No. 93079-1

SUPREME COURT
OF THE STATE OF WASHINGTON

COURT OF APPEALS NO. 47681-9-II

WASHINGTON TRUCKING ASSOCIATIONS, a Washington non-profit corporation; EAGLE SYSTEMS, INC., a Washington corporations; GORDON TRUCKING, INC., a Washington corporation; HANLEY TRUCK LINE, INC., a Washington corporation; JASPER TRUCKING, INC., a Washington corporation; PSFL LEASING, INC., a Washington corporation; and SYSTEM-TWT TRANSPORTATION d/b/a SYSTEM-TWT, a Washington limited liability company,

Respondents,

v.

THE STATE OF WASHINGTON, EMPLOYMENT SECURITY DEPARTMENT; PAUL TRAUSE, individually and in his official capacity as the former Commissioner of the Employment Security Department, and JANE DOE TRAUSE, husband and wife and the marital community composed thereof; BILL WARD, individually and in his official capacity, and JANE DOE WARD, husband and wife and the marital community composed thereof; LAEL BYINGTON, individually and in his official capacity, and JANE DOE BYINGTON, husband and wife and the marital community composed thereof; JOY STEWART, a single individual, individually and in her official capacity; MELISSA HARTUNG, a single individual, individually and in her official capacity; and ALICIA SWANGWAN, a single individual, individually and in her official capacity,

Petitioners.

BRIEF OF AMICUS CURIAE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS IN SUPPORT OF THE STATE OF WASHINGTON, *ET AL.*'s PETITION FOR REVIEW

ORIGINAL

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I. STATEMENT OF ISSUES

1) Assuming that they have standing, an issue your amicus does not address herein, are the plaintiffs permitted to seek punitive damages and attorneys' fees under 42 U.S.C. § 1983 in State court, where they would be prohibited from pursuing such claims in federal district court?

2) Did the court of appeals apply the wrong standard in deciding that, because the state remedies available to plaintiffs did not include attorney's fees and punitive damages under 42 U.S.C. § 1983, plaintiffs could proceed with claims for attorney's fees and punitive damages, notwithstanding the doctrine of comity, and notwithstanding precedent that the adequacy of state remedies for comity purposes is to be measured by procedural and not substantive criteria?

II. STATEMENT OF THE CASE

WSAMA adopts the statement of the case set forth in the State of Washington's Petition for Review by the Washington State Supreme Court, at pp. 2-5. The facts relied upon by your amicus are the facts set forth in the court of appeals decision in *Washington Trucking Associations v. State*, 192 Wn.App. 621, 369 P.3d 170 (Feb. 9, 2016), except as noted herein.

III. ARGUMENT

A. The Court of Appeals' Decision was Inconsistent with Supreme Court Precedent; the Adequacy of a State Remedy is Determined Based Upon "Minimum Procedural Criteria," Not on Substantive Criteria.

1. The court of appeals correctly concluded that *National Private Truck Council* and principles of federalism and comity prohibit state courts from hearing cases brought under 42 U.S.C. 1983 related to state taxation.

The court of appeals decision below was correctly concluded that *National Private Truck Council*, *infra*, applies to this case. The portions the opinion addressing the comity issue should be reviewed here, because the Supreme Court has laid down principles with which the court of appeals' ultimate conclusion is not consistent, even though that court correctly determined that such principles are controlling here:

> The principle of comity recognizes that the federal government, and particularly federal courts, must show "a proper respect for state functions" and must decline to "unduly interfere with the legitimate activities of the States." *Younger v. Harris,* 401 U.S. 37, 44 (1971). Comity is particularly important in cases involving state taxation because of the "important and sensitive nature of state tax systems." *Fair Assessment in Real Estate Ass'n v. McNary,* 454 U.S. 100, 102 (1981). "We have long recognized that principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration." *Nat'l Private Truck Council, Inc. v. Oklahoma Tax Comm'n,* 515 U.S. 582, 586 (1995).

