the assessed value remaining unchanged for the triennium. However, the Assessor occasionally revalues some properties in the interim years of a triennium. See 35 ILCS 200/9-85, 9-160.

14. At all times relevant to this complaint, the Property Tax Code has also permitted review of assessments by the Cook County Board of Review ("BOR"). The BOR acts only on the complaint of a taxpayer or taxing district, or on the motion of one of its members, and it therefore reviews only a fraction of the assessments made by the Assessor for any tax year. 35 ILCS 200/5-5(b), 200/16-95 et seq.

15. For each tax year the Illinois Department of Revenue ("IDOR") promulgates an "equalization" factor so that the total "equalized" assessed value ("EAV") of Cook County, in aggregate, approximates "33-1/3%" of market value as defined in the Property Tax Code. 35 ILCS 200/1-55. The IDOR conducts sales ratio studies to measure the average relationship between assessments and full market value based on actual sales for all major property classes; the equalizer for each year is the factor, based on averaged and adjusted study results for the three preceding years, which is multiplied against all assessments to raise the aggregate EAV to "33-1/3%" of market value. 35 ILCS 200/17-5 et seq.

16. The Cook County Clerk ("Clerk") divides the county in "tax code" areas, in each of which properties are subject to levies filed with the Clerk by the same group of taxing districts. 35 ILCS 200/18-10 et seq. The Clerk divides the levy for each district by its aggregate EAV to produce a tax rate that, when extended against all taxable parcels in the district, will collect the entire levy subject to various statutory limits and adjustments. 35 ILCS 200/18-45 and related sections. The sum of the district rates in each tax code area (the composite or total rate), extended against each property's EAV (minus exemptions, if any), produces each property's total annual taxes.

17. Since the composite rate is constant throughout each tax code and the equalizer is constant throughout the county, apart from the effect of any statutory exemptions, assessed valuations completely determine the relative shares of the tax levies paid by each taxpayer.

18. The Collector bills each taxpayer based on the assessed valuation, EAV (minus exemptions, if any), and composite tax rate. At all times relevant to this complaint, the bills issued to each taxpayer by the Collector have reflected these bases of the tax. For Class 2 property, the Collector's bills also expressly stated the market value (labeled "property value") and the statutory level of assessment on which the assessed value was purportedly based.

B. *De Facto* Classification; Systematic and Discriminatory Undervaluation

19. For at least tax years 2000 through 2008, assessed valuations of Classes 2, 5a and 5b property were not made by the Assessor at percentages of market value approximating those required under the Classification Ordinance, the Property Tax Code, and the Illinois Constitution. Most property (but not all) in these classes was undervalued, so that the average *de facto* levels of assessment were significantly lower than the legally required levels (hereafter referred to as "*de jure*" levels). The illegal *de facto* assessment levels are shown by sales ratio studies for

the relevant tax years.

20. Ratio studies compare assessments to market values and are used all over the United States to evaluate the accuracy and uniformity of property tax assessments. As stated by the International Association of Assessing Officers ("IAAO"), a professional organization to which many of the Assessor's senior staff belonged:

> Local jurisdictions should use ratio studies as a primary mass appraisal testing procedure and their most important performance analysis tool. The ratio study can assist such jurisdictions in providing fair and equitable assessment of all property. ***
> Ratio studies also play an important role in judging whether constitutional uniformity requirements are met.

Standard on Ratio Studies, § 2.4, at 8 (IAAO 2007).

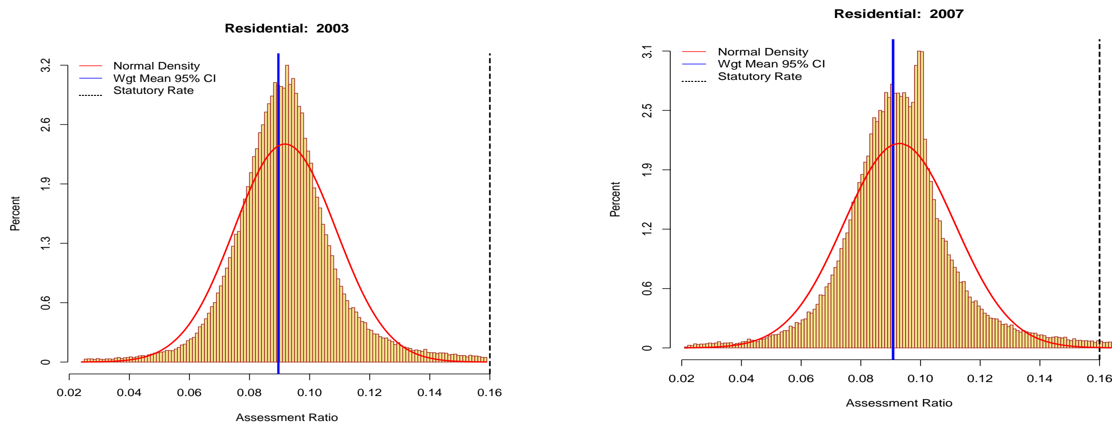
21. Attached as Exhibit B is a table with results of the IDOR sales ratio studies for Cook County Classes 2, 5a and 5b for 2000 through 2008. The IDOR reports adjusted median ratios for Class 2 residential property ranging from 9.8% to 8.1%, instead of the *de jure* level of 16%. IDOR adjusted median ratios for Class 5a commercial property range from 24.99% to 15.71%, instead of the *de jure* level of 38%. IDOR adjusted median ratios for Class 5b industrial property range from 26.35% to 17.99%, instead of the *de jure* level of 36%.

(See www.revenue.state.il.us/Aboutidor/TaxStats/index.htm, accessed 9/10/2010.)

22. A more extensive ratio study has been conducted by Daniel P. McMillen, Professor of Economics at the University of Illinois (Urbana) for tax years 2000-2008. The tables and graphs of Dr. McMillen's results for Class 2 residential, Class 5a commercial, and Class 5b industrial assessment ratios for 2000 through 2008 are attached as Exhibit C. (Exhibit C includes countywide study results and separate results for the City of Chicago, Triennial District 1.) The study samples represent significant portions of all commercial, industrial and residential property throughout the county.

