

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PRAVIN D. PATEL; ARUNA P. PATEL;
SANJAY PATEL; HARIVANDAN P.
PATEL; HANSA PATEL; AMRUT N.
PATEL; SITA PATEL; JAYESH PATEL;
SURESH PATEL; MAHESH PATEL;
BHAVABHAI PATEL; VIBHAKAR B.
PATEL; MAHENDRA PATEL;
VIMALABEN V. PATEL; MARKAN
THAKAR; CHANDRAVADAN K.P.
SHASTRI; PUSHPA C. SHASTRI; VIJAY
K. SHASTRI; BHAGWATIBEN V.
SHASTRI; RAJENDRA SHASTRI; ANITA
SHASTRI,

Plaintiffs-Appellants,

v.

CITY OF SAN BERNARDINO, a
Municipal Corporation,

Defendant-Appellee.

No. 01-55280
D.C. No.
CV-98-00298-RJT
OPINION

Appeal from the United States District Court
for the Central District of California
Robert J. Timlin, District Judge, Presiding

Argued and Submitted
March 4, 2002—Pasadena, California

Filed November 13, 2002

Before: James R. Browning, Sidney R. Thomas and
Johnnie B. Rawlinson, Circuit Judges.

Opinion by Judge Browning;
Dissent by Judge Rawlinson

COUNSEL

Frank A. Weiser, Los Angeles, California, for the plaintiffs-appellants.

James F. Penman, City Attorney, and Robert L. Simmons, Sr., Assistant City Attorney, San Bernardino, California, for the defendant-appellee.

OPINION

BROWNING, Circuit Judge:

Pravin D. Patel and twenty other named plaintiffs sued the city of San Bernardino, California for damages stemming from the city's enforcement of an unlawful tax. The district court dismissed the complaint for lack of jurisdiction. We affirm in part, reverse in part, and remand.

I.

The plaintiffs are owners and operators of hotels in the city of San Bernardino. The city imposed a "transient occupancy tax" on certain hotel guests, and the plaintiffs were required to collect this tax from their customers and remit it to the city. In 1991, the plaintiffs filed a complaint in state court for

declaratory and injunctive relief under state law, asserting that the tax was unconstitutionally vague on its face. In 1997, the California Court of Appeal agreed and held that the tax violated the Due Process Clause of the federal constitution. *See City of San Bernardino Hotel/Motel Ass'n v. City of San Bernardino*, 69 Cal. Rptr. 2d 97, 101-04 (Cal. Ct. App. 1997). However, the court denied injunctive relief and noted that the city could amend the tax ordinance to cure its infirmities. *Id.* at 104. That decision became final on February 9, 1998, shortly after the California Supreme Court denied discretionary review.

Meanwhile, the city passed an ordinance that replaced the old transient occupancy tax with a new “transient lodging tax.” City voters approved that ordinance on February 3, 1998, but the new tax did not take effect until June 30, 1998. The city continued to collect the old tax during this intervening period, even though the state courts had declared it unconstitutional.¹

The plaintiffs then filed a complaint against the city in federal district court, claiming \$1 million in damages under 42 U.S.C. § 1983 and state law. The district court dismissed the complaint for lack of jurisdiction under *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100 (1981). The plaintiffs appeal.

¹The city asserts that the new tax actually took effect immediately on February 3 after being approved by the voters, so the city ended its collection of the old tax several days before the Court of Appeals decision became final. However, the city ordinance itself is not in the record. Because the plaintiffs are appealing the dismissal of their complaint under Fed. R. Civ. P. 12(b)(6), we accept as true their allegation that the city continued to assess the old tax for several months after the Court of Appeals decision became final. *See Oki Semiconductor Co. v. Wells Fargo Bank*, 298 F.3d 768, 772 (9th Cir. 2002).

II.

[1] The Tax Injunction Act, 28 U.S.C. § 1341, provides that federal district courts may not “enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.” This statute prohibits both declaratory and injunctive relief in state tax disputes as long as the taxpayer has an adequate remedy in state court. *See California v. Grace Brethren Church*, 457 U.S. 393, 407-13 (1982); *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 297-99 (1943).

[2] In *Fair Assessment in Real Estate Ass’n v. McNary*, the Supreme Court extended the principles of comity and federalism underlying the Tax Injunction Act to prohibit an award of damages under § 1983. The Court recognized that federal courts generally must abstain from suits that would intrude into the administration of state taxation:

Petitioners will not recover damages under § 1983 unless a district court first determines that respondents’ administration of the County tax system violated petitioners’ constitutional rights. In effect, the district court must first enter a declaratory judgment like that barred in *Great Lakes*. We are convinced that such a determination would be fully as intrusive as the equitable actions that are barred by principles of comity.