Washington Trucking Ass'ns v. State, 192 Wn.App. 621, 642, 369 P.3d 170, 181 (2016). This is absolutely correct. The United States Supreme

Court has long noted that principles of federalism require a policy of non-interference with state tax systems. This policy, rooted in comity and federalism but expressed in both statutes and decisional law, is discussed at some length in both cited cases, *McNary* and *Nat'l Private Truck Council*, both *infra*. The court below correctly noted that this same set of principles negate any argument that Congress could have intended that 42 U.S.C. § 1983 could be used to obtain damages related to state tax systems, except in "exceptional circumstances":

> Because of comity, the United States Supreme Court "repeatedly [has] shown an aversion to federal interference with state tax administration." *Id.* For example, the Court held that federal courts could not render declaratory judgments as to the constitutionality of state tax laws. *Great Lakes Dredge & Dock Co. v. Huffman,* 319 U.S. 293, 298–302 (1943). Congress also has shown such an aversion. *Nat'l Private Truck,* 515 U.S. at 586. Congress enacted the Tax Injunction Act (TIA) in 1937, which prevents federal courts from enjoining the assessment, levy, or collection of any state tax where a plain, speedy, and efficient remedy exists in state court. 28 U.S.C. § 1341.

Washington Trucking Ass'ns, supra, 192 Wn.App. at 642-43 (footnote omitted). The court below then applied the two Supreme Court decisions, *Fair Assessment in Real Estate Ass'n v. McNary,* 454 U.S. 100, 102 (1981),[1] and *Nat'l Private Truck Council, Inc. v. Oklahoma Tax*

[1] "We have long recognized that principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration." *Id.*, 454 U.S. at 102.

Comm'n, 515 U.S. 582, 586 (1995), and correctly concluded that 42 U.S.C. § 1983 may not be used to interfere with state tax systems, either in actions for damages or in actions for equitable or declaratory relief, so long as an adequate state remedy was available. *National Private Truck Council,* citing *Fair Assessment,* held that actions for damages would be just as disruptive of state tax systems as actions for equitable relief or declaratory judgments, and therefore, given these principles, federal courts may not award 42 U.S.C. § 1983 damages in state tax cases:

> The United States Supreme Court again emphasized the "background presumption that federal law generally will not interfere with administration of state taxes." *Id.* at 588. The Court held that the comity-based rule adopted in *Fair Assessment* for federal court actions applied equally to state court § 1983 actions. *Nat'l Private Truck,* 515 U.S. at 589–92. The Court concluded that state courts must refrain from granting declaratory or injunctive relief under § 1983 when state law provides an adequate legal remedy. *Id.* at 589, 592.

Washington Trucking Ass'ns, supra, 192 Wn.App. at 644 (emphasis supplied). Based upon this strong statement of federalism and Congressional intent, the court below correctly concluded that *National Private Truck Council* and its principles apply to state court cases in which a plaintiff seeks damages against a government defendant in a state tax matter:

> ¶ 47 *National Private Truck* only addressed § 1983 claims that sought injunctive or declaratory relief against state

> taxes in state court. *Id.* at 592. But several lower courts have extended the *National Private Truck* holding to preclude damages claims under § 1983 in state court. *See, e.g., Patel v. City of San Bernardino,* 310 F.3d 1138, 1141 (9th Cir.2002) ("Read together, *Fair Assessment* and *National Private Truck* bar use of § 1983 to litigate state tax disputes in either state or federal court."); *Kowenhoven v. County of Allegheny,* 587 Pa. 545, 901 A.2d 1003, 1014 (2006) ("although Section 1983 injunctive and declaratory relief were at issue in *National Private Truck Council,* its reasoning applies equally to a Section 1983 request for money damages, particularly in view of the Court's earlier pronouncement, in *Fair Assessment* ").
>
> *National Private Truck* and *Fair Assessment* establish that regardless of the type of relief sought, the principle of comity bars a § 1983 claim challenging a state tax system filed in state court if state law provides an adequate remedy.

Washington Trucking Ass'ns, supra, 192 Wn.App. at 644-45 (emphasis added). Indeed, *National Private Truck Council* requires courts to construe 42 U.S.C. 1983 "narrowly," in this context, so as to avoid undue interference with administration of state tax laws.