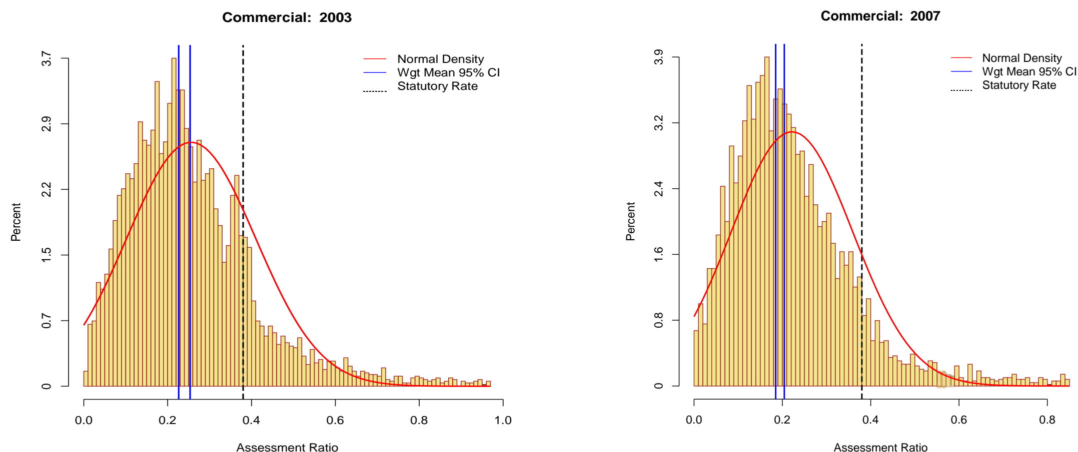
23. Class 2 residential property was on average systematically under-assessed at a weighted mean assessment level of approximately 9% of market value for 2000-2008, instead of the 16% required by law. Graphs of 2003 and 2007 study results are illustrative of all years:

Cook County Class 2 Residential Assessment Ratios



Commercial assessments were systematically made at weighted mean levels ranging from 24.0% to 18.5% for 2000 to 2008 instead of the 38% required by law. Graphs of 2003 and 2007 study results are illustrative of all years:

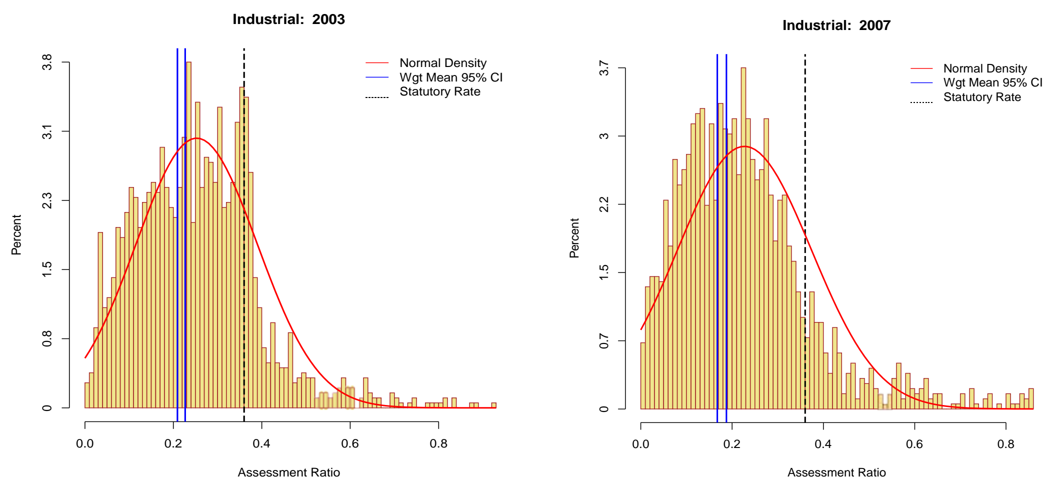
Cook County Class 5a Commercial Assessment Ratios



Industrial assessments were systematically made at weighted mean levels ranging from 24.1% to 16.8% for 2000 to 2008 instead of the 36% required by law. Graphs of 2003 and 2007 study re-

sults are illustrative of all years:

Cook County Class 5b Industrial Assessment Ratios



24. The horizontal axis of the graphs indicates the assessment ratios of sample properties and the vertical axis indicates the frequency with which those ratios appear in the sample (measured by percentage). The vertical blue lines indicate a 95% confidence interval around the *de facto* average (weighted mean) assessment ratio. The dotted vertical line indicates the *de jure* assessment ratio of 16%, 38%, and 36% for the residential, commercial and industrial classes. That dotted line is where each graph would have been centered if the Assessor had followed the law. Statistical analysis rejects any possibility that the majority of residential, commercial or industrial assessments were made at or near the *de jure* assessment levels for these classes.

25. In addition to the underassessment of most industrial properties at countywide average *de facto* levels significantly lower than the *de jure* levels, industrial properties located in the City of Chicago (Triennial District 1) were systematically assessed at average *de facto* levels significantly lower than even the countywide *de facto* levels for industrial properties.

26. The *de jure*, *de facto*, and constitutional maximum assessment levels for the residential, commercial and industrial classes are summarized on the following table:

Property Class	Source of Indicated Assessment Level	2000	2001	2002	2003	2004	2005	2006	2007	2008
Class 2 Residential Level	Statute & County Ordinance	16%	16%	16%	16%	16%	16%	16%	16%	16%
	IDOR Sales Ratio Study	9.05%	8.43%	8.10%	8.38%	8.31%	8.15%	8.51%	9.04%	9.80%
	McMillen Sales Ratio Study	9.20%	9.10%	8.80%	9.00%	9.00%	8.90%	9.00%	9.10%	9.00%
Class 5a Commercial Level	Statute & County Ordinance	38%	38%	38%	38%	38%	38%	38%	38%	38%
	IDOR Sales Ratio Study	24.99%	22.22%	21.88%	22.67%	16.59%	17.34%	15.71%	16.53%	18.74%
	McMillen Sales Ratio Study	22.90%	21.40%	22.90%	24.00%	22.50%	21.40%	19.80%	19.40%	18.50%
Class 5b Industrial Level	Statute & County Ordinance	36%	36%	36%	36%	36%	36%	36%	36%	36%
	IDOR Sales Ratio Study	26.35%	25.76%	23.80%	22.98%	18.90%	21.33%	18.06%	17.99%	20.03%
	McMillen Sales Ratio Study	24.10%	23.20%	23.10%	21.80%	20.00%	19.80%	19.20%	17.80%	16.80%
	McMillen Study (Chicago)	16.20%	15.80%	14.80%	14.60%	12.60%	12.40%	12.00%	11.10%	10.40%
Constitutional Max. Level	2½ x Class 2 Level (McMillen Study)	23.00%	22.75%	22.00%	22.50%	22.50%	22.25%	22.50%	22.75%	22.50%

27. The Assessor assessed most Class 2 residential property by a computerized multiple regression process that estimated real market values based on actual sales. At all times relevant to this complaint, at least prior to the amendment of the Classification Ordinance effective January 1, 2009, these real market value estimates were not disclosed to the public on county records.

28. The Assessor deliberately and systematically distorted the results of his regression process by adding an "adjustment factor" to the regressions, debasing the real estimates and creating fictitious "market values." The Assessor put the fictitious market values on county records available to the public to make it appear that Class 2 assessments were based on the 16% *de jure* level. In reality, the assessments were based on the *de facto* level, which, accurately measured, was approximately 9% of the Assessor's estimates of actual market value.

29. At all times relevant to tax years 2000-2008, the Collector caused tax bills issued to Class 2 taxpayers to state as the "property value" the fictitious "market value" shown on the Assessor's records instead of the real market value estimated by the Assessor's regression process. Approximately 1.2 million of these tax bills were issued by the Collector each year. Residential taxpayers were therefore given the false impression that the value basis of their tax was

much lower than the real market value estimated by the Assessor, and these taxpayers could not determine whether their properties were assessed uniformly with others because the average *de facto* assessment level for Class 2 was concealed.

30. By virtue of the concealment of the 9% *de facto* level of assessment for Class 2, the maximum assessment level allowed under the Illinois Constitution, i.e. two and one-half times 9%, or 22.5%, was also concealed from the public. Further, the public records failed to show that the *de facto* average assessment levels of Classes 5a and 5b were even lower than the constitutional maximum level.