454 U.S. at 113. Thus, taxpayers are barred “from asserting § 1983 actions against the validity of state tax systems in federal courts” as long as they had an adequate remedy available in state court. *Id.* at 116. *See also Nat’l Private Truck Council, Inc. v. Okla. Tax Comm’n*, 515 U.S. 582, 588-92 (1995) (holding that state courts cannot award declaratory or injunctive relief under § 1983 if the taxpayer has an adequate remedy under state law).

[3] However, we are aware of no appellate case which reaches the narrow question here: whether a party who has obtained a declaration in state court that a tax is invalid may then obtain a remedy under § 1983 in federal court. We agree with the plaintiffs that *Fair Assessment* does not strictly control this case: the plaintiffs are not seeking to challenge the validity of a tax, but merely to obtain retrospective damages for a tax that has already been declared invalid in state court. The city here does not defend the constitutionality of the challenged tax. Consequently, this suit is considerably less intrusive than the suit in *Fair Assessment*, where the federal court would have been required to determine the validity of the tax before awarding damages. *Cf. Fair Assessment*, 454 U.S. at 107 n.4 (leaving open the possibility that a § 1983 suit could proceed if it “requires no scrutiny whatever of state tax assessment practices”).

In *Fair Assessment*, the Supreme Court was concerned that allowing actions under § 1983 would be particularly intrusive given the absence of any need to exhaust state remedies:

[T]he intrusiveness of such § 1983 actions would be exacerbated by the nonexhaustion doctrine of *Monroe v. Pape*, 365 U.S. 167 (1961). Taxpayers such as petitioners would be able to invoke federal judgments without first permitting the State to rectify any alleged impropriety.

454 U.S. at 113-14. That concern is not present here, where the plaintiffs first raised their claims in state court and successfully persuaded those courts that the tax was unconstitutional.

[4] On the balance, however, we believe allowing damages would significantly intrude into the smooth functioning of the city’s tax system. *See Tomaiolo v. Mallinoff*, 281 F.3d 1, 8 (1st Cir. 2002) (noting that although allowing a suit might be less disruptive because the city had stopped collecting the tax,

“[a]ny such difference would not be so great as to justify recognizing an exception to *Fair Assessment*”); see also *Jerron West, Inc. v. Cal. State Bd. of Equalization*, 129 F.3d 1334, 1337 (9th Cir. 1997) (noting that the Tax Injunction Act prohibits “even an indirect restraint on tax assessment”). Although the state courts declared the tax facially unconstitutional, they did not consider whether the plaintiffs had been injured. Before a federal court awarded damages, it would have to determine whether plaintiffs suffered cognizable injury and the extent of that injury.² Further, allowing damages under § 1983 could expose cities and states to substantial tort liability, such as the \$1 million sought here, above and beyond any claim that the actual taxpayers have for a refund.

[5] Allowing the plaintiffs to proceed would create a bypass around the broad prohibitions of *Fair Assessment* and *National Private Truck*. In *National Private Truck*, 515 U.S. at 585, 588-92, the Court held that the state courts could not award relief under § 1983, even though those courts had determined the tax was invalid under state law.³ If the plaintiffs in this case were allowed to maintain their suit, they could accomplish through two suits — a declaratory judgment action in state court and then a damages action in federal court — what they could not do through a single action in

²The plaintiffs were not the actual taxpayers; they merely collected taxes from their hotel guests and remitted them to the city. At oral argument, plaintiffs stated they are not seeking a tax refund, but are instead seeking damages under a “theft of services” theory — that the city required them to expend their time and effort to collect and account for an illegal tax. We assume, without deciding, that this presents a valid basis for damages under § 1983.

³Although the only question expressly addressed in the *National Private Truck* opinion was whether the plaintiffs could obtain equitable remedies under § 1983 in state court, its rationale applies with equal force to a claim for damages under § 1983. See *Gen. Motors Corp. v. City and County of San Francisco*, 81 Cal. Rptr. 2d 544, 550 (Cal. Ct. App. 1999) (“While the high court has not expressly foreclosed the section 1983 action [for damages in state court] . . . , its interpretation of section 1983 compels the foreclosure.”).

state court for declaratory and monetary relief. Read together, *Fair Assessment* and *National Private Truck* bar use of § 1983 to litigate state tax disputes in either state or federal court. Given the “strong background principle against federal interference with state taxation,” *Nat’l Private Truck*, 515 U.S. at 589, we will not carve out a new exception here, particularly one that would offend principles of comity by encouraging bifurcated litigation between state and federal courts. We hold that the plaintiffs may not proceed under § 1983 so long as a “plain, speedy and efficient” remedy is available in state court.

