

## Memorandum

To: Clients and Other Interested Taxpayers  
From: O'Keefe Lyons & Hynes, LLC  
Date: **April 9, 2020**  
Re: **Ruling of U.S. Court of Appeals upholding federal jurisdiction over a constitutional challenge to Cook County property tax assessments filed by O'Keefe Lyons & Hynes on behalf of several commercial and industrial taxpayers.**

In *A.F. Moore & Assoc., Inc. v. Pappas*, 948 F.3d 889 (7th Cir. 2020), the U.S. Court of Appeals in Chicago finalized its January 29, 2020 decision upholding federal jurisdiction over a constitutional challenge to Cook County property tax assessments filed by O'Keefe Lyons & Hynes on behalf of several commercial and industrial taxpayers. State property tax assessment appeals, like other state tax disputes, are normally confined to the state courts even when taxpayers' rights under the federal constitution are at issue. Jurisdiction in federal courts is barred by the federal Tax Injunction Act and related legal doctrines, unless taxpayers can show that they have no "plain, speedy and efficient remedy" in the state court system – a standard so difficult that it has been met in only a handful of state tax cases throughout the country over the last forty years.

The *A.F. Moore* taxpayers allege that they were subjected to discriminatory property tax assessment levels while other taxpayers' properties in their classes received assessments at significantly more favorable levels – in violation of their equal protection and uniformity rights under the U.S. and Illinois Constitutions. These constitutional challenges were pursued in state court for more than a decade but were hampered by the taxing authorities' restrictive interpretations of state law. The authorities argued that this law, ironically enacted as part of a "reform" in the mid-1990s, would bar evidence of the actual assessment levels applied by the Cook County Assessor and effectively prevented the taxpayers and the court from obtaining and reviewing evidence showing how the assessments were actually made. The state court held that related provisions of the law excused the taxing authorities from legal sanctions when it was discovered that the Assessor had destroyed massive quantities of relevant evidence.

Consequently, in 2018 the O'Keefe firm re-filed the taxpayers' constitutional claims in the U.S. District Court for the Northern District of Illinois. The District Court dismissed the case, holding that federal jurisdiction was blocked by the Tax Injunction Act, but in January of this year the Seventh Circuit Court of Appeals reversed and reinstated the taxpayers' claims. Writing for a unanimous panel, Judge Amy Barrett noted that

“Illinois’s tax-objection procedures do not allow the taxpayers to raise their constitutional claims in state court. We are left to conclude that this is the rare case in which taxpayers lack an adequate state-court remedy.” 948 F.3d at 891. The taxing authorities filed petitions for rehearing and rehearing *en banc* (by the full court), but these were both denied unanimously on April 9, 2020.

*Post-script June 16, 2020:* On June 10, 2020 the taxing authorities filed another motion asking the Court of Appeals to stay the effect of its ruling while they petitioned for review in the U.S. Supreme Court. Six days later the Court of Appeals summarily rejected this request, leaving the case to proceed in the U.S. District Court.