C. Public Statements About the Under-valuation and the "10/25" Ordinance

31. The Assessor's *de facto* Class 2 classification level of approximately 9% of market value, and his *de facto* Class 5a and Class 5b classification levels in the low 20% range or lower, were deliberately maintained at all times relevant to this complaint prior to the amendment of the Classification Ordinance effective January 1, 2009. This amendment, known as the "10/25" ordinance, was intended to convert a rough approximation of the *de facto* classification levels into new *de jure* levels of 10% and 25% of market value.

32. On April 9, 2008, then-Assessor James M. Houlihan announced his proposal to "recalibrate" the classification system by having the county board reduce the *de jure* assessment levels of all classes to 10% and 25% of market value. (A transcript of Assessor Houlihan's announcement at the City Club of Chicago is attached as Exhibit D.)

33. In calling his proposal a "recalibration," Assessor Houlihan said that then-current assessed values would not be changed by the new *de jure* levels since those assessments already approximated 10% and 25% of the properties' market values:

> The ordinance change that I am proposing, *marries our assessment levels with the current market values*, and market value is some-

> thing that we can all relate to.
>
> * * *
>
> *This recalibration of the residential assessment level to 10, commercial and industrial to 25%, will in fact more closely reflect the current relationship between assessment and market value.*

(Ex. D, at 4, 7, emphasis supplied.)

34. A hearing before the Cook County Board of Commissioners Finance Committee on the 10/25 ordinance confirmed its intent to codify existing practice. (A transcript of the committee hearing and a copy of the committee report is attached as Exhibit E.) The Assessor testified that the proposed change in assessment levels would not in itself change either the assessed values or taxes:

> COMMISSIONER MURPHY: * * * Assessor Houlihan, you said that no one[‘s] taxes will be changed by what you are doing here today, they won’t go up and they won’t go down; is that correct?
>
> ASSESSOR HOULIHAN: I said that this ordinance, in and of itself, will not do that.
>
> * * *
>
> The assessment level, the Ordinance level, will not change the tax bills. . . . It will allow people to have a better understanding of that relationship to the market value . . . .

(Ex. E, at 47-48.)

35. Commissioner Claypool, the principal sponsor of the 10/25 ordinance, who was also familiar with the assessment system as a former deputy of the Cook County Board of Appeals (now the BOR), confirmed this before the committee voted, stating:

> We have known for years, forever, and pretended that it is not true [and] that somehow the assessments were at the statutory levels; *they are not*.
>
> *This reflects the actual reality as best we know it.*

(Ex. E, at 91-92, emphasis supplied.) The committee passed the amendment and it was enacted by the full board the following day. (Ord. No. 08-O-51, adopted September 17, 2008, amending

Code of Ord. Ch. 74, § 74-64, eff. January 1, 2009.)

36. As early as 2006 Assessor Houlihan had told a reporter for the Chicago Tribune that residential assessments, required by law to be 16% of market value, were "more like 10 percent of the market value." As the reporter noted, this meant "the numbers on your assessment notice are deliberately false." (Eric Zorn, "Political Claims + Property Taxes = Big Confusion," *Chicago Tribune* 10/5/06.) According to deposition testimony of a senior member of the Assessor's staff, he had also admitted the practice of intentionally disregarding the legally required assessment level to lawyers in the Cook County State's Attorney's office during 2008. But despite some senior county officials' general familiarity with the Assessor's practice of disregarding the legally required assessment levels, the mechanisms of this practice (such as the "adjustment factor" used in the regression process) and its exact results were concealed from the public.

D. <u>Discriminatory Assessments of a Minority of Properties in Each Class</u>

37. In the commercial, industrial, not-for-profit and residential classes, a minority of taxpayers' properties were assessed near to or above the *de jure* levels, and in the industrial class outside the City of Chicago (Triennial District 1) a minority was assessed at levels higher even than the *de facto* levels prevailing within the city. This same minority of assessments were also made at levels significantly higher than the maximum permitted by the Illinois constitution, two-and-one-half times the *de facto* residential level of 9%. These taxpayers, including the instant plaintiffs, paid taxes at significantly increased effective rates in comparison with most other taxpayers in the same classes, whose properties were assessed near to or below the more favorable *de facto* levels. Because the *de facto* levels and the methods of their creation by the Assessor were concealed from the public, the disparately assessed minority could not obtain effective redress for the excessive taxes through normal assessment appeal processes.

E. Plaintiffs' Assessments; Taxes Paid and Excessive Taxes to Be Refunded

38. Because each plaintiff's property was assessed significantly above the *de facto* assessment levels systematically applied to the majority of more favored properties, and above the maximum level permitted by the Illinois Constitution and laws, the taxes paid on each plaintiff's property were discriminatory and excessive as summarized below.

39. 8908 South Harlem Property:

a. The assessed value for 8908 South Harlem was 5,039,975 for tax year 2008. The Taxpayer paid total taxes of $1,132,060.19 on this assessment.

b. At the *de jure* assessment level, the assessed value for 2008 was purportedly based on an Assessor's fair market value estimate of $14,058,635 while, at uniform *de facto* levels, the same assessment implied effective Assessor's market values ranging from approximately $22,399,888 to $48,461,298.

c. An appraisal of 8908 South Harlem estimated the property's fair market value to be $14,000,000.

d. Based on the appraised market value and the *de facto* assessment level, the taxes paid on 8908 South Harlem were discriminatory, excessive, and overpaid by approximately $805,019.

40. 7510 North Caldwell Property

a. The assessed value for 7510 North Caldwell was 3,261,983 for each of tax years 2007 and 2008. The Taxpayer paid total taxes on these assessments of $1,001,496.38.

b. At the *de jure* assessment level, the assessed value for 2007-2008 was purportedly based on an Assessor's fair market value estimate of $9,061,064 while, at uniform

de facto levels, the same assessment implied effective Assessor's market values ranging from approximately $14,497,702 to $30,344,028.

c. An appraisal of 7510 North Caldwell estimated the property's fair market value to be $7,450,000.

d. Based on the appraised market value and the *de facto* assessment level, the taxes paid on 7510 North Caldwell were discriminatory, excessive, and overpaid by approximately $755,611.

41. <u>1701 Golf Road Property:</u>

a. Assessed values for 1701 Golf Road ranged from 23,669,993 to 18,642,236 for tax years 2004-2009. The Taxpayer paid total taxes on these assessments of $24,355,802.72.

b. At the *de jure* assessment level, the assessed values for 2004-2008 were purportedly based on Assessor's fair market value estimates ranging from $62,289,455 to $64,746,737, while, at uniform *de facto* levels, the same assessments implied effective Assessor's market values ranging from approximately $105,199,969 to $82,854,382. The reduced *de jure* level of assessment for 2009 implied an effective Assessor's market value of approximately $75,422,396.

c. Appraisals of 1701 Golf Road estimated the property's fair market value to range from $48,600,000 to $58,600,000. The property was sold in an arm's length transaction in 2013 for approximately $58,000,000.

d. Based on the appraised market values, the *de facto* assessment level for 2004-2008, and the reduced *de jure* level for 2009, the taxes paid on 1701 Golf Road were discriminatory, excessive and overpaid by approximately $8,648,343.

