No. SC100304

IN THE SUPREME COURT OF MISSOURI

STATE ex rel. JACKSON COUNTY, MISSOURI, et al
Realtors,

v.
THE HONORABLE DAVID CHAMBERLAIN,
Respondent.

Original Writ Proceeding

BRIEF OF RESPONDENT

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INTRODUCTION

This case is not about discrimination. It is not about assessment methodology, or what the correctly assessed value of Plaintiffs' properties should be. It is about statutory notice. Specifically, Realtors' failure to provide timely notice of increases in the assessed value of Plaintiffs' real property, as well as their failure to provide 30 days' notice prior to physical inspections of the property so that Plaintiffs could request the interior of their property be inspected during the inspection. Realtors admit these are mandatory deadlines; the parties' disagreement is over the consequence of violating them. Plaintiffs' position is that over a century of caselaw from this Court and the Missouri Courts of Appeals holds that when notice is not given in accordance with the Missouri statutes found in Chapters 137 and 138, property owners do not need to exhaust administrative remedies and can seek relief directly in court. Realtors disagree, and, without discussing most of the cases Plaintiffs rely on, ask the Court to find that these cases are no longer current, and to announce a new rule that property owners can no longer seek relief directly in court when they receive late notice or even no notice at all.

Because no Missouri court has ever held that a property owner who receives untimely notice (or, as is the case for some Plaintiffs, no notice at all) cannot seek injunctive relief directly in Court, Respondent Judge Chamberlain did not violate a clearly established and specific right of Realtors when he denied their Motion to Dismiss; his ruling was correct under the case law. Respectfully, this Court should quash its Preliminary Writ so that litigation can continue between the parties.

STATEMENT OF FACTS

Plaintiffs all owned real property in Jackson County, Missouri at the time of filing the First Amended Petition (First Amended Petition, Ex. A to Realtors' Petition for Writ, ¶¶ 2-6). As property owners, Plaintiffs had a right under R.S.Mo. § 137.243 to have Realtor Beatty, the County Assessor, to, no later than March 1, "provide the clerk with the assessment book which for this purpose shall contain the real estate values for that year, the prior year's state assessed values, and the prior year's personal property values." *Id.* at ¶¶ 31-32. Realtor Beatty missed this deadline, admitting on March 22, 2023 that the 2023 values for residential or commercial properties were not yet completed. *Id.* at ¶ 33.

This March 1 deadline is crucial to the statutory scheme contained in Chapters 137 and 138 because it allows sufficient time for political subdivisions to "informally project a nonbinding tax levy for that year," by April 8. *Id.* at ¶¶ 42-43 (quoting § 137.243). Using this tax levy, the collector then must "calculate and, no later than April thirtieth, provide to the assessor the projected tax liability for each real estate parcel for which the assessor intends to mail a notice of increase pursuant to sections 137.180, 137.355, and 137.490." *Id.*, ¶ 44 (quoting § 137.243). In short, because Realtors missed the first deadline, they denied all Jackson County property owners their right to receive a notice of assessment increase that contained a projected tax liability based on the difference between 2022 property values and 2023 property values. *Id.* at ¶ 45. Instead, property owners who received a notice of increased assessment were given an inaccurate and grossly inflated projected tax liability, so high that it would violate the Hancock Amendment. *Id.*

The panic Realtors' violations of the mandatory duties and deadlines of Chapters 137 and 138 created contributed to cause a record number of appeals filed with the Board of Equalization ("BOE"), which totaled over 43,000 at the time of filing the Amended Petition. *Id.* at ¶ 110. Realtors were well aware that their behavior would cause a record number of appeals. Realtor Beatty laughed as she discussed the bet Realtors had among themselves on how many appeals they would end up with. *Id.* ¶ 87. Realtors then took advantage of the mess they created and weaponized this already overtaxed appeal process against property owners by misrepresenting taxpayers' procedural and substantive rights. While paying lip-service to their own burden of proof, they falsely tell property owners they need to present evidence that proves the true value of their property. *Id.* at ¶¶ 74-86. They also gave property owners a fake hearing date in front of the BOE, tricking them into taking time off work and arranging childcare and transportation. *Id.* at ¶¶, 81-83, 107-114, 136, 179, 192, 199, 204 and 210.

The hope was, by forcing property owners to spend time and money under false pretenses at the outset, they will give up before they even get to a hearing, and agree to improper, illegal, and unauthorized tax increases. *Id.* And for those who continue to press for a hearing, Realtors have at least improperly forced them to do the work they paid Tyler $17.8 Million in taxpayer money to perform, which Tyler failed to do. *Id.* at ¶¶ 22-26, 83-93. Hence, for all these reasons, and as laid out in more detail in the First Amended Petition, "exhausting administrative remedies is not required … Defendants have hijacked the process and illegally rigged it to their own advantage." *Id.* at ¶ 114.

But even if Realtors had not sabotaged and weaponized the appeal process, exhaustion of administrative remedies is not required because Plaintiffs' claims stem from lack of statutory notice. Plaintiffs Trevor and Amanda Tilton, Square One Homes, LLC, and TrevCon, LLC (the "June 15 Plaintiffs") did not receive timely notice of increased assessments pursuant to § 137.180. *Id.* a, ¶ 142. As the First Amended Petition sets forth: "This deadline is jurisdictional, meaning if the County does not meet it, the County does not have the authority to raise the assessed value of the real property: 'Compliance with the notice provision of § 137.180, supra, is mandatory and failure by an assessor to give the requisite notice of an increase in the assessed valuation of property renders any increase in valuation and any tax computed thereon void.'" *Id.* at ¶ 57 (citing *United Missouri Bank of Kansas City v. March*, 650 S.W.2d 678, 679 (Mo.App. W.D. 1983) (citing *John Calvin Manor, Inc. v. Aylward*, 517 S.W.2d 59 (Mo. 1974)). Plaintiffs Alice Edmonds and Kimberly Clark (the "15% Plaintiffs"), along with every other residential property owner in Jackson County, did not receive 30 days' notice (indeed, they received no notice at all) prior to physical inspections being performed on their properties, and were thereby denied the "opportunity to 'request that an interior inspection be performed during the physical inspection' in violation of section 137.115." *Id.* at ¶ 157, *see also* ¶¶ 154-56.

In sum, Realtors' flagrant and repeated violations of the mandatory deadlines and duties in Chapters 137 and 138 have "completely frustrated the statutory scheme at the very outset,"[1] and resulted in Plaintiffs and all other similarly situated property owners

[1] *John Calvin Manor, Inc.*, 517 S.W.2d at 62.

suffering illegal and improper increases in assessed property value which now subjects them to unlawful and unauthorized tax increases. It has also forced them, at their own expense, to do the work that they have already paid $17.8 Million in their own taxpayer money to Tyler to perform. Plaintiffs bring this case pursuant to the caselaw, statutes, and constitution of Missouri to right these wrongs. Respondent did not err when he denied Realtors' Motion to Dismiss.

ARGUMENT

I. A Writ of Mandamus is issued only in extraordinary emergencies and even then, only to enforce, not adjudicate, an already established clear and specific legal right.

The standard of review is not, as Realtors insist, *de novo.* This is not an appeal; this is a petition for a writ of mandamus. "Mandamus will lie only when there is a clear, unequivocal, and specific right." *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 576 (Mo. 1994), citing *State ex rel. Sayad v. Zych*, 642 S.W.2d 907, 911 (Mo. 1982). "A writ of mandamus is not appropriate to establish a legal right, but only to compel performance of a right that already exists." *Id.*, citing *State ex rel. Brentwood Sch. Dist. v. State Tax Comm'n*, 589 S.W.2d 613, 614 (Mo. 1979). "A writ of mandamus is a hard and fast unreasoning writ, and is reserved for extraordinary emergencies." *Norval v. Whitesell*, 605 S.W.2d 789, 791 (Mo. 1980), citing *State on inf. Barker ex rel. Kansas City v. Kansas City Gas Co.*, 254 Mo. 515, 163 S.W. 854 (1913), and *State ex rel. Horton v. Bourke*, 344 Mo. 826, 129 S.W.2d 866 (1939). "Mandamus is a discretionary writ, not a writ of right." *State ex rel. Chassaing*, 887 S.W.2d at 576, citing *Norval*, 605 S.W.2d at 791. "As this Court

has often stated, the purpose of the writ is to execute, not adjudicate." *Id*., citing *State ex rel. Com'rs of State Tax Comm'n v. Schneider*, 609 S.W.2d 149, 151 (Mo. 1980).

Similarly, "[a] writ of prohibition does not issue as a matter of right." *Derfelt v. Yocom*, 692 S.W.2d 300, 301 (Mo. 1985), citing *State ex rel. Hannah v. Seier*, 654 S.W.2d 894, 895 (Mo. 1983). "The writ of prohibition, an extraordinary remedy, is to be used with great caution and forbearance and only in cases of extreme necessity." *State ex rel. T.J. v. Cundiff*, 632 S.W.3d 353, 355 (Mo. 2021), citing *State ex rel. Zahnd v. Van Amburg*, 533 S.W.3d 227, 229 (Mo. 2017) (quoting *State ex rel. Douglas Toyota III, Inc. v. Keeter*, 804 S.W.2d 750, 752 (Mo. 1991)). The primary purpose of a writ of prohibition is to prevent the usurpation of judicial power. R.S.Mo. §531.010. The purpose of prohibition is not to provide a remedy for all legal difficulties, nor to serve as a substitute for an appeal. *State ex rel. Eggers v. Enright*, 609 S.W.2d 381, 382 (Mo. 1980).

Finally, "[i]n the context of a motion to dismiss for failure to state a cause of action, it has long been held that 'where a petition reveals that the pleader has not stated and cannot state a cause of action of which the circuit court would have jurisdiction, then prohibition will lie." *State ex rel. Henley v. Bickel*, 285 S.W.3d 327, 330 (Mo. 2009) (quoting *State ex rel. Union Elec. Co. v. Dolan*, 256 S.W.3d 77, 81 (Mo. 2008)). One of the reasons for this is that in Missouri, leave to amend "shall be freely given when justice so requires." Mo. Sup. R. 55.33. Hence, unless the First Amended Petition proves conclusively that no set of facts exist that would allow Plaintiffs to bring their claims in court without first exhausting administrative remedies, Realtors are not entitled to the extraordinary remedy of a writ from this Court.

II. Response to Points Relied On I, II, and III[2]: Plaintiffs were not required to exhaust administrative remedies.

A. It is well established that Realtors' failure to comply with the requirements of Chapters 137 and 138 completely frustrates the statutory scheme and permits property owners, including Plaintiffs, to seek relief directly in court.

Relators spend considerable time promoting the merits of Chapters 137 and 138 in support of their argument that Plaintiffs must first exhaust the administrative remedies set forth therein before seeking relief in court. While doing so they ignore the reality that Relators, not Plaintiffs, violated these Chapters at the outset, including when they failed to send Plaintiffs timely notice as required by § 137.180. "It is apparent that the failure to give the notice required by § 137.180 completely frustrates the statutory scheme at the very outset." *John Calvin Manor, Inc.*, 517 S.W.2d at 62. And this failure to follow section 137.180's notice requirement renders the Plaintiffs' increased valuations, and any taxes based thereon, void: "Compliance with the notice provision of § 137.180, supra, is mandatory and failure by an assessor to give the requisite notice of an increase in the assessed valuation of property renders any increase in valuation and any tax computed thereon void." *United Missouri Bank of Kansas City v. March*, 650 S.W.2d 678, 679

[2] Realtors' First Point Relied on concludes "Plaintiffs cannot challenge a tax reassessment in circuit court without first exhausting administrative remedies." Realtors Second Point Relied on concludes "Plaintiffs are requesting a determination on the lawfulness of assessment process by an Assessor and such determination is to be resolved by the board of equalization or the commission with specialized assessment knowledge." Realtors' Third Point Relied on concludes "Plaintiffs failed to exhaust their administrative remedies, and they may not challenge the property tax assessments of other individuals." Because all three points argue that the failure to exhaust administrative remedies entitles Realtors to the relief they seek form this Court, this section of Plaintiffs' argument, that they did not need to exhaust administrative remedies, is offered in response to all three Points Relied On. Additional sections of argument specific to Points Relied on II and III follow below.