The holding in *Rosewell v. LaSalle Nat. Bank*, 450 U.S. 503 (1981) reflects not only Congress' express command in the Tax Injunction Act, but also the historical reluctance of the federal courts to interfere with the operation of state tax systems if the taxpayer had available an adequate remedy in the state courts. As the Court stated in a case in which it relied on *Rosewell*:

> In order to accommodate these concerns and be faithful to the congressional intent "to limit drastically" federal-court interference with state tax systems, we must construe narrowly the "plain, speedy and efficient" exception to the Tax Injunction Act.

California v. Grace Brethren Church, 457 U.S. 393, 412-13 (1982); *see also National Truck Council, supra,* 515 U.S. at 589-90, citing *Fair Assessment, supra*, 454 U.S. at 115-16, for the proposition that "§ 1983 does not permit federal courts to award damages in state tax cases when state law provides an adequate remedy."

In plain English, there is an "exception" to the rule that damages may not be awarded under 42U.S.C. § 1983 in state tax matters, when the state does not provide an "adequate remedy." The court below did not follow the command to construe this exception "narrowly." Indeed, the court below seemed to overlook the fact that, in *National Private Truck Council*, the claimant sought to use § 1983 to recover one of the very items of damages plaintiff seeks here – attorney's fees. Because the state remedy in Oklahoma was "adequate," comity barred plaintiff's claim – even though the plaintiff could not recover attorney's fees.

It was in failing to construe § 1983 "narrowly," and in failing to follow *Rosewell v. LaSalle Nat'l Bank, supra,* 450 U.S. at 514 (1981) that the court below erred.

2. The court of appeals failed to follow *Rosewell* and other cases determining the "adequacy" of available state remedies based on procedural, rather than substantive, criteria, instead creating its own test for "adequacy" from whole cloth. Washington remedies are not "so flawed as to allow the plaintiffs to avoid the *Fair Assessment* abstention doctrine."

The touchstone for assessing the adequacy of a state remedy is whether it "provides the taxpayer with a full hearing and judicial determination at which [he] may raise any and all constitutional objections to the tax." *Rosewell v. LaSalle Nat'l Bank,* 450 U.S. 503, 514 (1981) (internal quotation marks omitted). This is a *procedural* criterion, not a substantive one. *Id.*

Lower courts have had no difficulty following *Rosewell*, until the court of appeals decision below. The court below found state procedures inadequate in two respects. First, the taxpayers claimed that the fact that they could not recoup their attorney's fees rendered Washington remedies "inadequate." 192 Wn.App. at 649-650. The court of appeals agreed.

Second, plaintiffs argued, and the court below agreed, that "WTA and the Carriers seek an award of punitive damages under § 1983. Again, RCW 50.32.050 does not authorize the ALJ to award punitive damages." 192 Wn.App. at 650. The court below concluded, as a substantive matter, that if the precise damages sought under § 1983 were not recoverable under state law, the state law remedy was "inadequate."

This is not the law. *National Private Truck Council* upheld a refund-only remedy, in which a taxpayer sought, but could not recover, its attorney's fees. Courts have also rejected punitive damages claims made pursuant to 42 U.S.C. § 1983 under *National Private Truck Council*, *Fair Assessment*, and *Grace Brethren Church.*

Rosewell teaches that a remedy is "adequate" if it allows Respondents to make their constitutional arguments, even if it is not the best remedy or the remedy plaintiffs seek:

> To be adequate, a state remedy need only satisfy "minimal *procedural* criteria." *Rosewell v. LaSalle Nat'l Bank,* 450 U.S. 503, 512 (1981). Courts measure the adequacy of a state remedy by procedural, not substantive, criteria. *Id.* at 512. Further, courts should construe narrowly the exception to the requirements of an adequate remedy. *California v. Grace Brethren Church,* 457 U.S. 393, 413 (1982).

Gen. Motors Corp. v. City of Linden, 143 N.J. 336, 346-47, 671 A.2d 560, 565 (1996). A state remedy need not be identical to section 1983 remedies. *Sipe v. Amerada Hess Corp.*, 689 F. 2d 396, 407 (3rd Cir.1982). It need not be the best remedy available. *Colonial Pipeline Co. v. Collins,* 921 F. 2d 1237, 1245 (11th Cir.1991); *Mandel v. Hutchinson,* 494 F. 2d 364, 367 (9th Cir.1974). It need not be the most convenient remedy. *Behe v. Chester County Bd. of Assessment Appeals,* 952 F. 2d 66, 68 (3rd Cir.1991).