42. 6300 North River Road Property

a. The assessed value for 6300 North River Road was 2,432,065 for each of tax years 2007 and 2008. The Taxpayer paid total taxes on these assessments of $836,460.12.

b. At the *de jure* assessment level, the assessed value for 2007-2008 was purportedly based on an Assessor's fair market value estimate of $8,106,883 while, at uniform *de facto* levels, the same assessment implied effective Assessor's market values ranging from approximately $10,809,178 to $16,256,005.

c. An appraisal of 6300 North River Road estimated the property's fair market value to be $7,350,000

d. Based on the appraised market value and the *de facto* assessment level, the taxes paid on 6300 North River Road were discriminatory, excessive, and overpaid by approximately $458,263.

43. 1001 Skokie Boulevard Property

a. Assessed values for 1001 Skokie Boulevard ranged from 2,964,649 to 3,084,725 to tax years 2004-2008. The Taxpayer paid total taxes on these assessments of $2,276,515.11.

b. At the *de jure* assessment level, the assessed values for 2004-2008 were purportedly based on Assessor's fair market value estimates ranging from $7,963,989 to $8,317,429 while, at uniform *de facto* levels, the same assessments implied effective Assessor's market values ranging from approximately $14,589,808 to $15,180,733.

c. Appraisals of 1001 Skokie Boulevard estimated the property's fair market value

to range from approximately $6,650,000 to $7,590,000.

d. Based on the appraised market values and the *de facto* assessment levels for 2004-2008, the taxes paid on 1001 Skokie Boulevard were discriminatory, excessive and overpaid by approximately $1,199,006.

44. River Oaks Mall:

e. The River Oaks Mall assessed value ranged from 21,947,487 to 15,300,000 for tax years 2005-2008 and from 14,179,094 to 6,664,486 for 2009-2014. The Taxpayers paid total taxes on these assessments for the seven tax years in question (2005-2006, 2008-2014) of $47,524,550.61.

f. At the *de jure* level of assessment, the assessed values for 2005-2008 purported to be based on Assessor's fair market value estimates ranging from $57,757,111 to $40,877,672, while at the *de facto* level of approximately 22.5% the same assessments implied effective Assessor's market values ranging from approximately $97,544,000 to $68,000,000. The reduced *de jure* level of assessment (25%) for 2009-2014 implied effective Assessor's market values ranging from approximately $56,716,000 to $26,660,000.

g. Appraisals of the River Oaks Mall estimated the property's fair market value to range from $44,835,000 in 2005 to $28,650,000 in 2014. The property was sold in an arm's length transaction in early 2017 for approximately $27,000,000.

h. Based on the market values estimated by the appraisals, the *de facto* assessment level for 2005-2008, and the reduced *de jure* level after 2008, the taxes paid on River Oaks Mall for the seven tax years in question were discriminatory, excessive and overpaid by approximately $16,434,354.

45. The original taxes paid on plaintiffs' properties were distributed by the Collector to 61 different taxing bodies or districts and were spent by them years ago. However, the Collector is authorized to pay refunds of prior years' excessive taxes upon court order from funds currently collected for the districts. 35 ILCS 200/23-20. The 61 districts to which plaintiffs' taxes were distributed currently collect, in the aggregate, approximately $2.7 billion in taxes annually, so that the total refunds sought by plaintiffs for *all* tax years would constitute, on average, approximately 1.036% of *one* year's aggregate current collections for the districts. Consequently, the Collector has readily available funds to pay the refunds sought.

F. <u>The Assessor's Destruction of Evidence of the Illegal Assessment Levels</u>

46. By an order of the Cook County Court on or about August 1, 2014, the Assessor began to produce documents pursuant to discovery subpoenas served five years earlier. During the Fall of 2014 and early 2015, it became apparent that the Assessor had destroyed many of the documents responsive to the subpoenas and probative of the illegal *de facto* assessment levels.

47. The Assessor destroyed approximately 90% of the electronic records of his assessments of Class 2 residential properties made through the multiple regression process for tax years 2000-2008. Had these records not been destroyed, the regressions could have been rerun to duplicate the assessments at any time. By such duplication, the provenance of every single one of the approximately 1.2 million assessments made by the regression process for each tax year could have been traced precisely, and a dispute about the *de facto* assessment level would have been impossible.

48. The Assessor also destroyed all the records of his internal appeals process for all classes of property, for all tax years from 2000-2006 and for part of tax year 2007. Since some of the remaining records for commercial and residential appeals explicitly showed the Assessor's

use of the illegal *de facto* assessment levels, the destroyed records were expected to show this more completely. The destruction of the appeals records was particularly significant in relation to *de facto* assessment levels for commercial and industrial property, since the assessments for many of the properties in these classes have always been made by the Assessor in the process of such appeals.

49. The destruction violated the law on preservation of public records relevant to litigation and professional standards of the IAAO. All the electronic and paper records were destroyed by the Assessor while the plaintiffs' tax objection complaints under the Property Tax Code were pending, which included their constitutional claims about the discriminatory assessment levels. A substantial part of the records of both types were destroyed after plaintiffs' discovery subpoenas were issued to the Assessor.

50. On September 16, 2016, plaintiffs filed a motion and supporting brief to bar any further defenses related to the assessment level issues in the Cook County Court, as a sanction for the Assessor's destruction of evidence directly related to those issues (the "Spoliation Sanctions Motion"). Sanctions for the intentional destruction of evidence by a potential litigant, including barring relevant defenses, are available under Illinois Supreme Court Rule 219(c) even if the destruction occurred prior to the commencement of litigation. (*Shimanovsky v. General Motors Corporation*, 181 Ill.2d 112 (1998).) The current Assessor conceded that the evidence had been destroyed but maintained that this occurred during his predecessor's term in office. Nonetheless, the Assessor, Collector, and various intervening taxing districts opposed any relief pursuant to the Spoliation Sanctions Motion.

51. On February 16, 2018 (decision issued to the parties on February 22, 2018), the Cook County Court granted the Spoliation Sanctions Motion in part and denied it in part. In this

ruling:

a. The Cook County Court held that the Assessor had engaged in "wrongful spoliation" of both Class 2 computer regression records and appeals records. However, the court denied any sanction for the wrongful spoliation under the rule applicable to potential litigants.

b. The relief granted by the Cook County Court was strictly limited to violation of the subpoenas, extending only to three tax years (2005-2007), and only to one tax year (2006) for all types of evidence destroyed.

c. As to those tax years only, the Cook County Court recognized an evidentiary presumption against the government parties and in favor of the plaintiffs. No relief was granted with respect to the intentional spoliation of similar evidence for other tax years, even though the cases were pending, the Assessor was a potential litigant, and, for 2008, subpoenas were pending for the immediately prior tax years and their enforcement was being litigated while the evidence was destroyed.

d. The Cook County Court's denial of most of the relief requested for the spoliation was largely predicated on its holding that the Assessor was not a "party" defendant under the statutory tax objection procedure.

e. The Cook County Court held that the Assessor had no duty to refrain from intentionally destroying evidence known to be relevant to the Taxpayers' cases until a subpoena for documents was served on him. The Cook County Court held that, if they wished to create such a duty in the Assessor not to destroy evidence, the Taxpayers should have served subpoenas on the Assessor at the inception of their

cases, as early as 2000-2002. The court so held despite the facts that:

i. The Assessor's practice of evidence destruction was unknown before the production of documents under the subpoenas began; and

ii. The Cook County Court had previously held that the Assessor could not be compelled to provide evidence to taxpayers under the Property Tax Code and therefore was immune from any taxpayer's subpoenas.