(Mo.App. W.D. 1983), citing *John Calvin Manor, Inc.*, 517 S.W.2d 59. Here, Plaintiffs seek the same declaratory and injunctive relief that was upheld by the Missouri Court of Appeals in *March* and upheld by this Court in *John Calvin Manor*. Realtors ask the Court to issue a writ of mandamus that would deny Plaintiffs their right to seek such relief as established by these (and several more) cases, not to enforce any established right Realtors have.[3]

The above language from *March* is directly on point and confirms that Plaintiffs have the clear and specific right to bring this case and pursue these claims. Again: "**Compliance with the notice provision of § 137.180, supra, is mandatory and failure by an assessor to give the requisite notice of an increase in the assessed valuation of property renders any increase in valuation and any tax computed thereon void**." *March* at 679 (emphasis added). Plaintiffs set forth this language in their First Amended Petition as it clearly establishes that they have the right to the relief they seek. Realtors ignore it; they do not mention *March* even once in their Brief to this Court. How, given *John Calvin Manor, March,* and the wealth of other cases discussed below, can Realtors meet their burden in the Court of showing that they enjoy a clearly established and specific right to a dismissal of this case? Realtors do not say, choosing instead to also ignore the standard for issuing a writ. They ignore their burden and the cases that continue to embrace the holding in *John Calvin Manor* because the two cannot be squared. Given the extensive

[3] "Mandamus will lie only when there is a clear, unequivocal, and specific right. The right sought to be enforced must be clearly established and presently existing." *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 576 (Mo. 1994) (internal citations omitted).

case law in Plaintiffs' favor, Realtors cannot show they are entitled to a writ from this Court.

Plaintiffs also specifically cited to *John Calvin Manor* in their Amended Petition (see Exhibit A, Amended Petition, p. 012 at ¶ 57). There, Jackson County failed to give the plaintiff timely notice of an increase in the assessed value of its property. *John Calvin Manor, Inc.*, 517 S.W.2d at 60. Due to this failure, the trial court declared the increase void, ordered the County to return the value back to the prior year's value, and permanently enjoined the collection of taxes on any amount above the prior year's value. *Id.* at 61. This Court affirmed the trial court's judgment and held that the failure to give timely notice places the property owner in a different position than those who received such notice, and therefore grants them the right to seek relief directly from the courts. "The consequence of failing to give the required notice places the taxpayer in a markedly different position than if proper notice is given and bears directly on the adequacy of the remedies argued for by defendants." *Id.* at 61. The County, having violated its own statutory duties, thereby compromising the administrative relief available to the plaintiff, could not escape accountability in court. "It is apparent that the failure to give the notice required by § 137.180 completely frustrates the statutory scheme at the very outset." *Id.* at 62. Hence, as this Court explained, the trial court in *John Calvin Manor* did not err when it recognized this legal reality and granted the relief sought: "Upon finding the increased assessment to be void, the circuit court properly ordered the increase stricken from the records and let the prior assessment stand. The orders of the circuit court were necessary to afford complete relief once it was determined that the increased assessment was invalid." *Id.* at 59.

The right to seek declaratory and injunctive relief directly from the courts was established well before this Court's holding in *John Calvin Manor*. For instance, in *John Calvin Manor* this Court cited with approval to *McGraw-Edison Co. v. Curry*, 485 S.W.2d 175, 180 (Mo. App. 1972).[4] There, the Missouri Court of Appeals upheld the trial court's findings of law, including "that by reason of the failure to give plaintiff the required statutory notice the County Board of Equalization's action in raising the valuation was without its jurisdiction and void," and "that subsequent acts of defendants in assessing, collecting and disbursing the tax were without jurisdiction, authority and power and were void." *Id.* at 177-78. The court also held that the trial court "is empowered to grant the relief sought," which is the same relief sought here. *Id.* at 178.

The right of taxpayers to seek relief directly from the court when proper statutory notice is not given was established long before the holding in *McGraw*. The court there relied on authority from this Court to hold that "[w]ithout proof of notice, the Board lacked jurisdiction and its proceedings raising plaintiff's valuation were void. *Id.* at 179, citing *State ex rel. Lane v. Corneli*, 351 Mo. 1, 171 S.W.2d 687 (1943).[5] In *Corneli*¸ this Court held: "In tax proceedings, as in other proceedings, notice is a prerequisite to the validity of such proceedings. 'Provision for notice is part and parcel of 'due process of law.'" *Corneli* at 351 Mo. at 7 (quoting *State ex rel. Lemon v. Bd. of Equalization of Buchanan Cnty.*, 108 Mo. 235, 18 S.W. 782, 784 (1891)).

[4] Realtors also ignore the holding in *McGraw-Edison*, again choosing not to mention it once in their Brief.

[5] Realtors ignore the holding in *Corneli* as well.

And this Court continues to cite *John Calvin Manor* with approval to hold that when taxpayers do not receive proper statutory notice, they can bring a claim directly in court. In *State ex rel. SLAH, L.L.C. v. City of Woodson Terrace*, 378 S.W.3d 357 (Mo. 2012), this Court endorsed its holding in *John Calvin Manor* along with two more recent holdings from this Court and two more recent holdings from the Missouri Court of Appeals when listing different avenues of relief that are available to taxpayers: "For instance, a taxpayer can maintain a declaratory judgment action to contest the legality of an increased assessed valuation of property when the taxpayer was deprived of administrative remedies due to the assessor's failure to give the required statutory notice." *Id.* at 363, citing *John Calvin Manor, Inc.*, 517 S.W.2d 59; *Sch. Dist. of Kansas City v. State*, 317 S.W.3d 599, 606 (Mo. 2010) n. 6 (Mo. 2010); *Crest Communications v. Kuehle*, 754 S.W.2d 563 (Mo. 1988); *Gen. Motors Corp. v. City of Kansas City*, 895 S.W.2d 59 (Mo.App. W.D. 1995); and *Ingels v. Noel*, 804 S.W.2d 808 (Mo.App. W.D. 1991).

In *Ingels v. Noel*, 804 S.W.2d 808 (Mo.App. W.D. 1991)[6], the first time the taxpayers received notice of the newly assessed valuation and increased taxes for their property was upon receipt of a tax bill in late November or early December. *Id.* at 809. The taxpayers delivered checks for payment of the taxes and letters of protest. *Id*. Ultimately, the checks were returned to the taxpayers. *Id*. The taxpayers then filed suit in circuit court, where the court ruled in favor of the taxpayers and declared that the increased real estate

[6] *Ingle* is another case Realtors ignore.

tax assessments and the tax computed thereon were void and enjoined the defendants from collecting them. *Id*.

The County appealed, arguing that § 139.031, which allows taxpayers to pay certain taxes under protest and then seek to recover damages, required dismissal. The County argued that because plaintiffs had failed to "strictly comply" with this section, they could not pursue any cause of action. 139.031. *Id*. The Western District Court of Appeals held that § 139.031 is not the only option for aggrieved taxpayers, as they can pursue equitable relief as well:

> Taxpayers are not limited to the procedures of that statute. Equitable relief is available in certain cases. *John Calvin Manor, Inc. v. Aylward*, 517 S.W.2d 59, 63 (Mo.1974).
>
> Assuming that at least two possible remedies exist, a litigant has not finally elected his remedy until there has been something gained by him or lost by his opponent. As such, even the institution of suit is not a conclusive and irrevocable election of remedies. *Grote Meat Co. v. Goldenberg*, 735 S.W.2d 379, 386 (Mo.App.1987); *see also State ex rel. Hilleary & Partners, Ltd. v. Kelly*, 448 S.W.2d 926, 931 (Mo.App.1969).
>
> In *John Calvin Manor*, the first notice which the taxpayer had of the increased valuation of the real estate was upon receipt of the tax statement in December of that year. In upholding the taxpayer's successful injunction action, the Missouri Supreme Court held that equitable actions remain a viable source of relief in addition to statutory provisions for review, particularly when the taxpayer has been deprived of prior notice of the increased assessment. 517 S.W.2d at 63.
>
> Therefore, two avenues of relief were available to the Ingels. While it may have seemed in the first instance that the respondents chose the statutory method, technically, they failed to consummate their protest in accordance with the statute. **Instead, these taxpayers elected the equitable cause of action. The court correctly assumed jurisdiction of this equity action.**

Ingels, 804 S.W.2d at 809–10 (emphasis added).

This holding is applicable here, and Plaintiffs have two avenues of relief available to them. Their equitable causes of action have been expressly approved of by this Court in instances such as this, where the taxpayers were deprived of timely notice of their increased assessments as a result of Realtors' actions and omissions. And, as discussed below, the Hancock Amendment also provides them with express standing to pursue such claims.

Ingels and the other three holdings cited by this Court in *City of Woodson Terrace* are not the only examples of Missouri courts endorsing this Court's holding and logic of *John Calvin Manor*. In *St. Louis Concessions, Inc. v. City of St. Louis*, 926 S.W.2d 495, 496–97 (Mo.App. E.D. 1996)[7], the Eastern District determined that the taxpayer did not receive the statutory notice where the assessor's office "corrected" an error in assessment by replacing a mistakenly entered assessment value with a much higher value. *St. Louis Concessions, Inc.*, 926 S.W.2d at 496–97. This correction was deemed an increase in valuation, which the taxpayer had not received proper statutory notice of. *Id.* The court found that the defendants' failure to provide the proper notice permitted the taxpayer to bring suit directly in court. *Id.* at 497–98. The court of appeals held that "the court correctly enjoined the City from enforcing the 1994 tax liability based on the increased but 'void' assessment," and remanded the case with instructions "to simply enjoin the City from collecting the 1994 tax liability based on the increased assessment." *Id.* at 498.

[7] Also ignored by Realtors.

Relators do not hold any right, let alone a clearly established one, to have Respondent ignore this precedent and deny Plaintiffs the opportunity to seek the same relief explicitly endorsed by these cases. This remains true despite their bald assertion that "*John Calvin Manor* is no longer controlling caselaw." (Exhibit B, Realtors' Motion to Dismiss p. 056, heading D). Relators argued that Respondent would be mistaken to rely on that holding because it is "a case from 1974." *Id.* at 057. Respondent was right to reject this argument and Relators cannot demonstrate that in refusing to depart from the Court's holding in *John Calvin Manor* Respondent violated a clearly established right that warrants the extraordinary remedy they seek from this Court. Respondent was not free to ignore this Court's holding in *John Calvin Manor.* "Missouri's Constitution expressly states that the Missouri Supreme Court 'shall be the highest court in the state' and that its 'decisions shall be controlling in all other courts.'" *Doe v. Roman Catholic Diocese of St. Louis*, 311 S.W.3d 818, 822 (Mo.App. E.D. 2010) (quoting Mo. Const. art. V, § 2). Missouri courts "are constitutionally bound to follow the most recent controlling decision of the Missouri Supreme Court, and inquiries questioning the correctness of such a decision are improper." *John Doe B.P. v. Catholic Diocese of Kansas City-St. Joseph*, 432 S.W.3d 213, 219 (Mo.App. W.D. 2014); *see also State v. Aaron*, 218 S.W.3d 501, 511 (Mo.App. W.D. 2007); *Knorp v. Thompson*, 352 Mo. 44, 175 S.W.2d 889, 894 (1943).