The state remedy need not be or equal to or comparable with federal remedies to be "adequate." *Colonial Pipeline Co., supra,* 921 F. 2d at 1245; *Mandel, supra,* 494 F. 2d at 367.[2] A requirement that plaintiffs exhaust administrative remedies before filing section 1983 actions does not render the state remedy inadequate. *See Grace Brethren Church, supra,* 457 U.S. at 416 n. 35. Finally, a taxpayer's failure to resort to available state procedures (and thus be subject to an exhaustion defense) does not render those procedures insufficient. *Burris v. City of Little Rock,* 941 F. 2d 717, 721 n. 4 (8th Cir.1991).

In *California v. Grace Brethren Church,* 457 U.S. 393, 411-13 (1982), the court stated:

> Last Term, in *Rosewell v. LaSalle National Bank,* this Court had occasion to consider the meaning of the "plain, speedy and efficient" exception in the Tax Injunction Act. After reviewing previous decisions[24] and the legislative history of the Act, the Court concluded that the "plain, speedy and efficient" exception requires the "state-court remedy [to meet] certain minimal *procedural* criteria." 450 U.S., at 512 (emphasis in original). In particular, a state-court remedy is "plain, speedy and efficient" only if it "provides the taxpayer with a 'full hearing and judicial determination' at which she may raise any and all

[2] In that case, the court stated: "For a state remedy to be 'adequate' under 28 U.S.C. § 1341 it need not necessarily be 'the best remedy available or even equal to or better than the remedy which might be available in the federal courts.' *Bland v. McHann,* 463 F.2d 21, 29 (5th Cir. 1972), cert. denied, 410 U.S. 966 (1973)." *Mandel v. Hutchinson,* 494 F.2d 364, 367 (9th Cir. 1974).

> constitutional objections to the tax." *Id.*, at 514, 101 S.Ct., at 1229 (quoting *LaSalle National Bank v. County of Cook*, 57 Ill.2d 318, 324, 312 N.E.2d 252, 255–256 1974)).

Grace Brethren Church, 457 U.S. 393, 411-12. Thus *Rosewell* and *LaSalle* both require reversal of the decision below. Respondents *received* a full hearing; they *made* their constitutional objections to the tax. That is an "adequate" remedy. The *Grace Brethren Church* Court added:

> Applying these considerations, the *Rosewell* Court held that an Illinois tax scheme, requiring the taxpayer to pay an allegedly unconstitutional tax and seek a refund through state administrative and judicial procedures, was a "plain, speedy and efficient remedy" within the meaning of the Tax Injunction Act. In reaching this holding, the Court specifically relied on legislative Reports demonstrating congressional awareness that refunds were the exclusive remedy in many state tax systems.
>
> The holding in *Rosewell* reflects not only Congress' express command in the Tax Injunction Act, but also the historical reluctance of the federal courts to interfere with the operation of state tax systems if the taxpayer had available an adequate remedy in the state courts. As this Court stated in *Dows v. City of Chicago*, 11 Wall. 108, 110, 78 U.S. 108, 110 (1871), long before enactment of the Tax Injunction Act:
>
> > "No court of equity will ... allow its injunction to issue to restrain [state officers collecting state taxes], except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, ... before the aid of a court of equity can be invoked."

> In order to accommodate these concerns and be faithful to the congressional intent "to limit drastically" federal-court interference with state tax systems, *we must construe narrowly the "plain, speedy and efficient" exception to the Tax Injunction Act.*

California v. Grace Brethren Church, 457 U.S. 393, 411-13 (1982) (footnotes omitted) (emphasis added). Thus, again, the test made from whole cloth below, that the state remedy is inadequate because it did not provide for attorney's fees or punitive damages, is inconsistent with the letter, spirit, and intent of the drafters of § 1983, as well as the plain language of the decisions on point.

In case this Court is concerned about the interchange of comity and TIA cases, it should be noted that the Seventh Circuit recently held that "we take guidance from both comity and Tax Injunction Act case law in determining whether available state remedies are so flawed as to allow plaintiffs to avoid the *Fair Assessment* abstention doctrine." *Capra v. Cook Cty. Bd. of Review*, 733 F.3d 705, 714 (7th Cir. 2013).