G. <u>The Inadequacy of Procedures Under the Property Tax Code</u>

52. Plaintiffs' tax objection cases in the Cook County Court are governed by amendments which substantially rewrote the relevant provisions of the Property Tax Code effective in 1995 (hereafter the "1995 Property Tax Code Amendments"). (See 35 ILCS 200/23-5 et seq. and related sections, as revised by P.A. 89-126, eff. July 11, 1995.) Although the Seventh Circuit Court of Appeals and the district courts have occasionally heard cases arising out of the Illinois tax system, no federal court has ever considered the adequacy of the 1995 Property Tax Code Amendments for purposes of due process or the Tax Injunction Act's requirement of a "plain, speedy and efficient remedy."

53. Plaintiffs have argued to the Cook County Court that the 1995 Property Tax Code Amendments were intended to provide an adequate remedy for federal and state constitutional claims. However, the litigation of plaintiffs' cases for more than a decade in the Cook County Court, the positions advanced by the Cook County taxing authorities, various rulings of the Cook County Court, and a ruling by the Illinois Appellate Court, have all confirmed that the tax objection procedures under the Property Tax Code are inherently uncertain, unclear, involve extensive and unwarranted delays, and fail to provide a plain, speedy and efficient remedy for the violations of plaintiffs' federal and state constitutional rights.

54. The 1995 Property Tax Code Amendments created a process for tax objection complaints that differs significantly from normal civil actions. Among other features:

a. Tax objection complaints must be filed individually for each tax year and property; payment of the total annual taxes and exhaustion of the administrative remedy of appeal to the county BOR are prerequisites to the complaint. 35 ILCS 200/23-5 through 23-15. Class actions are prohibited, effectively overturning an Illinois Appellate Court decision allowing them prior to the 1995 Property Tax Code Amendments. 35 ILCS 200/23-15(a). (See *In Re Application of Rosewell [etc.] v. Leyden Fire Protection District*, 236 Ill. App.3d 165, 168-69 (1st Dist. 1992), *overturned by legislation*; see also *Fakhoury v. Pappas*, 395 Ill. App.3d 302, 308 (1st Dist. 2009).)

b. The county collector is the only taxing official expressly designated as a defendant. 35 ILCS 200/23-15(a). However, the collector is not required to appear formally or to answer or otherwise respond to the complaint. *Id.*

c. The amended statute fails to provide for the assessor to be named as a defendant even where, as in the instant cases, the assessor's conduct is the primary issue to be litigated.

d. Assessment valuations are presumed correct and legal, and the taxpayer challenging the valuation must prove them to be erroneous or illegal by clear and convincing evidence as to any relevant factual matter. 35 ILCS 200/23-15(b)(2).

e. However, access to *any* evidence from assessing officials is prohibited in cases alleging "incorrect valuation":

> If an objection is made claiming incorrect valuation, the court shall consider the objection without regard to the correctness of any practice, pro-

> cedure, or method of valuation followed by the assessor, board of appeals, or board of review in making or reviewing the assessment, and without regard to the intent or motivation of any assessing official.

35 ILCS 200/23-15(b)(3) (hereafter the "Methodology Prohibition"). The Methodology Prohibition overturned a prominent feature of the tax objection procedure prior to the 1995 Amendments, in which access to assessing officials' evidence was freely available and was required in some cases. (*In Re Application of County Collector [etc.] v. Ford Motor Company*, 131 Ill.2d 541, 553 (1989) ("the taxpayer may be required in some cases to call the assessor to testify as to the manner in which the assessment was made"), *overturned by legislation*.)

55. The 1995 Property Tax Code Amendments codified a judicially created rule requiring exhaustion of the administrative remedy of appeal to the BOR prior to filing an assessment objection in court. 35 ILCS 200/23-10. Under the previous, generally accepted interpretation of this rule and a decision of the Illinois Appellate Court, no particular issues, including constitutional issues, needed to be raised in the BOR to exhaust the administrative remedy. (See *In Re Application [etc.] v. Carpenter*, 133 Ill. App.3d 142, 143, 146 (4th Dist. 1985).) Contrary to that interpretation, the Cook County Court retroactively required submission of the Taxpayers' specific constitutional arguments to the BOR as a precondition to exhaustion, resulting in the dismissal of federal and other constitutional claims in one case and threatening similar results in some other cases. Upon information and belief, the Cook County Court's exhaustion ruling has been selectively invoked by the Collector only in the cases brought by the instant Taxpayers to enforce their federal and state constitutional rights. Appellate review of the exhaustion ruling in any of the cases will not be available for years as a practical matter.

56. Because the Collector cannot be required to answer or otherwise plead in response

to the plaintiffs' complaints, after more than a decade of litigation plaintiffs do not and cannot know the Collector's theory of defense against the constitutional claims in the Cook County Court. The 1995 Property Tax Code Amendments do not require that plaintiffs be informed of the Collector's defense theory prior to trial, or even during it.

57. Without the Assessor as a party defendant, discovery devices such as interrogatories, notices to produce, and requests to admit facts relating to the constitutional claims about the Assessor's misconduct are unavailable. Discovery directed to the Collector about the constitutional claims has consistently elicited the response that the Collector has no information about the Assessor's conduct.

58. Assessment valuations involve an applied science or craft that uses one or more methodologies to select one value conclusion from a range of possible values, based in theory on market data gathered from properties comparable to the subject property. Assessments and the methodologies used to produce them must be uniform among similarly situated properties, such as properties in the same class under the Classification Ordinance. It is impossible to prove in a judicial proceeding whether a given assessment valuation is incorrect or disparate, without analyzing the methodology used by the Assessor to select one valuation for the taxpayer's property from among the range of possible values. (See, e.g., *CSX Transportation v. Georgia State Board of Equalization*, 552 U.S. 9, 16-17 (2007).)

59. The 1995 Property Tax Code Amendments require the Taxpayers to rebut the presumption that the Assessor's valuations were correct and legal, by clear and convincing evidence, yet the Methodology Prohibition bars the Taxpayers from obtaining or using evidence of the methodologies used by the Assessor. This makes the presumption of correctness of the Assessor's valuations irrebuttable and makes the Methodology Prohibition inherently arbitrary and

irrational.

60. The Cook County State's Attorney ("State's Attorney"), statutory counsel for the Collector and other taxing officials in the Cook County Court, originally including the Assessor, has consistently argued that the Methodology Prohibition bars *all* evidence from the Assessor, even in challenges based on the Assessor's illegal and unconstitutional misconduct. In a 2002 ruling, the Cook County Court accepted this argument and ordered that (1) the Assessor could not be named as a party defendant under the 1995 Property Tax Code Amendments, and (2) evidence from the Assessor or other assessing officials could not be obtained in discovery or admitted in evidence. (A copy of this order, entered in *Friedman v. Pappas*, 94 Obj. 799 (7/24/02), is attached as Exhibit F.)