Realtors invited Respondent to question the correctness of, and ultimately disregard the holding in *John Calvin Manor*, along with all the subsequent cases endorsing it, in favor of a finding from the State Tax Commission, *Main Street Market Company, Complainant v. Gary Rector, Assessor, Carter County,* Missouri Respondent, 2021 WL 3705023. There,

the taxpayer had appealed directly to the State Tax Commission and argued that because he received notice one day after the statutory deadline of June 15, the assessment was rendered void. *Id*. at *4. The Tax Commission disagreed, reasoning that the taxpayer was not denied an administrative remedy—in fact, he was already utilizing his administrative remedy in his appeal to the Tax Commission. *Id. Main Street Market Company* does not cite or discuss *John Calvin Manor* at all. Nor does it state that taxpayers need to exhaust administrative remedies, regardless of whether or not they received notice of an increase in value. *John Calvin Manor* and its progeny, all holding that without timely notice taxpayers do not need to file an administrative appeal before filing a lawsuit in circuit court, remain binding precedent in Missouri. The State Tax Commission's decision in *Main Street Market* did not take away a clearly established right from Plaintiffs and hand a newly-minted clearly established right to Relators.

This is especially true when considering that the State Tax Commission itself has endorsed the holding in *John Calvin Manor* at other times. For instance, the State Tax Commission cited *John Calvin Manor* in its finding that because notices were properly mailed to the taxpayer, it was required to exhaust its administrative remedies in *Gri Brookside Shops, LLC, Complainant v. Robert Murphy, Assessor, Jackson County, Missouri, Respondent*, 2017 WL 3721061, at *3. The State Tax Commission has also explained that "[t]he appropriate remedy when notice of an increase is not given is to render the new assessment void and to reinstate the previous year's assessment." *Commerce Properties, Inc., Complainant, v. John D. O'flaherty, Assessor For the County of Jackson, Missouri, Respondent.*, 1984 WL 16293, at *6. There is simply no legal support for

Realtors' position that *John Calvin Manor* and the long list of similar cases are no longer controlling, and instead they hold a clearly established right that required Respondent to disregard them all and enter judgment in their favor.

Realtors' insistence that the courts of Missouri are closed to all plaintiffs who "received a valuation increase notice late" is against Missouri law (Realtors' Brief, p. 7). To the contrary, there is not a single case holding that a property owner who receives untimely notice cannot seek relief directly in court. That is why Realtors are forced to cite to cases that involve discrimination and other non-notice issues. Statutory notice, though, is different and it has always been. The General Assembly did not respond to the holding in *John Calvin Manor* by amending Chapters 137 or 138 to prohibit property owners who receive untimely notice form seeking relief directly in court. Nor did it amend these Chapters to expand the State Tax Commission's authority to allow it to hear direct appeals. And, as discussed below, the State Tax Commission cannot create for itself authority not granted to it by statute. Even if it could, no court—including this Court—has called into question the holdings of *John Calvin Manor* and the many cases that continue to rely on it with approval. Realtors simply want the law to be what it is not.

To the extent Relators argue that these cases, spanning back more than a century, should all be overruled, such relief is not available to them via a writ of mandamus or a writ of prohibition. "A writ of mandamus is not appropriate to establish a legal right … [a]s this Court has often stated, the purpose of the writ is to execute, not adjudicate." *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 576 (Mo. 1994). Realtors have not met their burden to show they are entitled to the extraordinary remedy of a writ of mandamus.

B. In Missouri, courts have discretion to find an equitable exception to the requirement to exhaust administrative remedies exists when, like here, the defendants violated statutory mandates.

As discussed above, in *McGraw-Edison*, the Missouri Court of Appeals held in a case against very similar defendants (including the Jackson County Assessor, Collector, and members of the Board of Equalization of Jackson County), that notice is jurisdictional and the failure to send a notice that complies with the statutes allows a plaintiff to obtain injunctive relief directly in court. But the *McGraw-Edison* court also held a second, independent reason existed to permit the property owner to seek relief directly in court; there exists an equitable exception to the requirement of exhausting administrative remedies:

> It is neither logical nor morally justifiable that such a state agency be permitted to disregard such definite legislative directions and still retain any defense to an action to correct its void revaluation order, either upon the theory of governmental immunity or failure of plaintiff to exhaust administrative remedies.

McGraw-Edison Co. v. Curry, 485 S.W.2d 175, 180 (Mo. App. 1972).[8]

[8] Missouri is not unique in this regard; other jurisdictions recognize a court's inherent discretion to apply such an equitable exception to the defense of failure to exhaust administrative remedies. *See Gibson v. Berryhill*, 411 U.S. 564, 575, 93 S. Ct. 1689, 1696, 36 L. Ed. 2d 488 (1973) ("State administrative remedies have also been held inadequate, however, where the state administrative body was found to be biased or to have predetermined the issue before it."), citing *Kelly v. Bd. of Ed. of City of Nashville*, 159 F. Supp. 272 (M.D. Tenn. 1958)). *See also Bartlett v. U.S. Dept. of Agric.*, 716 F.3d 464, 475 (8th Cir. 2013) (government may be estopped form asserting defense of failure to exhaust administrative remedies based on its own "affirmative misconduct."); *Rowden v. Warden*, 89 F.3d 536, 537 (8th Cir. 1996) (As it relates to the defense of failure to exhaust administrative remedies, "[e]stoppel against the government requires a showing of affirmative misconduct."); *Riggs v. A.J. Ballard Tire & Oil Co., Inc. Pension Plan & Tr.*, 979 F.2d 848 (4th Cir. 1992) ("The magistrate judge found that exhaustion would be futile

There, the notice defendants claimed to have sent failed to comply with the applicable statute. Specifically, the applicable statute required the notice of an increase in property valuation "advise plaintiff of the 'day of hearing' [and] that it 'could offer objections to such increase as made.' " *Id.* at 179. But the notice defendants claimed to have sent "advises that 'appeals' will be heard in Kansas City on July 11, 12, 14, 18, 21 and 28, 1967, and at Independence, July 10 and 26, 1967, and that the Board would adjourn July 29, 1967." *Id.* Because this notice "certainly does not comply with the statute," the court held that it could not justify allowing defendants to assert that plaintiff failed to exhaust administrative remedies, and applied Missouri's equitable exception to this requirement. *Id.*

Here, as detailed throughout the First Amended Petition, Realtors' failures to comply with the statutory requirements of Chapters 137 and 138 go far beyond the failure to give proper notice. They began missing statutory deadlines in March, which directly led to property owners receiving falsely inflated projected tax liabilities, which contributed to a record number of appeals being filed. Hence, like the defendants in *McGraw-Edison,* even if they had sent notice, the notice failed to comply with the statutory language. R.S.Mo. § 137.180 requires the notice to contain the projected tax liability, and "section

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in this instance in view of Ballard's bad faith and the total failure of the Company to take any action on Riggs' claim or to supply him the information he sought. We cannot say that this finding is clearly erroneous. Therefore, Riggs' failure to exhaust administrative remedies is excused."). In fact, research reveals no jurisdiction that does not provide for such an equitable exception.

137.243 sets forth the mandatory process the assessor must follow when determining projected tax liability." (Ex. A, ¶ 42).

But the facts alleged here are much worse than those in *McGraw-Edison.* Realtors did not just fail to send timely notice and fail to follow the statutory procedures for what must be contained in the notice. They also misrepresented property owner's procedural and substantive rights in connection with this appeal process, and convinced them to miss work and make accommodations to attend an appeal hearing under false pretenses, all in an effort to get them to just give up and accept unlawful increases in assessments and, therefore, taxes (*See* Exh. A, ¶¶ 74-87, 107-114, 136, 179, 192, 199, 204 and 210). They also would not allow property owners to appeal until they submitted information on their properties that Tyler failed to gather, even though Tyler was paid millions of dollars from the property owners' tax money to do so (*See Id.* ¶ 92 (Realtor Beatty explaining that you cannot file an appeal without providing certain information on your property)).

In other words, property owners who want to appeal based on the allegations contained in this suit—that the failure to follow the statutes renders any increase void, and/or any increase beyond 15% void, cannot do so without providing evidence as to what the true assessed value of their property should be. That evidence is then being used against them at the hearings. This due process violation, requiring property owners to submit evidence against their own argument before they are permitted to appeal, alone warrants the equitable exception to the requirement to exhaust administrative remedies. Especially for Plaintiffs and putative class members whose claims are not based on what the true value of their property should be, but rather on the consequences of Realtors' statutory violations.

Respondent did not err in exercising his discretion to apply it to the facts as alleged, and claims being pursued, in this case.

And Realtors' violations of Plaintiff's rights and Chapters 137 and 138 do not stop there. As set forth below and argued to the Respondent, they continue to ignore the fourth Saturday in August statutory deadline to have appeals resolved and have over 15,000 to go as of the time of this filing. Even if this August deadline is "directory," as Realtors claim, it is not non-existent. As the *McGraw* court explained, Realtors must strictly comply with the statutes because those statutes are the source of all their power and authority:

> Second, the rule as stated in *Gas Serv. Co. v. Morris*, 353 S.W.2d 645 (Mo. 1962) that procedural requirements as enunciated by the Legislature before administrative agencies must be strictly complied with, should apply with equal force to legislative requirements imposed upon county boards of equalization. Such boards are statutory tribunals and derive their jurisdiction, powers and duties from the statutes. *State ex rel. Lane v. Corneli, supra*. The Legislature in Section 138.120(2) V.A.M.S. placed the mandatory (shall) duty upon the Board of Equalization to give the plaintiff the notice and that such notice was to contain certain specific facts and information. The Supreme Court in *State ex rel. Wilson Chevrolet, Inc. v. Wilson, supra*, and *State ex rel. Lane v. Corneli, supra*, declared such notice to be jurisdictional.

Id. at 180.

Even if Realtors are correct that it has been clearly established that they are now afforded more leeway under the law to violate the mandates of Chapters 137 and 138, courts still have the discretion to, in the appropriate circumstances, say "enough is enough" and apply the equitable exception to the requirement of exhausting administrative remedies. And it cannot be said that Plaintiffs' First Amended Petition "reveals that the pleader has not stated *and cannot state*" that the appropriate circumstances exist in this

case to apply that exception. *State ex rel. Henley v. Bickel*, 285 S.W.3d 327, 330 (Mo. 2009) (emphasis added).

This is especially true not only in light of Realtors' many violations of the statutory scheme, but also in light of the reality that requiring property owners to exhaust administrative remedies will force tens of thousands of them to choose between either paying unlawful taxes or spending more in litigation expenses to avoid paying those unlawful taxes. The only way to protect individual taxpayers and place any check on the abuse of the taxing statutes is through a class action. This case presents such circumstances where Respondent's discretion to apply an equitable exception to the exhaustion of administrative remedies is appropriate. At the very least, the First Amended Petition contains enough allegations that it cannot be said that Realtors enjoy a well-established and clearly defined right to deny the Respondent discretion to determine if the equitable exception to the failure to exhaust administrative remedies applies. Plaintiffs should be permitted to proceed to discovery and/or amend their petition to further allege the ongoing abuses to the appeal process that justifies this equitable exception.[9]

It is neither logical nor morally justifiable to permit Realtors to insist that Plaintiffs exhaust administrative remedies in light of their own disregard for their definite, legislative directions, as well as the Plaintiffs' right not to be forced to present evidence against their own interests before they can even file an appeal with the Board of Equalization. Accordingly, Respondent properly exercised his discretion, and a writ is not warranted.