The analysis below, so correct on many points, was flawed with respect to the adequacy of state remedies. Its approach was inconsistent with the many cases on the subject, from the Supreme Court, various federal courts of appeal, and all state appellate tribunals weighing in on the issue. This Court should reverse.

3. A state remedy that does not award attorney's fees is not "inadequate."

National Private Truck Council began in Oklahoma state court as a class action challenging certain state taxes as violative of the dormant Commerce Clause. The Oklahoma Supreme Court found in favor of the taxpayers and ordered the taxing authority defendants to make refunds in accordance with the applicable state law. *Private Truck Council of America, Inc. v. Oklahoma Tax Commission,* 806 P.2d 598, 610 (Okla.1990). However, the Court denied the taxpayers attorney fees under 42 U.S.C. §§ 1983, 1988, holding that there was no right to vindicate a commerce clause claim under Section 1983. *Id.*

The United States Supreme Court vacated the judgment and remanded the matter for further consideration in light of its intervening holding that Section 1983 could be used to litigate a commerce clause claim. *National Private Truck Council Inc., v. Oklahoma Tax Commission,* 501 U.S. 1247 (1991). On remand, the Oklahoma Supreme Court stood by its prior judgment, denying § 1988 attorney's fees unavailable under state law, but for a different reason. This time the Court held that as a matter of federalism and comity, "a state court should not give relief that a federal court sitting in the same state could not give."

Private Truck Council of America, Inc. v. Oklahoma Tax Commission, 879 P.2d 137, 141 (Okla.1994).

The U.S. Supreme Court affirmed the second judgment of the Oklahoma Supreme Court. Acknowledging the long standing principle that federal courts should not disrupt a state's system of tax administration, the Court construed Section 1983 narrowly. It held that Congress did not intend Section 1983 to provide a vehicle to challenge state taxes, in either state or federal court, where state law provided an adequate remedy, as did Oklahoma law. The Court held that, even though attorney's fees were not available under Oklahoma's refund procedure, that procedure was "adequate," because it gave the taxpayer a full and fair opportunity to assert constitutional claims.

4. A state remedy that does not provide punitive damages is not "inadequate."

There are few reported decisions on the question whether a state remedy that does not provide for punitive damages is "inadequate," allowing the plaintiff to avoid the *Fair Assessment* abstention doctrine. Your amicus could find no case so holding, and Respondents have not identified one. However, cases applying *Fair Assessment* and *National Private Truck Council* properly have no difficulty with this issue:

> GM seeks to distinguish *National Private Truck* on the grounds that it seeks compensatory and punitive damages,

> not merely a refund or declaratory relief, as the taxpayers sought in *National Private Truck.* We reject the distinction.
>
> In *Fair Assessment,* as in the present case, the taxpayers sought damages. Nonetheless, the Court held that when a state provides an adequate remedy, a federal court may not entertain an action for damages. The Court reasoned that a damage award would first require a declaration that the state officials had violated the taxpayers' constitutional rights. 454 U.S. at 113. A taxpayer's right to seek damages would disrupt the tax system as much as the right to seek declaratory relief. *Ibid.* In brief, the Court focused not on the nature of the relief requested, but on the possible interference of any relief in the administration of the state tax system. Thus, neither state nor federal courts may award damages or grant either injunctive or declaratory relief when a state provides an adequate remedy.

Gen. Motors Corp. v. City of Linden, 143 N.J. 336, 346, 671 A.2d 560, 565 (1996). This analysis was discussed with approval in *New England Legal Foundation v. Boston,* 423 Mass. 602, 614, 670 N.E.2d 152 (1996) (denying attorney's fees pursuant to § 1988 where adequate state remedy existed); and *J.P. Alexandre, LLC v. Egbuna*, 137 Conn.App. 340, 351 and fn. 11, 49 A.3d 222, 228 (2012).