61. The *Friedman* order was reviewed in a consolidated appeal and was affirmed by the Illinois Appellate Court in an unpublished order. *David Friedman v. Maria Pappas*, No. 1-02-2685 and other consolidated cases (Ill. App. 1st Dist. 2003) (hereafter "*Friedman* appellate order"). (A copy of the *Friedman* appellate order is attached as Exhibit G.) The appellate court held that "*constitutional objections – all of which challenge the practices, procedures and methods of assessment, cannot be raised in a complaint filed under section 23-15 [of the 1995 Property Tax Code Amendments] where the statute limits the scope of the proceeding*." (Ex. G, at 13, emphasis added.) Though the unpublished *Friedman* order is not technically precedential, it represents a construction of the 1995 Property Tax Code Amendments, particularly the Methodology Prohibition, by the Illinois Appellate Court that could be applied to the instant cases on appeal. That would bar any hearing and final determination of the Taxpayers' constitutional claims under the Property Tax Code.

62. To avoid the likelihood of years of procedural litigation on *all* the issues raised

by the Cook County Court's *Friedman* ruling, plaintiffs did not try to join the Assessor as a defendant in that court. However, in 2009 plaintiffs served subpoenas for documents on the Assessor related to the constitutional claims. The State's Attorney moved to quash the subpoenas based on the Methodology Prohibition, as previously argued in *Friedman* and similar cases. Enforcement of the subpoenas was stayed by the Cook County Court over the next *five years* while the State's Attorney's motion to quash, motion for reconsideration, and motion for interlocutory appeal were litigated. The Cook County Court's final denial of the motion to quash remains subject to review on appeal after any final judgment.

63. Although the Cook County Court held plaintiffs' discovery subpoenas enforceable in August, 2014, production of the documents by the Assessor is still incomplete. Because of the destruction of large amounts of documentary evidence by the Assessor during the litigation, a great part of the documentation of the Assessor's *de facto* assessment level practices no longer exists.

64. In December, 2014, after production of some Assessor's documents, plaintiffs subpoenaed a former senior Assessor's employee in charge of the Class 2 assessment process and the research department to explain the documents at a deposition. The witness refused to answer approximately 700 questions on Fifth Amendment grounds when the deposition was initially taken in May, 2015. The Cook County Court later granted plaintiffs' motion to compel the testimony. The deposition was retaken in October, 2015, and the testimony confirmed many of the foregoing allegations about the *de facto* assessment levels. However, this evidence was taken subject to the State's Attorney's objection that testimonial as well as documentary evidence of the Assessor's methods and practices was barred by the Methodology Prohibition and other aspects of the 1995 Property Tax Code Amendments.

65. The State's Attorney procured an order on April 19, 2016 from the Cook County Court preserving for appeal all her arguments related to the Methodology Prohibition, including the Collector's "objections to [the] subpoenas for deposition of the Assessor's former employees, or any other discovery regarding the practices, procedures or methods of county assessing officials in making or reviewing the assessment," among other procedural contentions. The objections comprise the same arguments as in *Friedman*, which resulted in the appellate court's ruling that constitutional issues may not be raised in the tax objection process.

66. Despite well over a decade of active litigation, and despite hundreds of pages of opinions by the Cook County Court, plaintiffs, defendants, and the Cook County Court itself cannot have any clear or certain understanding of the parameters of tax objection procedure under the 1995 Property Tax Code Amendments, as they may ultimately be interpreted by the Illinois reviewing courts.

67. The Cook County Court's February 2017 ruling has effectively permitted the Assessor to destroy evidence of the illegal *de facto* classifications with impunity, provided that the destruction was done before the evidence was subpoenaed by a taxpayer, or after the time frame of an earlier subpoena. The Cook County Court's construction of the 1995 Property Tax Code Amendments significantly limits access to evidence from the Assessor in any case, and further restrictions may result on appeal. As in the Illinois Appellate Court's *Friedman* ruling, the Amendments may be construed to bar any hearing of the plaintiffs' constitutional claims.

68. Resolving the inadequacies of the 1995 Property Tax Code Amendments would require another decade of litigation by the instant Taxpayers in the Cook County Court, the Illinois Appellate and Supreme Courts, and again in the Cook County Court on remand, with no assurance of a remedy for the constitutional claims. To the extent that a remedy for any constitu-

tional claims under the 1995 Property Tax Code Amendments can be said to exist at all, it is not plain, speedy, or efficient as required by due process and the Tax Injunction Act.

COUNT I
VIOLATION OF EQUAL PROTECTION
UNDER THE FOURTEENTH AMENDMENT TO THE
UNITED STATES CONSTITUTION, PURSUANT TO 42 U.S.C. § 1983

69. Plaintiffs reallege and incorporate by reference the allegations of all preceding paragraphs.

70. For the reasons set forth above, the assessments of each of the plaintiffs' subject properties, in the amounts and for the tax years indicated above, violates the plaintiff's right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution, in that the majority of other similarly situated property was assessed systematically and intentionally at a level of assessment significantly lower and more favorable than the level of assessment required by law, and significantly lower and more favorable than the level of assessment applied to the plaintiff's subject property.

71. The principle of equal protection requires that, where the assessing authority has violated the express command of the law and has made assessments significantly below the required percentage of fair market value, all similarly situated taxpayers, such as the plaintiffs, are entitled to be assessed at the same equal percentage.

72. The actions of the Assessor, in systematically and intentionally assessing the subject properties based upon disparate assessment levels, in violation of plaintiffs' equal protection rights under the Fourteenth Amendment to the United States Constitution, were all taken under color of state law.

73. The actions of the Collector, in collecting taxes based upon disparate assessment levels systematically applied to the subject properties, in violation of plaintiffs' equal protection

rights under the Fourteenth Amendment to the United States Constitution, were all taken under color of state law.

Wherefore, for the reasons specified above, plaintiffs pray:

a. That the Court enter a declaratory judgment against the Assessor and Collector, that the assessments of each of the subject properties in the amounts and for the tax years set forth above were illegal and unconstitutional, and that such assessments resulted in the collection of unconstitutionally excessive taxes in the amounts set forth above;

b. That the Court find and declare that, because of the excessive, illegal and unconstitutional assessment, each of the plaintiffs is entitled to a refund of taxes paid upon its subject property in the amount set forth above; and that each plaintiff is further entitled to interest on the refund pursuant to 35 ILCS 200/23-20 to and including the date of final payment of all refund amounts due;

c. That the Collector be enjoined to refund to each of the plaintiffs the taxes collected upon the excessive, illegal and unconstitutional assessment, with interest as provided by law;

d. That plaintiffs be awarded the costs of this action and their attorney's fees pursuant to 42 U.S.C. § 1988; and

e. That plaintiffs be granted such other and further relief as the Court may deem to be equitable and just.