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[9] Realtors also refuse to entertain the legal questions presented by this suit at the board hearings.

C. Because whether increases in assessed values are void due to lack of proper notice is purely a question of law, the "legal question" exception to the requirement to exhaust administrative remedies applies.

As the above cases recognize, courts are equipped to answer questions concerning whether an increased in assessed value is void due to lack of proper notice because such questions are purely legal questions, and do not invade the province of the Board of Equalization or State Tax Commission. It is well established that a plaintiff does not need to exhaust administrative remedies when his claim centers around a legal question as opposed to an issue of fact within the administrative agency's expertise.

> Exhaustion of administrative remedies is not required when an issue 'poses no factual questions or issues requiring the special expertise within the scope of the administrative agency's responsibility, but instead proffers only questions of law clearly within the realm of the courts. A failure to exhaust administrative remedies may be justified when the only or controlling question is one of law, at least where there is no issue essentially administrative, involving agency expertise and discretion, which is in its nature peculiarly administrative.

LO Mgmt., LLC v. Office of Admin., 658 S.W.3d 228, 238 (Mo.App. W.D. 2022) (quoting *Premium Standard Farms, Inc. v. Lincoln Twp. of Putnam Cnty.*, 946 S.W.2d 234, 238 (Mo. 1997)).

In *Premium Std. Farms*, the Court held that the plaintiff did not need to exhaust administrative remedies because the central issue in their case was a question of law, not disputes of fact within the realm of the relevant administrative agency:

> This is a legal issue. "Because the question ... poses no factual questions or issues requiring the special expertise within the scope of the [administrative agency's] responsibility, but instead proffers only questions of law clearly within the realm of the courts, the doctrine of exhaustion does not apply in the present case. *See* 73 C.J.S. Public Administrative Law and Procedure Section 40 ('A failure to exhaust administrative remedies may be justified

> when the only or controlling question is one of law, at least where there is no issue essentially administrative, involving agency expertise and discretion, which is in its nature peculiarly administrative....').)"

Premium Standard Farms, Inc., 946 S.W.2d at 238.

Here, the central questions for Plaintiffs are purely legal ones. For Plaintiffs Trevor and Amanda Tilton, Square One Homes, LLC, and TrevCon, LLC (the "June 15 Plaintiffs"), the central question is: are the increases in assessment void due to lack of timely notice?[10] And for Plaintiffs Alice Edmonds and Kimberly Clark (the "15% Plaintiffs"), the central questions concern whether the increase in assessed values above 15% are void due to Relators' failure to give property owners thirty days' notice to "request that an interior inspection be performed *during the physical inspection*" as required by section 137.115.11. (emphasis added). These are not administrative issues; these are legal questions. They are best answered by the courts.

For this reason, this Court holds that certain issues, including the effect of the lack of proper statutory notice such as that addressed in *John Calvin Manor,* are not particularly suited for the Board of Equalization or State Tax Commission and instead are legal questions that may properly be answered directly by the courts. In *Lake St. Louis Cnty. Ass'n v. State Tax Comm'n,* 759 S.W.2d 843 (Mo. 1988),[11] this Court discussed the different options available to challenge a tax based on an improper property assessment and

[10] Again, as pled in Plaintiffs' First Amended Petition, the Western District Court of Appeals clearly thinks so: "Compliance with the notice provision of § 137.180, supra, is mandatory and failure by an assessor to give the requisite notice of an increase in the assessed valuation of property renders any increase in valuation and any tax computed thereon void." *United Missouri Bank of Kansas City*, 650 S.W.2d at 679.

[11] This is another case Realtors ignore in their Brief.

recognized that Missouri courts, as opposed to the Boards of Equalization, are best suited for determining purely legal questions:

> When the assessor denied reconsideration the landowner may have had several options. *See Crest Communications v. Kuehle*, 754 S.W.2d 563, 565–66 (Mo. banc 1988); *John Calvin Manor, Inc. v. Aylward*, 517 S.W.2d 59, 62 (Mo.1974). The landowner elected to proceed through the county board of equalization. The utility of proceeding through the board might be questioned because there is no indication that the landowner challenges the amount of the assessments and ***the board is not particularly suited for determining legal questions***, but the landowner made use of an available option.

Lake St. Louis Community Ass'n, 759 S.W.2d at 845 (emphasis added). The same logic applies in this case just as it applied in *John Calvin Manor*, and the host of other cases holding courts have the authority to directly answer questions concerning whether increase assessments are void due to lack of proper notice. In fact, "the utility of proceeding through the board" is much more questionable here, given that this case does not just present pure legal questions, but as alleged the board and other Realtors are openly hostile to property owners, misrepresenting the process, their rights, and requiring them to submit evidence against their own interest before permitting them to appeal.

Because this case presents purely legal questions that the Board of Equalization (nor the State Tax Commission) is not particularly suited for, Plaintiffs were not required to exhaust their administrative remedies and Respondent properly denied Realtors' Motion to Dismiss. Relators cannot meet their high burden to show they are entitled to a writ of mandamus.

D. The conflicts between the holdings of the State Tax Commission and those from the courts of Missouri demonstrate that pure legal questions, like those presented here, should be resolved by the courts, not the State Tax Commission.

Again, "the board is not particularly suited for determining" the pure legal questions this case presents. *Lake St. Louis Community Ass'n*, 759 S.W.2d at 845. Realtors nonetheless insist that such pure legal questions cannot be addressed by the courts and instead must be addressed by the board and then the State Tax Commission. But the State Tax Commission is no more suited to addressing such questions than the board, and its rulings on such questions have no precedential value. "[A]n administrative decision [from the State Tax Commission] has no precedential value for appellate courts." *State ex rel. 401 N. Lindbergh Associates v. Ciarleglio*, 807 S.W.2d 100, 105 (Mo.App. E.D. 1990), citing *Bi-State Dev. Agency of Missouri-Illinois Metro. Dist. v. Dir. of Revenue*, 781 S.W.2d 80, 83 (Mo. 1989). And not only do such decision have no precedential value, but they can often be "in direct conflict with prior judicial decisions." *Id.* As discussed, this is true for the Commission's decision in *Main Street Market*, which directly contradicts *John Calvin Manor* and its progeny.

Given this, pure legal questions, especially those presented in this case which affect tens of thousands of property owners, should be decided by the courts, not left to the administrative agencies. Realtors appear to agree, but only so long as this Court decides the questions of law presented in their favor, not in Plaintiffs'. In the heart of their brief, Realtors betray their argument that Plaintiffs cannot obtain a decision on the merits from the courts until they exhaust their administrative remedies. They appeal to the Court to enter a ruling that "the June 15 date is directory and the alleged late notice as asserted by

Plaintiffs does not void the reassessment because property owners did in fact receive notice and were able to file their Board of Equalization appeals." Realtors Brief at 22.

Of course, such a ruling would directly contradict the language of *John Calvin Manor* and *March*. But it is telling that Realtors ask the Court to decide the merits of this case. Realtors know that courts—not administrative agencies—are best at deciding legal questions, and their request of this Court to decide it in their favor is a concession that doing so falls within the jurisdiction of Missouri courts, without the need to first have Plaintiffs exhaust their administrative remedies. For all their talk of the importance of Chapters 137 and 138, and the disaster that would result if Plaintiffs were allowed to litigate this case on the merits directly in court, Realtors are happy to allow Plaintiffs to do so, as long as this Court decides the issue in Realtors' favor. Litigation, though, is a two-way street. If one party is able to seek a decision on the merits in their favor, then so too is the other party. A writ is not warranted.

E. Realtors brand new argument concerning section 137.265 does not establish they are entitled to a writ; that statute does not pertain to notice.

Realtors tell the Court: "Relators raised their arguments before the circuit court and the court of appeals and have preserved them for review in this writ proceeding." Realtors' Brief, p. 13. This is not true. Realtors never raised their argument that section 137.265 requires dismissal to Respondent or in the Court of Appeals. Nor did they raise it in their Petition for Writ or Suggestions in Support to this Court. This statute, § 137.265, appears for the very first time in their Brief. Respectfully, because they failed to even raise this argument in front of Respondent, it cannot be said that Realtors are entitled to a writ

compelling Respondent to adopt the argument, as Respondent could not have committed error in rejecting an argument that was not made to him.

But even if Realtors had made this argument to Respondent, it would not entitle them to a writ here. This case is about notice, which is jurisdictional. *See McGraw-Edison Co.*, 485 S.W.2d at 180, and *State ex rel. Lane v. Corneli*, 351 Mo. 1, 171 S.W.2d 687 (1943), both discussed above. In contrast, section 137.265 does not pertain to notice at all: "An assessment of property or charges for taxes thereon shall not be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessment not being made or completed within the time required by law." § 137.265. If the legislature wanted to provide that untimely notice also does not render an assessment illegal or void, it could have done so. But it did not. This statute has remained unchanged since 1945, well before the Court's holding in *John Calvin Manor*, meaning the legislature did not respond to that holding, or the wealth of other cases holding lack of proper notice renders assessment increases void, by amending this statute to include notice. It therefore cannot supersede or overrule Plaintiffs' right to seek relief directly in court when they do not receive timely notice, as opposed to when they do not receive a timely assessment.

Realtors also cite three cases to support their argument that section 137.265 entitles them to a ruling on the merits in their favor from this Court. *State ex rel. 401 North Lindbergh Associates*, 807 S.W.2d at 104; *St. Louis Cnty. v. State Tax Comm'n*, 529 S.W.2d 384 (Mo. 1975); and *Taney Cnty. v. Empire Dist. Elec. Co.*, 309 S.W.2d 610, 614 (Mo. 1958). None of these cases apply, as they do not address the issue here, which is notice. In *State ex rel. 401 N Lindbergh Assocs.*, the court held that the St. Louis County Board of

Equalization was able to hold a hearing on August 1, despite language in section 138.100 that "hearings shall end on the last Saturday of July of each year." The court read section 137.265 in *pari materia* with section 138.100 to conclude that the deadline was "merely directory" as opposed to "mandatory," and therefore the board could hold a hearing two days after the deadline. *Id*. at 104. Section 138.100 is not applicable to any issue here, because by its own terms it applies to "first classification counties," which Jackson County is not. Even if it were applicable, the facts are a far cry from those present here. Due to Realtors' and Tyler Technologies' massive misconduct, as outlined in the First Amended Petition, there are still 15,000 appeals yet to be conducted by the board. Assuming fifteen minutes per appeal, and assuming the board is capable of working on nothing else for eight hours a day, that is still over 468 days' worth of appeals. Hence, even if the last Saturday in July deadline is directory, Realtors are still exceeding their authority, as they have not been given total discretion to ignore this deadline.[12] For the same reasons, *St. Louis County*, 529 S.W.2d 384 is off point as it involves the board's ability to take action on August 8, as opposed to the last Saturday of July.