The “plain, speedy and efficient” exception to the Tax Injunction Act must be narrowly construed. *See Grace Brethren Church*, 457 U.S. at 413; *Ret. Fund Trust v. Franchise Tax Bd.*, 909 F.2d 1266, 1273 (9th Cir. 1990). In their state suit, plaintiffs only sought declaratory and injunctive relief, expressly disclaiming any entitlement to a tax refund. Further, unlike the present federal suit, the state suit did not pursue damages for a taking under state law. The state court gave them most of the relief they sought when it declared the tax invalid. This remedy, for the most part, was adequate.

[6] The state court declined to award injunctive relief, however, and the city allegedly continued to collect the tax for several months after the decision invalidating the tax became final. To the extent that the city refused to follow the holding of the California Court of Appeal after its decision became final, the plaintiffs did not receive a “plain, speedy and efficient” remedy. *See Rosewell v. LaSalle Nat’l Bank*, 450 U.S. 503, 516-17 (1981) (suggesting that “uncertainty concerning a State’s remedy may make it less than ‘plain’ under 28 U.S.C. § 1341”) (citation omitted); *Ashton v. Cory*, 780 F.2d 816, 819 (9th Cir. 1986) (noting that a remedy is not plain “if there is uncertainty regarding its availability or effect”); *see also* John F. Coverdale, *Remedies for Unconstitutional State Taxes*, 32 Conn. L. Rev. 73, 84 (1999) (“There is no dispute that once a state tax has been finally declared unconstitutional

the state may not continue to collect the tax.”⁴ Consequently, we reverse the district court’s dismissal of the complaint in part and hold that the plaintiffs may pursue remedies under § 1983 for any damages that accrued after the state courts overturned the tax.⁵ The parties shall bear their own costs.⁶

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

RAWLINSON, Circuit Judge, Dissenting:

I respectfully dissent from that portion of the opinion concluding that the lack of injunctive relief in the state court proceeding resulted in an inadequate remedy. Our holding today

⁴Contrary to the dissent’s assertion, our holding is based on the obvious inadequacy of the state remedy, not on whether a federal remedy is “better.” A tax declared unconstitutional cannot continue to be collected. The state’s remedy for the Due Process violation—declaring the tax unconstitutional—was uncertain and unclear in its effect since the city continued to collect the unconstitutional tax.

⁵Plaintiff’s ability to bring a § 1983 suit in state court is not a substitute for a plain and adequate state remedy. First, § 1983 provides federal relief, even if it may be awarded by a state court, and is not a state remedy. *Cf. Nat’l Private Truck*, 515 U.S. at 592 (holding that “state courts, like their federal counterparts, must refrain from granting federal relief under § 1983” when there is an adequate state remedy). Moreover, the Supreme Court has never held that a state court must entertain § 1983 cases; thus, a § 1983 claim in state court may only be a speculative remedy. *See Nat’l Private Truck*, 515 U.S. at 588 n.4. Finally, despite the availability of a § 1983 claim in state court as well as federal court, we must respect the plaintiffs’ choice of federal forum when federal jurisdiction is available. *Zwickler v. Koota*, 389 U.S. 241, 248 (1967) (“Congress imposed the duty upon all levels of the federal judiciary to give due respect to a suitor’s choice of a federal forum for the hearing and decision of his federal constitutional claims.”).

⁶On remand, the district court should first consider whether to exercise supplemental jurisdiction over the plaintiffs’ state law claim. If it does not, it should dismiss that claim without prejudice.

is in disharmony with our ruling in *Ashton v. Cory*, 780 F.2d 816, 820 (9th Cir. 1986). In *Ashton*, we concluded that “for a state remedy to be adequate . . . , it need not be the best remedy available, nor need it even be equal to . . . that available in federal court.” (citation omitted).

The majority acknowledges that the hotel owners prevailed on their claim that the transient occupancy tax violated the due process clause of the United States Constitution. Under the rationale of *Acton*, lack of the arguably better relief of an injunction did not render the state remedy inadequate for purposes of the Tax Injunction Act. Therefore, I would affirm the judgment of the district court.