COUNT II
VIOLATION OF DUE PROCESS
UNDER THE FOURTEENTH AMENDMENT TO THE
UNITED STATES CONSTITUTION, PURSUANT TO 42 U.S.C. § 1983

74. Plaintiffs reallege and incorporate by reference the allegations of all preceding paragraphs.

75. The procedural inadequacies of the 1995 Property Tax Code Amendments as set forth above constitute a violation of the plaintiffs' rights to due process of law. In particular, the Methodology Prohibition, which may be construed to bar all discovery and evidence of methodologies, practices and procedures used by the Assessor in assessing the plaintiffs' properties and similarly situated properties, violates plaintiffs' rights to due process.

76. While the Cook County Court has not interpreted the Methodology Prohibition as restrictively as argued by the taxing authorities, that court's interpretation limits access to Assessor's evidence to narrow circumstances, and a more restrictive construction will be sought and may be applied on appeal, even to the extent of barring the hearing of *any* constitutional claims within the tax objection process.

77. The Methodology Prohibition, on its face and as interpreted by the Cook County Court, bars access to evidence from the Assessor or other assessing officials on any issue that constitutes the "valuation" of property. The statute presumes that the assessment being challenged is "correct and legal," yet it imposes an elevated burden on the plaintiffs to rebut the presumption while barring evidence from the Assessor whose work product is protected by the presumption. As such, the Methodology Prohibition is inherently arbitrary and irrational.

78. Other provisions of the 1995 Property Tax Code Amendments, as interpreted by the Cook County Court, prohibiting joinder of the Assessor as a defendant and immunizing the Collector from answering the complaint, arbitrarily and irrationally burden the Taxpayers' reme-

dy for violation of their federal and state constitutional rights.

79. For the reasons set forth above, the assessments of each of the plaintiffs' subject properties, in the amounts and for the tax years indicated above, violates the plaintiff's right to due process of law under the Fourteenth Amendment to the United States Constitution, as each of the plaintiffs were prevented from obtaining prompt and effective review of the Assessor's disparate and excessive assessments by the Methodology Prohibition and the other inadequacies of the 1995 Property Tax Code Assessments.

80. The actions of the Assessor, in systematically and intentionally assessing the subject properties based upon disparate assessment levels and excessive valuations, were all taken under color of state law.

81. The actions of the Collector, in collecting taxes based upon the disparate assessment levels and excessive valuations, were all taken under color of state law.

82. The actions of both the Assessor and Collector in contesting review of the assessments of the subject properties based upon the Methodology Prohibition and other features of the 1995 Property Tax Code Amendments, all of which violate plaintiffs' rights to due process, were all taken under color of state law.

Wherefore, for the reasons specified above, plaintiffs pray:

a. That the Court enter a declaratory judgment that the Methodology Prohibition is unconstitutional, facially and as applied to the plaintiffs, and that the Court permanently enjoin its enforcement;

b. That the Court enter a declaratory judgment that the provisions of the 1995 Property Tax Code Amendments prohibiting joinder of the Assessor as a defendant and immunizing the Collector from answering the complaint are unconstitutional

as applied to plaintiffs, and that the Court permanently enjoin their enforcement;

c. That the Court enter a declaratory judgment against the Assessor and Collector, that the assessments of each of the subject properties in the amounts and for the tax years set forth above were illegal and unconstitutional, and that such assessments resulted in the collection of unconstitutionally excessive taxes in the amounts set forth above;

d. That the Court find and declare that, because of the excessive, illegal and unconstitutional assessment, each of the plaintiffs is entitled to a refund of taxes paid upon its subject property in the amount set forth above; and that each plaintiff is further entitled to interest on the refund pursuant to 35 ILCS 200/23-20 to and including the date of final payment of all refund amounts due;

e. That the Collector be enjoined to refund to each of the plaintiffs the taxes collected upon the excessive, illegal and unconstitutional assessment, with interest as provided by law;

f. That plaintiffs be awarded the costs of this action and their attorney's fees pursuant to 42 U.S.C. § 1988; and

g. That plaintiffs be granted such other and further relief as the Court may deem to be equitable and just.

COUNT III
VIOLATION OF DUE PROCESS UNDER THE ILLINOIS CONSTITUTION, ARTICLE I, § 2

83. Plaintiffs reallege and incorporate by reference the allegations of all preceding paragraphs.

84. The procedural inadequacies of the 1995 Property Tax Code Amendments as set

forth above constitute a violation of the plaintiffs' rights to due process of law. In particular, the Methodology Prohibition, which may be construed to bar all discovery and evidence of methodologies, practices and procedures used by the Assessor in assessing the plaintiffs' properties and similarly situated properties, violates plaintiffs' rights to due process under Ill. Const. 1970, Art. I, § 2.

85. While the Cook County Court has not interpreted the Methodology Prohibition as restrictively as argued by the taxing authorities, that court's interpretation limits access to Assessor's evidence to narrow circumstances, and a more restrictive construction will be sought and may be applied on appeal, even to the extent of barring the hearing of *any* constitutional claims within the tax objection process.

86. The Methodology Prohibition, on its face and as interpreted by the Cook County Court, bars access to evidence from the Assessor or other assessing officials on any issue that constitutes the "valuation" of property. The statute presumes that the assessment being challenged is "correct and legal," yet it imposes an elevated burden on the plaintiffs to rebut the presumption without any evidence from the Assessor whose work product is protected by the presumption. As such, the Methodology Prohibition is inherently arbitrary and irrational.

87. Other provisions of the 1995 Property Tax Code Amendments, as interpreted by the Cook County Court, prohibiting joinder of the Assessor as a defendant and immunizing the Collector from answering the complaint, arbitrarily and irrationally burden the Taxpayers' remedy for violation of their federal and state constitutional rights.

88. For the reasons set forth above, the assessments of each of the plaintiffs' subject properties, in the amounts and for the tax years indicated above, violates the plaintiff's right to due process of law under the Illinois Constitution, as each of the plaintiffs were prevented from

obtaining prompt and effective review of the Assessor's disparate and excessive assessments by the Methodology Prohibition and the other inadequacies of the 1995 Property Tax Code Assessments. The unconstitutional assessment of each plaintiff's property is actionable under 35 ILCS 200/23-15. Alternatively, to the extent that constitutional claims may not be actionable under § 23-15, these claims are actionable under the general equitable powers of the Court.

Wherefore, for the reasons specified above, plaintiffs pray:

a. That the Court enter a declaratory judgment that the Methodology Prohibition is unconstitutional, facially and as applied to the plaintiffs, and that the Court permanently enjoin its enforcement;

b. That the Court enter a declaratory judgment that the provisions of the 1995 Property Tax Code Amendments prohibiting joinder of the Assessor as a defendant and immunizing the Collector from answering the complaint are unconstitutional as applied to plaintiffs, and that the Court permanently enjoin their enforcement;

c. That the Court enter a declaratory judgment against the Assessor and Collector, that the assessments of each of the subject properties in the amounts and for the tax years set forth above were illegal and unconstitutional, and that such assessments resulted in the collection of unconstitutionally excessive taxes in the amounts set forth above;

d. That the Court find and declare that, because of the excessive, illegal and unconstitutional assessment, each of the plaintiffs is entitled to a refund of taxes paid upon its subject property in the amount set forth above; and that each plaintiff is further entitled to interest on the refund pursuant to 35 ILCS 200/23-20 to and including the date of final payment of all refund amounts due;

e. That the Collector be enjoined to refund to each of the plaintiffs the taxes collected upon the excessive, illegal and unconstitutional assessment, with interest as provided by law; and

f. That plaintiffs be granted such other and further relief as the Court may deem to be equitable and just.