[12] *State ex rel. 401 N Lindbergh Assocs* also serves as a good reminder that the State Tax Commission is not "tasked with supervising and enforcing the laws set forth in Chapters 137 and 138" as Realtors argue on page 25 of their Brief. As the court explained, the State Tax Commission had previously held "that the Board of Equalization may not conduct a hearing on a valuation increase after the last Saturday in July." *Id*. at 105. Hence, if it truly was in charge of enforcing Chapters 137 and 138, as Realtors claim, the board would not have been permitted to hold a hearing on August 1. Instead, the court dismissed this holding from the commission as being in "direct conflict with prior judicial decisions" and having "no precedential value." *Id*. The State Tax Commission deals with the process and methods of assessment, it does not deal with purely legal questions, courts do because courts are far more suited to do so.

Taney County, 309 S.W.2d 610, the final case relied on by Realtors for this argument, holds that the State Tax Commission must determine property values by October 31. Nonetheless, the court exercised its discretion to forgive a determination that came on November 9. As it explained, such a delay was only forgivable because it involved one piece of property, as opposed to the 15,000 determinations the board has yet to make here:

> The only person suffering any inconvenience by the slight delay of the Commission was the county clerk who was required thereby to do a small amount of additional work. The clerk knew that the petition to review the valuation of the property in question had been heard by the Commission and was being considered by it. When a decision had not been made by October 31, the clerk should have delivered the tax books to the collector showing thereon the taxes due on all of the property listed therein except the property in question. When the order fixing the valuation of that property was thereafter made by the Commission on November 9, 1956, it became the duty of the county clerk to forthwith prepare a supplemental tax book extending the taxes upon the instant property in accordance with the valuation placed thereon by the Commission and deliver the same to the collector. Section 137.300. *State ex rel. Thompson v. Jones*, 328 Mo. 267, 41 S.W.2d 393; *State ex rel. Thompson v. Collier*, 328 Mo. 246, 41 S.W.2d 400. Ample time remained for defendant to thereafter pay the taxes so extended before they would have become delinquent on January 1, 1957.

Taney County, 309 S.W.2d at 615.

Here, Realtors' actions as alleged in the First Amended Petition go far beyond a mere inconvenience. 15,000 appeals have yet to be heard meaning the value of 15,000 properties (and therefore the tax revenue that can properly be generated from such properties for the 2023 year) remain in dispute before the board. Respondent was not required to (even if Realtors had asked him) apply the holding in *Taney Cnty* to the drastically different facts of this case. The solution to the problem Realtors created is not to forgive them for their multitude of statutory violations and require Plaintiffs and the

putative class members to pay unlawful taxes. Doing so would have far worse consequences in the long run than tackling this current problem head-on in court, as property owners have had the right to do for over a century.

F. Realtors continue to mischaracterize this case as a discrimination case; it is not, and the discrimination cases Realtors rely on are therefore inapplicable.

Realtors mischaracterize Plaintiffs' claims in their Petition for Writ to this Court. Realtors describe Plaintiffs' lawsuit as "at its core a claim that the Assessor engaged in discriminatory assessment practices." (Realtors' Brief, p. 7). This is not a discrimination case. In fact, the word "discrimination" does not appear even once in Plaintiffs' 238-pagaragaph First Amended Petition (see generally, Exhibit A). That is not due to creative pleading, it is due to the fact that this case is about notice, not discrimination.

In support of their request for a writ, Realtors cite decisions from the Western District Court of Appeals involving "substantive issues of discriminatory assessment" (Realtors' Brief, p. 18, citing *Bravo v. Jackson Cnty. Bd. of Equalization*, 638 S.W.3d 913, 923 (Mo.App. W.D. 2021) and claim "that the Assessor engaged in discriminatory assessment practices" (*Id*., p. 7, citing *Westside Neighborhood Ass'n v. Beatty*, 643 S.W.3d 539, 543 (Mo.App. W.D. 2021). Realtors characterize these holdings as "a lawsuit like the one at issue" and "a similar case" to the case at bar (Realtors' Suggestions in Support of Writ, p. 2). This case is not analogous to those Realtors cite as it is simply not a case that involves discrimination at all.

Realtors characterize this Court's holding in *Sperry Corp. v. Wiles*, 695 S.W.2d 471 (Mo. 1985) as an "action seeking relief against allegedly excessive assessments." (Realtors'

Brief, p. 17). *Sperry* was actually an action regarding an alleged discriminatory assessment, where no issue of lack of statutory notice was raised and the request was to recover taxes paid under protest—not an award of actual damages.

Realtors rely on *Armstrong-Trotwood, LLC v. State Tax Comm'n*, 516 S.W.3d 830 (Mo. 2017) for an explanation of the review by the State Tax Commission of any assessment actions. Again, that case was involving a discriminatory and non-uniform assessment and again there was no allegation that the taxpayer did not receive the statutory notice of an increase in value.

Realtors cite *McCarthy v. Peterson*, 121 S.W.3d 240 (Mo.App. E.D. 2003) and characterize it as a claim directly to a circuit court alleging a tax bill was void because the Assessor did not conduct a physical inspection of the property before increasing the property value by more than 17% (Realtors' Brief, p. 17). In reality, the plaintiff in *McCarthy* had filed an appeal with the Board of Equalization, and subsequently, unhappy with the Board's finding, skipped her appeal to the State Tax Commission and instead filed a petition in circuit court. *Id*. at 242-43. The court's analysis was focused on the procedure to appeal findings by the Board of Equalization, which is not at issue in the present case. *Id*. at 243-244. Specifically, the defendant's motion to dismiss was "for lack of subject matter jurisdiction, arguing owners were seeking review of an agency order over which the circuit court does not have jurisdiction." *Id*. at 243.

Under the rationale in *Ingels*, 804 S.W.2d at 809–10, the *McCarthy* plaintiff had elected her remedy between the "two avenues of relief" available to her by pursuing an appeal with the Board of Equalization. The *McCarthy* court simply held that she could not

thereafter attempt the equitable relief avenue, because an appeal of the BOE's decision goes to the State Tax Commission, not the circuit court. *McCarthy*, 121 S.W.3d at 243–244.

McCarthy does not help Realtors here because that case did not involve any issue concerning notice; the plaintiff received timely notice of the increase in her assessed value. Here, the June 15 Plaintiffs did not receive notice on or before June 15 as required by R.S.Mo. §§ 137.180 and 137.355; and the 15% Plaintiffs did not receive thirty days' notice to "request that an interior inspection be performed during the physical inspection" as required by R.S.Mo. § 137.115.11.

Realtors also cite *Bravo v. Jackson Cnty. Bd. of Equalization*, 638 S.W.3d 913, 918 (Mo.App. W.D. 2021), which involved the uniformity clause of Article X, Section 3 of the Missouri Constitution requiring uniformity of taxes upon the same class or properties which alleged racial discrimination during the assessment. The court found it significant that R.S. Mo. § 138.430 specifically lists claims of discriminatory assessment as claims that *shall* be appealed to the State Tax Commission. *Id*. at 922.

Realtors also heavily on *Westside Neighborhood Ass'n v. Beatty*, 643 S.W.3d 539 (Mo.App. W.D. 2021), which involved many of the same named Defendants here. Again, discrimination was the issue and again, no monetary damages were sought by the Plaintiffs. There, the plaintiffs alleged the defendants' assessment actions violated the federal Fair Housing Act and that the assessment policies had an adverse disparate impact on minority property owners. *Id*. at 540.

Relators ask the Court to place great weight on the following quote from the Western District's decision in *Westside Neighborhood*:

> [r]egardless what form of relief the Associations seek, they are requesting a determination on the lawfulness of an assessment policy applied by the Assessor. **Such a determination necessarily involves reviewing the policy and making findings as to whether the Assessor improperly assessed properties, issues which should be resolved by a board of equalization or the commission with specialized assessment knowledge.**

Realtors' Suggestions in Support of Writ, p. 2, citing *Westside Neighborhood Ass'n v. Beatty*, 643 S.W.3d 539, 544 (Mo.App. W.D. 2021) (emphasis supplied by Realtors).

But the present case does not ask Respondent to review any assessment policy or to make findings on whether the Assessor improperly assessed properties. Instead, this case is about statutory notice, not assessment. The above block quote ends with a footnote, omitted by Relators, wherein the Western District helps explain the difference between this case and one that improperly asks courts to rule on the reasonableness of the assessment methodologies:

> The Associations assert in their reply brief that an "examination of the amount of the underlying assessments is not needed," and that they "need show only that the objected-to policy, assuming it is neutral on its face, had a 'significant adverse impact on members of a protected minority group.'" (Reply Br. 10 (citing *Gallagher v. Magner*, 619 F.3d 823, 833 (8th Cir. 2010))). In *Gallagher*, the U.S. Court of Appeals for the Eighth Circuit set forth a three-step, burden-shifting analysis for disparate-impact FHA claims. *See* 619 F.3d at 833. In step one, the plaintiff "must show a facially neutral policy had a significant adverse impact on members of a protected minority group." *Id.* (internal marks omitted). If the plaintiff makes that showing, "the burden shifts to the [defendant] to demonstrate that its policy or practice had 'manifest relationship' to a legitimate, non discriminatory policy objective and was necessary to the attainment of that objective." *Id.* at 834. Finally, if the defendant shows its actions were justified, the burden shifts back to the

> plaintiff "to show 'a viable alternative means' was available to achieve the legitimate policy objective without discriminatory effects." *Id.*
>
> In arguing that they need only show the 2019 policy had a significant adverse impact on minorities, the Associations fail to acknowledge the remaining steps of the *Gallagher* analysis, steps which would necessarily involve determinations regarding the reasonableness of the Assessor's methods of assessment and whether there existed viable alternative assessment methods she could have employed.

Westside Neighborhood Association, 643 S.W.3d at 545.

In other words, and as argued by Plaintiffs' counsel when Respondent heard oral argument on Realtors' Motion to Dismiss, discrimination cases involve more than just pure legal questions concerning the outcome of the assessment process. While that is the first step, the burden then shifts to defendants to argue the reasonableness of the assessment methods. Assessment methods are the domain of the Board of Equalization and the State Tax Commission, and courts are not to interfere in that domain. But here, there is no second step that asks Respondent to weigh different methods of assessment. The only questions Plaintiffs are asking Respondent to decide in their claims for declaratory and injunctive relief are purely legal questions concerning notice, not assessment.

In fact, while R.S.Mo. § 138.430 specifically reserves the power to determine questions of discrimination to the State Tax Commission, notably absent from this section is the power of the State Tax Commission to hear questions concerning notice. This is not by coincidence. Questions of notice are, and have always been, questions for the courts. "Such boards are statutory tribunals and derive their jurisdiction, powers and duties from the statutes." *John Calvin Manor, Inc.*, 517 S.W.2d at 64 (citing *State ex rel. Lane v. Corneli*, 351 Mo. 1, 7, 171 S.W.2d 687, 690 (1943) ("Where notice is jurisdictional, as it

is here, it must affirmatively appear of record, unless waived, or the proceedings are void.") (citing *Eaton v. St. Charles Cnty.*, 76 Mo. 492 (1882); *Ramsey v. Huck*, 267 Mo. 333, 184 S.W. 966 (1916); *State, on Inf. of Killam, v. Colbert*, 273 Mo. 198, 201 S.W. 52 (1918); *St. Louis Cnty., to Use of Mississippi Valley Tr. Co. v. Menke*, 95 S.W.2d 818 (Mo. App. 1936); *Ex parte McLaughlin*, 105 S.W.2d 1020 (Mo. App. 1937); *State ex rel. Kerr v. Landwehr*, 32 S.W.2d 83 (Mo. 1930)).