Again, it is not the type of money remedy available, it is the procedural question whether respondents had an opportunity to argue that the State's actions were unconstitutional that matters. This Court should reverse on the subject of adequacy of the state remedy involved, and hold that the *Fair Assessment* abstention doctrine, as the Seventh Circuit refers

to this issue, is applicable and that state remedies are "not so flawed" as to render the doctrine inapplicable to Respondents' attorney's fee and punitive damages claims.

5. Respondents have the burden of proving that the Washington state remedies are "inadequate."

Here, as under the Tax Injunction Act, 28 U.S.C. 1341, the claimant has the burden of proving that to establish the absence of an adequate remedy for purposes of comity. *Gibson v. Gains,* 2006 WL 858336 at *3 (11th Cir.2006); *Winicki v. Mallard,* 783 F.2d 1567, 1570 (11th Cir.1986). In *Winicki,* the court held:

> It is immediately apparent that these two lines of authority mandate different results in the state taxation context where a "plain, speedy and efficient" state remedy is available to vindicate violations of federal rights. The Supreme Court confronted this incompatibility head on in *Fair Assessment in Real Estate v. McNary,* 454 U.S. 100 (1981). ... Thus, where a Section 1983 action is grounded in an allegation of an unconstitutional tax scheme, to survive dismissal **the plaintiff must demonstrate** that there is no plain, adequate, and complete state remedy available. **The initial burden, then, is upon the plaintiff to make such a showing.** Unless he is able to do so, the federal courts may properly refuse to entertain his Section 1983 action.

Winicki v. Mallard, 783 F.2d 1567, 1570 (11th Cir. 1986) (emphasis added); *see also Hanson v. Quill Corp.*, 500 N.W.2d 196, 197 (N.D. 1993)

(same principles applicable to Tax Increment Act cases also apply to 1983 cases in this setting).[3]

In this case, Respondents had the burden of showing that state law does not provide an adequate remedy. They did not do so.

B. This Court Should Follow the Lead of Many State Courts Which have Addressed this Subject.

This is not a new issue. Many states have weighed in on the question whether their own states provide remedies which are sufficiently "adequate" to mandate application of *National Private Truck Council* or, as the Seventh Circuit phrased it, "not so flawed" as to avoid application of *Fair Assessment* abstention. The decision below is not consistent with any of these decisions. See, e.g., *Gen. Motors Corp. v. City & Cty. of San Francisco*, 69 Cal. App. 4th 448, 460-61, 81 Cal. Rptr. 2d 544, 551-52 (1999), citing decisions from three other states:

> A citizen, like General Motors, may not maintain a section 1983 action challenging municipal taxation when an adequate state remedy exists. We are not alone in this conclusion. The New Jersey Supreme Court directed the dismissal of a section 1983 damages claim challenging a city property tax where an adequate state remedy existed. (*General Motors Corp. v. City of Linden* (N.J.1996) 143 N.J. 336, 671 A.2d 560, 561, 564–567 (*City of Linden*).) Other state courts have likewise barred section 1983

[3] It is worth noting that in *Hanson*, as in many of these cases, the plaintiff asserted that the state remedy was inadequate because it could not recover attorney's fees in the refund action provided by state law. The court found the state remedy adequate. *See* 500 N.W.2d at 197-198.

> damages claims challenging local taxes where an adequate state remedy exists. (*Murtagh v. County of Berks* (Pa.Commw.Ct.1998) 715 A.2d 548, 549, 551–552 [county property tax]; *Camps Newfound/Owatonna v. Harrison* (Me.1998) 705 A.2d 1109, 1110–1112 [town property tax].)

Other states have followed suit:

> A state remedy is plain, speedy, and efficient only if it meets certain minimal procedural requirements. *Rosewell v. LaSalle Nat'l Bank,* 450 U.S. 503, 512 (1981). These requirements are that the state must provide taxpayers with a full hearing and judicial determination at which they may raise any and all constitutional objections to the tax. *California v. Grace Brethren Church,* 457 U.S. 393, 411 (1982). Furthermore, the state may provide either predeprivation or postdeprivation remedies to satisfy due process. *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Dep't of Bus. Reg. of Florida,* 496 U.S. 18, 36-40 (1990).