COUNT IV
VIOLATION OF EQUAL PROTECTION AND UNIFORMITY UNDER THE ILLINOIS CONSTITUTION, ART. I, § 2 and ART. IX, § 4(b), AND MAINTENANCE OF AN UNCONSTITUTIONAL AND ILLEGAL CLASSIFICATION SYSTEM

89. Plaintiffs reallege and incorporate by reference the allegations of all preceding paragraphs.

90. For the reasons set forth above, the assessments of each of the plaintiffs' subject properties, in the amounts and for the tax years indicated above, violates the plaintiff's rights to equal protection and uniformity under Ill. Const. 1970, Art. I, § 2 and Art. IX, § 4(b), in that the majority of other similarly situated property was assessed systematically and intentionally at a level of assessment significantly lower and more favorable than the level of assessment required by law, and significantly lower and more favorable than the level of assessment applied to the plaintiff's subject property.

91. The systematic and intentional under-assessment of the majority of property in the same classes as the subject properties constituted the maintenance of a *de facto* classification system, which violated the Classification Ordinance, and also violated 35 ILCS 200/9-150, the limitation on classification enacted by the General Assembly pursuant to its express authority under Ill. Const. 1970, Art. IX, § 4(b). The illegal and unconstitutional assessment of each plaintiff's property is actionable under 35 ILCS 200/23-15. Alternatively, to the extent that constitutional claims may not be actionable under § 23-15, these claims are actionable under the general equi-

table powers of the Court.

92. The principles of equal protection and uniformity under Ill. Const. 1970, Art. I, § 2 and Art. IX, § 4(b), require that, where the assessing authority has violated the express command of the law and has made assessments significantly below the required percentage of fair market value, all similarly situated taxpayers, such as the plaintiffs, are entitled to be assessed at the same uniform percentage.

Wherefore, for the reasons specified above, plaintiffs pray:

a. That the Court enter a declaratory judgment that the assessments of each of the subject properties in the amounts and for the tax years set forth above were illegal and unconstitutional, and that such assessments resulted in the collection of unconstitutionally excessive taxes in the amounts set forth above;

b. That the Court find and declare that, because of the excessive, illegal and unconstitutional assessment, each of the plaintiffs is entitled to a refund of taxes paid upon its subject property in the amount set forth above; and that each plaintiff is further entitled to interest on the refund pursuant to 35 ILCS 200/23-20 to and including the date of final payment of all refund amounts due;

c. That the Collector be ordered to refund to each of the plaintiffs the taxes collected upon the excessive, illegal and unconstitutional assessment, with interest as provided by law; and

d. That plaintiffs be granted such other and further relief as the Court may deem to be equitable and just.

COUNT V
VIOLATION OF THE ILLINOIS CONSTITUTION, ART. IX, § 4(b), PROHIBITING ASSESSMENT OF PROPERTY IN ANY CLASS AT A LEVEL MORE THAN TWO AND ONE-HALF TIMES THE LOWEST LEVEL OF ASSESSMENT OF PROPERTY IN ANY OTHER CLASS

93. Plaintiffs reallege and incorporate by reference the allegations of all preceding paragraphs.

94. Because Class 2 property was on average systematically and intentionally assessed at a *de facto* level of approximately 9% of fair market value for the tax years 2000-2008, the maximum level of assessment at which property in any class could be assessed for any of those tax years, under Ill. Const. 1970, Art. IX, § 4(b), was two and one-half times that level, or approximately 22.5%. The plaintiffs' subject properties were each assessed for one or more tax years within the period of 2000-2008, as further specified above, at a level significantly exceeding 22.5% of its fair market value, and those assessments are therefore unconstitutional. The illegal and unconstitutional assessment of each plaintiff's property is actionable under 35 ILCS 200/23-15. Alternatively, to the extent that constitutional claims may not be actionable under § 23-15, these claims are actionable under the general equitable powers of the Court.

Wherefore, for the reasons specified above, plaintiff pray:

a. That the Court enter a declaratory judgment that the assessments of each of the subject properties in the amounts and for the tax years set forth above were illegal and unconstitutional, and that such assessments resulted in the collection of unconstitutionally excessive taxes in the amounts set forth above;

b. That the Court find and declare that, because of the excessive, illegal and unconstitutional assessment, each of the plaintiffs is entitled to a refund of taxes paid upon its subject property in the amount set forth above; and that each plaintiff is

further entitled to interest on the refund pursuant to 35 ILCS 200/23-20 to and including the date of final payment of all refund amounts due;

c. That the Collector be ordered to refund to each of the plaintiffs the taxes collected upon the excessive, illegal and unconstitutional assessment, with interest as provided by law; and

d. That plaintiffs be granted such other and further relief as the Court may deem to be equitable and just.

COUNT VI
INCORRECT AND ILLEGAL VALUATION
IN VIOLATION OF THE PROPERTY TAX CODE

95. Plaintiffs reallege and incorporate by reference the allegations of all preceding paragraphs.

96. The assessed value of each of the subject properties exceeded the legally-required percentage of each property's fair market value, even if that percentage is considered to be the level of assessment required by the Classification Ordinance, since a correct estimate of the property's fair market value would have produced a significantly lower assessed value. The assessment and resulting taxes are therefore incorrect and illegal under 35 ILCS 200/23-15.

Wherefore, for the reasons specified above, plaintiffs pray:

a. That the assessments of each of the subject properties for the tax years specified above be adjudged to be excessive, incorrect and illegal;

b. That the Court find and declare that, because of the excessive, incorrect and illegal assessment, each of the plaintiffs is entitled to a refund of taxes together with accrued statutory interest pursuant to 35 ILCS 200/23-20 to and including the date of final payment of all refund amounts due;

c. That the Collector be ordered to refund to each of the plaintiffs the taxes collected upon the excessive, incorrect and illegal assessment, with interest as provided by law; and

d. That plaintiffs be granted such other and further relief as the Court may deem to be equitable and just.

Respectfully submitted,

A.F. Moore & Associates, Inc.; J. Emil Anderson & Son, Inc.; Prime Group Realty Trust; American Academy of Orthopaedic Surgeons; Erling Eide; and Fox Valley/River Oaks Partnership; Simon Property Group (Delaware), Inc.

By: /s/ Mark R. Davis
One of Plaintiffs' Attorneys

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Attorneys for Plaintiffs

Statement Pursuant to Local Rule 3.2

The following plaintiffs state as follows pursuant to Local Rule 3.2(a):

A.F. Moore & Associates, Inc., has no publicly held affiliates.

J. Emil Anderson & Son, Inc., has no publicly held affiliates.

Prime Group Realty Trust has no publicly held affiliates.

American Academy of Orthopaedic Surgeons has no publicly held affiliates.

Fox Valley/River Oaks Partnership has no publicly held affiliates.

Simon Property Group (Delaware), Inc., is wholly owned by a publicly held affiliate, Simon Property Group, Inc., a Delaware corporation.

Respectfully submitted,

/s/Mark R. Davis
One of Their Attorneys