Westside Neighborhood is clearly distinguishable from the present case. None of the cases Realtors cite deal with a lack of notice. And this case is not alleging discrimination. Instead, the questions of notice presented to Respondent include: Did the June 15 class receive notice on or before June 15? If not, what are the consequences of such failure by Realtors? Likewise, the 15% class involves questions of notice. Did these class members receive at least 30 days' notice prior to the physical inspections? If not, what are the consequences of such failure by Realtors? Unlike issues of discrimination, questions of notice are not identified in section 138.430 as those which are reserved for the State Tax Commission. As such, by the statute's plain language, and consistent with the holding in *Westside Neighborhood Ass'n,* the questions raised in this case properly belong in front of the Respondent Circuit Court, not the State Tax Commission.

Because purely legal questions are presented in this case, Plaintiffs were not required to exhaust their administrative remedies prior to pursuing relief in circuit court, Respondent did not err in denying Realtors' Motion to Dismiss, and Relators cannot show they are entitled to the extraordinary remedy they now seek.

G. Plaintiffs do not need to exhaust administrative remedies because doing so would be futile; the BOE does not possess the authority to hold tens of thousands of hearings after August 26, 2023.

Exhausting administrative remedies is not necessary when doing so would be futile because either the agency cannot provide the relief, or it does not have the authority to provide such relief. "The futility exception requires consideration of the authority and ability of the administrative body to provide an adequate remedy." *Tri-Cnty. Counseling Services, Inc. v. Office of Admin.*, 595 S.W.3d 555, 569 (Mo.App. W.D. 2020) (citing *Bartlett v. U.S. Dept. of Agric.*, 716 F.3d 464, 472–73 (8th Cir. 2013) ("An administrative remedy will be deemed futile if there is doubt about whether the agency could grant effective relief."); *Duncan v. Missouri Bd. for Architects, Prof'l Engineers & Land Surveyors*, 744 S.W.2d 524, 531 (Mo.App. E.D. 1988) (reasoning that because "[a]dministrative agencies lack the jurisdiction to determine the constitutionality of statutory enactments[,] ... [r]aising the constitutionality of a statute before such a body is to present to it an issue it has no authority to decide" and concluding that "[t]he law does not require the doing of [that] useless and futile act" in that context.).

Here, Plaintiffs do not need to exhaust administrative remedies before pursuing their claims in court because it would be futile to do so; the BOE has no statutory authority to operate past August 26, 2023, which was the fourth Saturday in August. R.S.Mo. § 138.050.1 provides in relevant part: "***In any county with a charter form of government or any city not within a county, the board shall complete all business by the fourth Saturday in August***." This lack of statutory authority is confirmed not only by the plain language of this section but also by the overall statutory scheme, as explained more fully below. Hence,

if the BOE has *any* statutory authority at all to be conducting these appeals after August 26, 2023, it must come from a different section. And while section 138.100 does provide that Boards of Equalizations in first class counties "may meet thereafter at least once a month for the purpose of hearing allegations of erroneous assessments," this statute is specifically limited to only first class counties, which Jackson County is not.

Jackson County has a charter form of government, and therefore cannot also be a first-class county. Article VI, Section 18(a) of the Missouri Constitution provides: "Counties which adopt or which have adopted a charter or constitutional form of government *shall be a separate class of counties outside of the classification* system established under section 8 of this article." (emphasis added). Hence, any county that has adopted a charter form of government is not a first (or any) class county. And statutes that apply to first class counties do not apply to charter counties. The State Tax Commission agrees. Just this year, it ruled that assessment statutes that apply to first class counties do not also apply to charter counties:

> The Missouri General Assembly has provided in Section 137.325 that Sections 137.325 to 137.420 (including 137.355) are applicable only to first class counties. St. Louis County is not a first class county - it is a charter county. Charter counties are not classified as first class counties, even though they may otherwise meet the criteria for first class counties. Charter counties comprise their own, separate class of counties.

David Duane Dixon, Complainant(s) v. Jake Zimmerman, Assessor, St Louis, County, Missouri, Respondent, 2023 WL 4349919, at *3 (citing *Leiser v. City of Wildwood*, 59 S.W.3d 597, 603 (Mo.App. E.D. 2001) (holding because St. Louis County has a charter form of government, it is not a first class county).

Likewise, the Missouri General Assembly has provided that section 138.100 is applicable only to first class counties. This section is titled "Rules — hearings (first classification counties)." This title is part of the statute and cannot be ignored. "[T]he title of a statute is necessarily a part thereof and is to be considered in construction." *Bullington v. State*, 459 S.W.2d 334, 341 (Mo. 1970). Hence, this section applies only to first class counties, not Jackson County and it does not provide the BOE the authority to conduct appeals after August 26, 2023.

This is not an oversight by the Missouri General Assembly. It is consistent with the statutory scheme surrounding assessments and appeals. For example, section 137.385 also applies only to first class counties and allows Boards of Equalization from those counties to extend the time for filing an appeal. "Such appeal shall be lodged with the county clerk as secretary of the board of equalization before the second Monday in July; provided, that the board may in its discretion extend the time for filing such appeals." Only first-class counties are permitted to extend the time to file an appeal because only first-class counties are permitted to meet after August "for the purposes of hearing allegations of erroneous assessments." Section 138.100. Because Boards of Equalization from charter counties cannot meet to hear appeals after the fourth Saturday in August, there is no need, and the statutes do not grant the authority, for them to extend the time for filing such appeals.

And, finally, R.S.Mo. § 139.031 also demonstrates the statutory scheme that Boards of Equalizations generally do not hold the power to conduct appeals past August 24, 2023. This section allows taxpayers disputing the increase in the assessment of their property to pay under protest so that the collector "shall impound in a separate fund all portions of such

taxes which are protested or in dispute." § 139.031.2. If and when the dispute over the assessed value is resolved in the taxpayer's favor, he can receive a refund out of this separate fund. But there is a catch—these taxpayers have ninety days to file "a petition for the recovery of the amount protested in the circuit court of the county in which the collector maintains his office." *Id.* If they fail to do so, their payments under protest, along with any claim to a refund, becomes "null and void." *Id.* And while there is an exception for property owners who have "filed with the state tax commission or the circuit court a timely and proper appeal of the assessment of the taxpayer's property," § 139.031.3, there is no such exception for property owners who are still waiting for their (late, not authorized by any statute) BOE hearing.[13] They must file an action in court or lose their right to a refund. This section does not contemplate that Board of Equalization hearings will yet to be conducted after tax bills come due because only first-class Boards of Equalizations have the right to conduct hearings after August.

Here, the Board of Equalization purported to grant an extension of time for filing an appeal when it did not have the statutory authority to do so, and it continues to hold hearings when it does not have the statutory authority to do so. And because, as discussed below, the State Tax Commission's jurisdiction is dependent upon there first being a hearing by the local Board of Equalization, by acting in contravention to its statutory authority, the Board of Equalization has denied property owners the chance to pursue their administrative

[13] That no such provision exists for those still waiting for their BOE hearing is more confirmation that there exists no statutory authority for what Realtors are attempting to do. The statutes do not contemplate, and do not authorize, charter county boards of equalization to conduct hearings past August, let alone into the next year.

remedies. The statutes simply never anticipated, and do not authorize, the current situation that the Realtors created. Plaintiffs here are not required to pursue a futile administrative remedy before having their day in court.

H. Missouri Regulation 12 CSR 30-3.010(1)(B)1(a) does not overrule the prior holdings from the Missouri Supreme Court and Western District Court of Appeals.

12 CSR 30-3.010(1)(b)1(a) does not change the above analysis, nor can it overrule the above decisions. Realtors argued otherwise to Respondent, insisting that because this rule provides that property owners who receive late notice can skip the BOE appeal and take their case directly to the State Tax Commission, the Respondent can depart from the prior holdings of the Western District and Supreme Court. But even after this rule became effective in 1984, as discussed above this Court continued to cite to *John Calvin Manor* with approval to hold that property owners who receive late notice do not need to exhaust any administrative remedy and can file directly in court. Administrative agencies such as the State Tax Commission cannot pass rules that conflict with state law or go beyond the agency's statutory authority. This rule does both. It is therefore invalid, and Respondent could not rely on it to overlook the above caselaw and dismiss this case, nor can it serve as the basis for the extraordinary relief Relator requests from this Court.

In *Lake St. Louis Cnty. Ass'n v. State Tax Comm'n*, 759 S.W.2d 843 (Mo. 1988), this Court cited to *John Calvin* with approval and summarized the case as follows: "Suit for injunction to prevent collection of taxes in excess of amount due on valuation submitted by taxpayer, because assessor failed to give notice of increased valuation." *Id.* at 846, f.n. 2. The plaintiff in *Lake St. Louis*, like the plaintiff in *John Calvin Manor* and the Plaintiffs

here did not receive timely notice of an increase in the assessed value of its property. *Id.* at 844. The Court held that this meant it "may have had several options," including filing directly in court. *Id.* at 845 (citing *John Calvin Manor, Inc.*, 517 S.W.2d at 62). Because the disputed assessment at issue occurred in 1986, 12 CSR 30-3.010(1)(b)1(a) was in effect (it was enacted in 1983 and went into effect in 1984), and this holding is dispositive of Realtors' argument. The State Tax Commission did not nullify the holding in *John Calvin Manor* when it passed this rule.

Nor could it have, as agency rules are invalid to the extent to which they conflict with state law or go beyond the agency's statutory authority. R.S.Mo. § 536.014 is entitled "Rules invalid, when" and provides that:

> No department, agency, commission or board rule shall be valid in the event that:
>
> (1) There is an absence of statutory authority for the rule or any portion thereof; or
>
> (2) The rule is in conflict with state law; or
>
> (3) The rule is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected.

Both the Court of Appeals for the Western District and this Court confirm this statute prevents departments, agencies, commissions, and boards from passing rules or regulations which expand their own authority beyond that which is provided by statute. "The key principle is that administrative agencies—legislative creations—possess only those powers expressly conferred or necessarily implied by statute." *Bodenhausen v. Missouri Bd. of Registration for Healing Arts*, 900 S.W.2d 621, 622 (Mo. 1995). *See also Farmer v. Barlow*

Truck Lines, Inc., 979 S.W.2d 169, 170 (Mo. 1998) ("A cardinal principle of all administrative law cases is that an administrative tribunal is a creature of statute and exercises only that authority invested by legislative enactment.") and *PharmFlex, Inc. v. Div. of Employment Sec.*, 964 S.W.2d 825, 829 (Mo.App. W.D. 1997) ("The rules or regulations of a state agency are invalid if they are beyond the scope of authority conferred upon the agency, or if they attempt to expand or modify statutes. Further, regulations may not conflict with the statutes and if a regulation does, it must fail.").

In *Bodenhausen*, the Court held that the Board of Healing Arts' disciplinary action against a physician was invalid because the Board of Healing Arts exceeded its statutory authority when it disciplined the physician without first filing a complaint with the Administrative Hearing Commission. The Court explained that the relevant statutes required the Board of Healing Arts to first file a complaint with the Administrative Hearing Commission. *Id.* at 622 (citing § 334.100). Only after it files its complaint and the Administrative Hearing Commission finds cause for discipline, can the Board of Healing Arts discipline a physician. *Id*. (citing §§ 621.045 and 621.110). Because the Board of Healing Arts failed to file a complaint and instead entered into a discipline agreement directly with the physician, it lacked the authority to do so, and the discipline was invalid. "Because the Commission never made findings of fact and conclusions of law, as mandated by §§ 621.045.1 & 621.110 and § 334.100.3 RSMo Supp.1989, the Board could not impose additional discipline on Dr. Bodenhausen in 1992." *Id.* Administrative agencies cannot grant themselves permission to skip statutory prerequisites via administrative rules.