Kerr v. Waddell, 185 Ariz. 457, 464, 916 P.2d 1173, 1180 (Ct. App. 1996). In Nebraska, the state's highest court held as follows:

> The lesson of both *National Private Truck Council, Inc.* and *Fair Assessment* is that § 1983 must be construed in light of the background principle of federal noninterference in state and local tax schemes. In *Fair Assessment,* the U.S. Supreme Court recognized that a § 1983 claim for damages offers as much chance for interference as a § 1983 claim for injunctive or declaratory relief.

Francis v. City of Columbus, 267 Neb. 553, 558, 676 N.W.2d 346, 351 (2004). The *Francis* court concluded:

> Courts measure the adequacy of a state remedy by procedural, not substantive criteria. *Rosewell v. LaSalle National Bank,* 450 U.S. 503 (1981). Thus, the "state

> remedy need not be identical to section 1983 remedies.... It need not be the best remedy available ... the most convenient remedy ... or equal to or comparable with federal remedies." ...*General Motors Corp.*, 143 N.J. at 348, 671 A.2d at 566. Rather, a state remedy is adequate if it provides the taxpayer with the opportunity for a "'"full hearing and judicial determination"' at which [he or] she may raise any and all constitutional objections to the tax.'' *Rosewell,* 450 U.S. at 515 n. 19.

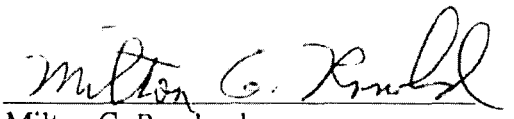
Francis v. City of Columbus, 267 Neb. 553, 559-60, 676 N.W.2d 346, 352 (2004). The court below erred by overlooking these decisions, and the reasoning of the Supreme Court, on which they all relied.

Thus although the court below identified the purposes served by *Fair Assessment* and *National Private Truck Council*, the court's decision on attorney's fees and punitive damages was not consistent with those purposes. Rather, in creating an adequacy analysis from whole cloth, the court below simply overlooked the "narrow" construction of § 1983, and the narrow construction of the exception from *Fair Assessment* abstention, the court actually disserved the purposes of these cases, and the historical view of 42 U.S.C. § 1983 they require.

IV. CONCLUSION

This Court should accept review, agree with the courts of California, New Jersey, Pennsylvania, Nebraska, Arizona, and other states, and hold that the adequacy of state remedies is judged by procedural standards, which are "minimal," and reverse.

RESPECTFULLY SUBMITTED this 28th day of June, 2016.



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Petitioners.

CERTIFICATE OF SERVICE

I, April Engh, hereby certify and declare under penalty of perjury under the laws of the State of Washington, that on June 28, 2016, I emailed to The Supreme Court for the State of Washington at

supreme@courts.wa.gov the following documents for filing:

1. Motion Of The Washington State Association Of Municipal Attorneys For Leave To File Brief Of Amicus Curiae In Support Of The State Of Washington, *et al.*'s Petition For Review;

2. Declaration Of Milton G. Rowland In Support Of Washington State Association Of Municipal Attorneys For Leave To File Brief Of Amicus Curiae In Support Of The State Of Washington, *et al.*'s Petition For Review;

3. Brief of Amicus Curiae Washington State Association of Municipal Attorneys in Support of The State Of Washington, *et al.*'s Petition For Review; and

4. Certificate of Service.

Additionally, I certify and declare that on the 28th day of June, 2016, I delivered a true and correct copy of the foregoing documents to the following persons ***via Email and U.S. Mail, postage prepaid:***

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SIGNED at Spokane, Washington, this 28th day of June, 2016.

April Engh, Legal Assistant

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Subject: RE: Washington Trucking Associations, et al. (Respondents) v The State of Washington, et al. (Petitioners); Supreme Court Case No. 93079-1; Motion for Leave to File Amicus Brief.

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Subject: Washington Trucking Associations, et al. (Respondents) v The State of Washington, et al. (Petitioners); Supreme Court Case No. 93079-1; Motion for Leave to File Amicus Brief.

Attached for filing on behalf of Milton G. Rowland, please find the following:

Motion for Leave to File Amicus Brief;
Declaration of Milton G. Rowland;
Brief of Amicus Curiae Washington State Association of Municipal Attorneys in Support of the State of Washington's Petition in above referenced case; and
Certificate of Service.

Thank you, April.

April Engh
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