This means the State Tax Commission cannot circumvent the holdings of Missouri courts, including this Court, by passing a rule granting itself permission to skip the statutory prerequisite of hearings in front of local Boards of Equalization. Boards of Equalization and the State Tax Commission "have only such powers and jurisdiction as is specified in the applicable statutes." *Armstrong-Trotwood, LLC v. State Tax Comm'n*, 516 S.W.3d 830, 837 (Mo. 2017) (citing *Foster Bros. Mfg. Co. v. State Tax Comm'n of Mo.*, 319 S.W.2d 590, 594 (Mo. 1958). And by statute, the State Tax Commission does not have jurisdiction to change the value of an assessment except on appeal from a local Board of Equalization. Section 138.430, from which the State Tax Commission purports to get its authority to issue Rule 12 CSR 30-3.010(1)(B)1(a), provides in relevant part:

> Every owner of real property or tangible personal property ***shall have the right to appeal from the local boards of equalization to the state tax commission*** under rules prescribed by the state tax commission, within the time prescribed in this chapter or thirty days following the final action of the local board of equalization, whichever date later occurs, concerning all questions and disputes involving the assessment against such property, the correct valuation to be placed on such property, the method or formula used in determining the valuation of such property, or the assignment of a discriminatory assessment to such property.

(emphasis added).

This Court recognizes this limitation on the State Tax Commission's jurisdiction in assessment matters: "It should be noted that ***the Commission is not granted the power to raise or lower the valuation of a specific unit of property within a class, except upon appeal from the Board, in which case its jurisdiction is derivative***." *Foster Bros. Mfg. Co.*, 319 S.W.2d at 595 (emphasis added).

The language of Rule 12 CSR 30-3.010(1)(B)1(a) providing that "the owner may appeal directly to the State Tax Commission … where the assessor fails to notify the current owner of the property of an initial assessment or an increase in assessment from the previous year, prior to thirty (30) days before the deadline for filing an appeal to the board of equalization," exceeds the State Tax Commission's statutory authority and is therefore invalid. Just as the Board of Healing Arts cannot skip the statutory prerequisite of a hearing before the Administrative Hearing Commission, neither can the State Tax Commission skip the statutory prerequisite of hearing before the local Board of Equalization.

In sum, Realtors' entire argument that Plaintiffs have failed to exhaust administrative remedies depends upon 12 CSR 30-3.010(1)(B)1(a) being a valid rule that overruled Missouri Supreme Court and Western District Court of Appeals precedent. It is not and it did not. Administrative agencies such as the State Tax Commission and local Boards of Equalization cannot escape the holdings from this Court that they disagree with via passing an administrative rule that grants themselves more authority than the Missouri General Assembly has. The binding decisions of the Western District and this Court that hold property owners who receive late notice are entitled to direct injunctive relief from the courts stand even in the face of the 1984 administrative rule that Relators' argument exclusively relies on. Realtors' Motion to Dismiss relying on an agency rule to the contrary was properly denied based on the existing caselaw, and they cannot demonstrate that Respondent deprived them of a clearly established right by failing to grant it.

III. Additional response to Point Relied On II: Neither the board nor the State Tax Commission have the authority to grant Plaintiffs relief because there is no administrative remedy for Plaintiffs' damages claims.

Plaintiffs' claims for Negligence against Realtors (Counts III and V) seek actual damages (See Exhibit A, p. 035 and 037, the Wherefore clauses following ¶¶ 199 and 210). Specifically, Plaintiffs allege that they "suffered, and will suffer in the future, economic harm in that they have and will be forced to spend time and money combating Defendants' unauthorized property assessments, including but not limited to the tax consequences of these unauthorized assessments." (Exhibit A, p. 035 and 037, ¶¶ 199 and 210).

Realtors never argued to Respondent in their Motion to Dismiss that either the Board of Equalization or the State Tax Commission can award the damages Plaintiffs' Negligence Claims seek. "The doctrine of exhaustion of administrative remedies requires that **where a remedy before an administrative agency is provided**, relief must be sought by exhausting this remedy before the courts will act." *Sperry Corp. v. Wiles*, 695 S.W.2d 471, 472 (Mo. 1985) (cited by Realtors) (emphasis added).

As Realtors explained to the Circuit Court in their Motion to Dismiss, the Board of Equalization is authorized only to "correct and adjust the assessment." (Exhibit B, Realtors' Motion, p. 052, citing R.S.Mo. § 138.060; see also Realtors' Suggestions in Support of Writ, p. 7). Similarly, the State Tax Commission only has the authority to "correct any assessment or valuation which is shown to be unlawful, unfair, improper, arbitrary, or capricious." *Id.* (citing R.S.Mo. § 138.430.1).

In other words, there is no administrative remedy for the monetary damages Plaintiffs seek from Realtors in their negligence claims. Plaintiffs cannot be required to

exhaust an administrative remedy where none exists. Because neither the Board of Equalization nor the State Tax Commission is authorized to award Plaintiffs compensatory damages, Plaintiffs' claims seeking such damages are not subject to the doctrine of exhaustion of administrative remedies.

Tellingly, Realtors continue to ignore Plaintiffs' claims for actual damages. Realtors did not mention such damage claims in their Motion to Dismiss (See generally Exhibit B, Realtors' Motion). Then, even after Plaintiffs raised this argument to the Circuit Court in their Opposition (Exhibit C, Plaintiffs' Opposition, p. 092-093) Realtors again did not mention Plaintiffs' request for damages in their Reply brief (See generally Exhibit D, Realtors' Reply). For their Suggestions in Support of their Writ, Realtors informed this Court that Plaintiffs' claims seek both injunctive relief and damages but failed yet again to explain how Plaintiffs' claims for damages are subject to the doctrine of exhaustion of administrative remedies, or how any administrative remedy is available for the money damages Plaintiffs seek.

The undersigned counsel for Respondent in the brief filed November 1, 2023 with this Court again pointed out Realtors' failure to explain how there is an administrative remedy at all for these damages claims. Three weeks later, in their Brief filed November 22, 2023, Realtors again do not mention or otherwise dispute that there is no administrative remedy for Plaintiffs' claims for money damages, a tacit admission that no such remedy exists.

Realtors argue that while "Plaintiffs' class action lawsuit is requesting the circuit court to exercise its judgment . . . and calculate damages relating to the 2023 reassessment,

even though Missouri law explicitly provides that the State Tax Commission is the administrative agency vested with the powers to oversee the assessment process." (Realtors Brief, p. 24-25). But no caselaw states—explicitly or otherwise—that the State Tax Commission can award or calculate monetary damages. This includes such damages as time off work and paying out of pocket for an assessment which were directly caused or directly contributed to be caused by Relators' breach of mandatory duties.

Because there is no administrative remedy for Plaintiffs' damages claims, Respondent properly denied Realtors' Motion to Dismiss.

IV. Additional response to Realtors' Point III: Plaintiffs and other putative class members have standing to challenge their own assessed property values.

While Realtors initially raised their "lack of standing" argument in their initial Motion to Dismiss (Exhibit B, Realtors' Motion, p. 050-051), after Plaintiffs opposed it (Exhibit C, Plaintiffs' Opposition, p. 075-079), Realtors neither discussed the argument again in their Reply brief (see generally Exhibit D) nor raised the argument to the Respondent Court during oral argument. Accordingly, Plaintiffs had believed that Realtors had abandoned their lack of standing argument.

To the extent the lack of standing argument was preserved, however, the very case law Realtors rely upon confirm Respondent correctly denied Realtors' Motion to Dismiss on the ground of lack of standing. Realtors' argument that Plaintiffs' class allegations must be dismissed because they lack standing to challenge the tax assessments of other property owners reflects a fundamental misunderstanding of the present litigation. This is a class action.

Plaintiffs are not seeking to litigate assessment issues concerning the real property of strangers to this case; they seek to litigate issues of statutory notice on behalf of each property owner who falls within the Class definitions. Missouri Supreme Court Rule 52.08 specifically provides them the ability to do so: "One or more members of a class may sue or be sued as representative parties on behalf of all." A class action is to be used where it is not feasible for all persons whose interest may be affected by an action to be made a party to it. *Sheets v. Thomann*, 336 S.W.2d 701 (Mo. App. 1960). "The fundamental question is whether the group aspiring to class status is seeking to remedy a common legal grievance." *Smith v. Missouri Highways & Transp. Comm'n*, 372 S.W.3d 90, 94 (Mo.App. S.D. 2012), citing *Dale v. DaimlerChrysler Corp*, 204 S.W.3d 151, 175 (Mo.App. W.D. 2006). "[W]hat really matters in class certification is not the raising of common questions, but the ability of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Id.*, citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 131 S. Ct. 2541, 2551, 180 L. Ed. 2d 374 (2011). Here, Plaintiffs are not asking to challenge the assessments of **other** property owners—they seek class certification in order to bring claims on behalf of themselves as well as all similarly situated individuals. If permitted and if ultimately successful, each class member will obtain relief addressing their own individual harm, not the harm of others.

In support of their lack of standing argument, Realtors rely on two cases. In the first, *State ex rel. Kansas City Power & Light Co. v. McBeth*, 322 S.W.3d 525 (Mo. 2010), the plaintiffs were a school district and two individual taxpayers who challenged the tax assessment of two power plants owned by KCPL. *Id*. at 527. Unlike this case, they were

not attempting to bring a class action that included KCPL as a putative class member, rather they were simply trying to directly challenge the tax assessment of KCPL's real property. This Supreme Court held that the plaintiffs lacked standing to do so, but they did have standing to pursue a declaratory judgment regarding the assessor's duties under the relevant statutes. *Id.* at 533.

Here, as opposed to the plaintiffs in *McBeth*, Plaintiffs are not challenging the assessments of properties owned by other individuals or entities, but rather bring actions based on their own real properties, and the real properties of the putative class members. The proposed Classes include all property owners who did not receive the statutorily required notice by June 15 and all property owners whose assessments increased by more than 15% but whose properties were not physically inspected and who did not receive the proper notice so that they could request an interior inspection be performed. The Class Members will recover for their own individual damages—not the damages of other property owners.

The second case Realtors rely upon for their lack of standing argument is *Crowell v. Cox*, 561 S.W.3d 882 (Mo.App. W.D. 2018). There, the court found that the plaintiffs lacked standing to challenge the legality of an assessment of their property that occurred before they were the property owners. *Id*. at 890. This case is clearly distinguishable from the case at bar, where the named Plaintiffs are challenging the legality of the assessments of their own property, the Class Action is challenging the legality of the assessments of each Class Members' property.

The holding in *McBeth* confirms that Plaintiffs have standing to bring Counts VII and VIII, which seek declaratory judgment. There, the court specifically distinguished an action for declaratory judgment from the general rule that a third party is not permitted to challenge another's property tax assessment. 322 S.W.3d at 530. The court held "To the extent that the plaintiffs merely seek a declaration of their rights and the assessor's duties under the utility taxation statutes, they do have standing." *Id.* The court reasoned individual taxpayers have an interest in the methodology used by the assessor, and whether the assessor complied with the relevant statutes, as it would directly impact their taxes. *McBeth*, 322 S.W.3d at 530-31 ("The plaintiffs have a sufficient interest to seek a declaratory judgment as to the assessor's duties under the utility taxation statutes.").

Like the plaintiffs in *McBeth*, the Plaintiffs here have brought claims seeking a declaratory judgment. This Court's holding in *McBeth* that plaintiffs have standing to seek a declaratory judgment regarding the assessor's duties under the relevant statutes is therefore directly applicable and protected Counts VII and VIII (both seeking declaratory judgment) from dismissal.

The *McBeth* holding does not apply because the Plaintiffs and proposed Class Members are seeking to recover for their own properties, not the properties of third parties who are strangers to this litigation. As such, Plaintiffs have standing to bring their claims, and the Respondent correctly denied Realtors' Motion to Dismiss arguing to the contrary.

V. The Hancock Amendment to the Missouri Constitution expressly permits Plaintiffs to file a lawsuit for judicial relief by providing that "any taxpayer…shall have standing" to bring such claims.

Plaintiffs' constitutional claims are brought under the Hancock Amendment to the Missouri Constitution. This Amendment includes Article X, section 23, which is entitled "Taxpayers may bring actions for interpretations of limitations" and provides:

> Notwithstanding other provisions of this constitution or other law, **any taxpayer** of the state, county, or other political subdivision **shall have standing to bring suit in a circuit court** of proper venue and additionally, when the state is involved, in the Missouri supreme court, **to enforce the provisions of sections 16 through 22,** inclusive, of this article and, if the suit is sustained, shall receive from the applicable unit of government his costs, including reasonable attorneys' fees incurred in maintaining such suit.

(emphasis added). This language from the Missouri Constitution disposes of Realtors' argument with respect to Plaintiffs' lack of standing, as well as their argument that Plaintiffs needed to exhaust administrative remedies. To the contrary, the Missouri Constitution expressly gives them standing.

And under the authority of this express constitutional standing, Plaintiffs have brought claims to enforce Article X, section 22, which states in part: "Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, ***not authorized by law***. . ." (emphasis added). As set forth in the Amended Petition (Exhibit A), by illegally hiking up the assessed value of their citizens' real properties, the Realtors are subjecting members of both classes to unauthorized tax increases. Accordingly, under both *McBeth*, 322 S.W.3d at 530-31 and Article X section 23 of the Missouri Constitution, Plaintiffs have standing to seek a declaration as to what Realtors' statutory duties are, as well as standing to bring suit in circuit court to challenge whether or not the Realtors'

failure to comply with the relevant statutes renders the resulting tax "not authorized by law" and therefore prohibited by the Hancock Amendment.

In their Motion to Dismiss, the Realtors did not mention the Hancock Amendment even once (See generally Exhibit B, Realtors' Motion). And, when Plaintiffs pointed this fact out in their Opposition and cited the language from the amendment expressly providing Plaintiffs standing (Exhibit C, p. 077-079), Realtors were silent in response in their Reply (see generally Exhibit D).

These Plaintiffs have standing to bring their constitutional claims. Article X section 23 expressly permits them to file this suit in circuit court to enforce the provisions of the Hancock Amendment. Realtors' Motion to Dismiss, which ignored the Hancock Amendment entirely, was properly denied.

VI. Response to Brief of Amici Curiae, there are procedures available to ensure that Plaintiffs are not required to pay unlawful taxes while still protecting the interests of the Amici Curiae.

Plaintiffs do not seek to punish Amici Curiae for Realtors' actions. Amici Curiae make it clear that they "have no say" in Realtors' decisions, acts, and omissions leading to this lawsuit, and Plaintiffs are not disputing that here. Plaintiffs' issue is with Realtors, not the school district of Jackson County. But Plaintiffs do take issue with the suggestion that the die is cast and, even if the increased taxes Plaintiffs and putative class members are subject to are unlawful and illegal, Plaintiffs have no option but to hold their nose and pay them, for the sake of the school districts. Governments in Missouri must follow the law when they tax their citizens; they cannot extract payment from their citizens under any means possible, even if that extracted money will go towards a good public use. The

solution to the mess Realtors created cannot be to look the other way while property owners pay tens of millions of dollars in unlawful taxes.[14]

Fortunately, the law provides a solution that protects the interests of Amici Curiae while at the same time protecting property owners from being forced to pay increased taxes based on unlawful increases in property valuation. "In 1985, the General Assembly amended Section 137.073, RSMo, to permit a political subdivision which revised its property tax levy as a result of general reassessment to recoup losses resulting from subsequent corrective reductions in property assessments." *Scholle v. Carrollton R-VII Sch. Dist.*, 771 S.W.2d 336, 336 (Mo. 1989). In *Scholle*, this Court held that statute was constitutional and upheld summary judgment in a school district's favor for doing exactly what Amici Curiae claim cannot be done—adjusting their tax rates to recoup losses caused by subsequent reductions to property values within their boundaries.

In *Scholle*, the school district set its tax levies based on the total assessed value of real property within its boundaries. *Id*. at 337. After it did so, that total value was adjusted downward by $3,878,795.00. *Id.* As a result, the school district lost $150,779.00 of expected revenue. *Id*. It had a shortfall. Likewise, here, Amici Curiae alert the Court to

[14] While Plaintiffs do not argue that the amount of tax at issue on a class-wide basis is negligible, Amici Curiae appear to overstate the true amount in controversy by oversimplifying Plaintiffs' claims. Plaintiffs are not seeking to revert the assessed valuation back to 2022 levels across the board as a whole. Rather, the taxes at issue are limited to the putative classes, which make up only a percentage of Jackson County property owners. And, as to the 15% Class, although Plaintiffs may have inartfully worded their Motion for TRO, the First Amended Petition makes clear that Plaintiffs do not seek to revert it back to the 2022 levels at all; they seek increases to be capped at 15%. Only Realtors know the specific amounts involved, as this Court issued its preliminary writ prior to the date Respondent ordered Realtors to respond to discovery.

concerns of their potential shortfalls should Plaintiffs and putative class members not be required to pay taxes computed on illegal and unlawful assessments.

This Court held that section 137.073 provides a constitutional way for the district in *Scholle* (and, likewise, the Amici Curiae here) to recoup this shortfall. As the Court explained, this section protects taxing jurisdictions from the catastrophic results the Amici Curiae warn of here. It does so by ensuring that reductions in tax revenue due to reliance on what turns out to be improper property valuations will not ultimately be lost:

> Art. X, § 24(b) provides that "the general assembly may enact laws implementing [the provisions of art. X, §§ 16–23] which are not inconsistent with the purposes of said sections." Section 137.073 serves the purposes of art. X, § 22(a). The taxpayers enjoy a direct benefit from the statute because it encourages taxing authorities to make the levy adjustments required by the constitution swiftly even though based on assessments which are subject to challenge and correction; the statute accomplishes this end by assuring those charged with governmental responsibility that revenues lost through a levy founded on incorrect assessments will not ultimately be lost. We hold, therefore, that Section 137.073.4 is consistent with the purposes of art. X, § 22(a) and bears no constitutional infirmity.

Scholle, 771 S.W.2d at 339.

Missouri law protects Amici Curiae from the concerns they raise to the Court, just as it protects Plaintiffs and putative class members from being forced to pay unlawful property taxes.

A simple hypothetical may be helpful to explain how Amici Curiae are protected by this statute. A school district exists within Jackson County that has only two properties within its boundaries. This district needs to (and legally can) raise $100,000 in revenue each year from property taxes. Both properties within the district are correctly assessed at $100,000 each. Therefore, each property owner will pay a 50% levy ($50,000) each year

to fund the school district. In 2023, though, the assessor unlawfully and illegally doubles the value of one of the properties to $200,000. While the property owner's challenge to this assessment is pending, the school district must set its levy based on the total property value as reported by the assessor, which is now $300,000. To raise $100,000, the levy is now set at 33%, which means one homeowner will receive a tax bill of approximately $66,000 and the other of approximately $33,000. The first property owner successfully challenges the assessment, and his tax obligation is reduced to $33,000, the result of the 33% levy being applied to the correct assessment of $100,000. This leaves the school district with approximately a $33,000 shortfall for the year. To recover this, the school district can set its 2024 levy to generate $133,000 ($100,000 for its yearly budget plus $33,000 to recoup the shortfall the year before caused by the improper property assessment) in tax revenue. This will be a 66% levy, which means each homeowner will pay $66,000 in 2024. Over the course of the two years, each homeowner pays a total of $100,000 each, which is their fair share. The school district is able to receive the funding it needs without the second property owner being forced to accept an unlawful tax increase. Likewise, here, Plaintiffs and putative class members do not need to accept an unlawful tax increase in order to sufficiently fund the Amici Curiae.

Another layer of protection comes from Respondent's broad discretion to fashion appropriate and fair relief, taking into account the interests of all. "The long-settled rule provides that circuit courts sitting in equity are 'vested with a broad discretionary power to shape and fashion relief to fit the particular facts, circumstances and equities of the case before it.' " *Robinson v. Langenbach*, 599 S.W.3d 167, 186 (Mo. 2020) (quoting *Priorities*

USA v. State, 591 S.W.3d 448, 452 (Mo. 2020)). "Any circuit court with jurisdiction over the parties and a controversy can render whatever relief is required, be it equitable or a request for damages." *State ex rel. Leonardi v. Sherry*, 137 S.W.3d 462, 472 (Mo. 2004). Amici Curiae admit that all putative class members still have a "second bite at the apple," even if they "did not timely appeal their assessed valuations." (Amici Curiae Brief, p. 5). They admit that if the tens of thousands of putative class members were to do so, their interests would be sufficiently protected by the procedures set forth int section 139.031.8. Given Respondent's broad powers to fashion appropriate equitable relief, there is nothing preventing him from rendering relief to Plaintiffs and putative class members consistent with this procedure, if warranted, thereby protecting the interests of Amici Curiae.

Amici Curiae are not to blame for the problems set forth in the First Amended Petition, and Plaintiffs do not want to take money from Jackson County school districts. They simply do not want to be subjected to unlawful tax increases. The law provides a way to accomplish this and hold the responsible parties accountable while protecting innocent taxing jurisdictions from collateral damage. Respectfully, Plaintiffs should be afforded the opportunity to seek such relief from Respondent; he has the discretion to do so.

CONCLUSION

As important as taxes are, they cannot be extracted by any means necessary. Realtors are attempting to subject tens of thousands of Jackson County property owners to enormous tax increases based on illegal and unauthorized property assessments. Realtors insist the courts have no say over them, the amount of taxes they seek to collect, or the manner in which they do so. They argue that this is so even if they have violated the statutes and

constitution of Missouri, even if this case presents only purely legal questions, and even if it would be inequitable under the circumstances to deny Plaintiffs the ability to seek relief directly in court. Respondent was not wrong to recognize the law allows, in certain situations, that courts can directly place a check on the taxing authorities of Missouri. A solution exists that holds Realtors accountable, protects Plaintiffs and the putative class members from paying unlawful taxes, and keeps the government and school districts properly funded. Respondent has the jurisdiction and authority to craft the appropriate relief, and he did not violate a clearly established right of Realtors when he refused to dismiss this case.

WHEREFORE, for the reasons stated above, Plaintiffs respectfully ask the Court to set aside its preliminary writ and allow this case to proceed before Respondent, and for such further relief as this Court deems just and proper.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Rule 84.06(c), that the foregoing Brief of Respondent: complies with Rule 55.03; complies with the length limitations set forth in Rule 84.06(b), in that it contains 18,992 words (as determined by Microsoft Word); was prepared using Microsoft Word in 13-point Times New Roman font; and was electronically served on all counsel of record via Case.net.I hereby certify that the foregoing Opposition was prepared using Microsoft Word in 13-point Times New Roman font.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 30, 2023, I electronically filed the foregoing with the Clerk of Court via CaseNet and emailed the same to the following:

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