

IN THE SUPREME COURT OF PENNSYLVANIA

No. 16 MAP 2022

**GM BERKSHIRE HILLS LLC and
GM OBERLIN BERKSHIRE HILLS LLC,**

Appellants,

v.

**BERKS COUNTY BOARD OF ASSESSMENT APPEALS and
WILSON SCHOOL DISTRICT,**

Appellants.

**AMICI CURIAE BRIEF OF NATIONAL ASSOCIATION OF PROPERTY
TAX ATTORNEYS, ALLIANCE 4 HORNE LLC, ALLIANCE 3201 SOUTH
76TH STREET LLC, 3250 SOUTH 78TH STREET LLC AND WESCO
INDUSTRIAL PRODUCTS LLC IN SUPPORT OF PETITIONERS**

**Appeal from the Commonwealth Court at No. 930 C.D. 2020 dated July 8,
2021, Affirming the Orders of the Berks County Court of Common Pleas at
No. 18-18627 dated January 14, 2020 and August 18, 2020**

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Pa. Const. art. VIII § 1, Uniformity Clause*passim*

U.S. Const. amend. XIV, § 29

I. STATEMENT OF THE INTEREST OF AMICI CURIAE

Amici Curiae is Alliance 4 Horne LLC, Alliance 3201 South 76th Street LLC, and Alliance 3250 South 78th Street LLC (collectively “Alliance”), Wesco Industrial Products LLC (Wesco”) and the National Association of Property Tax Attorneys (“NAPTA”).

Alliance owns and operates properties throughout the Philadelphia area. Southeast Delco School District filed an assessment appeal for the property owned by Alliance 4 Horne LLC in Folcroft, PA. From an adverse decision of the Delaware County Board of Assessment Appeals, Alliance 4 Horne LLC filed an appeal with the Delaware County Court of Common Pleas involving the same issues presented herein. Philadelphia School District filed assessment appeals for the properties owned by Alliance 3201 South 76th Street LLC and Alliance 3250 South 78th Street LLC with the Philadelphia County Board of Revision of Taxes involving the same issues presented herein. As a result, this Honorable Court’s decision in *GM Berkshire Hills LLC* might affect the appeal for which Alliance’s is the property owner.

Wesco is the lessee of property located in North Wales, Pennsylvania. By the terms of the Lease Agreement, Wesco is obligated to pay real estate taxes for the property. North Penn School District filed an assessment appeal for the property occupied by Wesco. From an adverse decision of the Montgomery County Board

of Assessment Appeals, North Penn School District filed an appeal with the Montgomery County Court of Common Pleas. Wesco raised therein the same issues presented herein. As a result, this Honorable Court's decision in *GM Berkshire Hills LLC* might affect Wesco's case.

NAPTA is a nonprofit corporation that promotes education in and awareness of issues pertaining to property taxes, sponsors research of property tax issues and concepts, creates papers and commentaries involving current issues and publishes pertinent books, pamphlets and media presentations, interacts with fellow property tax professionals and provides appropriate, quality training and instruction opportunities, promotes camaraderie and interaction between property tax professionals, promotes and improves the image and functioning of the property tax profession and such other activities and undertakings that would enhance an understanding of property taxes in jurisdictions throughout the United States. The decision of this Honorable Court could have a domino effect into other states throughout the United States.

No person or entity other than the *Amici Curiae* authored or paid in whole or in part for the preparation of this brief.

II. STATEMENT OF SCOPE AND STANDARD OF REVIEW

Amici Curiae accepts and incorporates Petitioners' statement of scope and standard of review.

III. STATEMENT OF THE QUESTION INVOLVED

Amici Curiae accepts and incorporates Petitioners’ statement of questions involved.

IV. STATEMENT OF THE CASE

Amici Curiae accepts and incorporates Petitioners’ statement of the case.

V. ARGUMENT

This Court’s Order granting allowance of the instant appeal limited the issues to be presented to: (1) whether a School District’s use of a monetary threshold violated the Uniformity Clause of the Pennsylvania Constitution, Art. VIII §1 (“Uniformity”): (2) whether applying the monetary threshold only to recently sold properties violated Uniformity, *supra*. (“Welcome Stranger”).

1. Monetary Thresholds Violate Uniformity

a. Different School District Policies Within the Same County Violates Uniformity

The Uniformity Clause of the Pennsylvania Constitution provides that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. Pa. Const. art. VIII § 1. For more than 50 years, this Court has held that, for a Uniformity analysis, all real estate within a county is

the same class. *Deitch Co. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cnty.*, 209 A.2d 397, 401 (Pa. 1965).

Monetary thresholds, like the one imposed by the School District herein and others, throughout the Commonwealth, violate Uniformity because they treat members of the same class differently based upon an arbitrary threshold. This problem is accentuated when one considers that different monetary thresholds may be employed by different School Districts within the same county. Consider the following “real life” example:

Zip code 19008, within Delaware County, includes both Radnor School District and Marple Newtown School District. Fawn Hill Lane is within zip code 19008 and lies in both Radnor School District and Marple Newtown School District. 767 Fawn Hill Lane and 242 Fawn Hill Lane are neighboring, adjoining properties. 767 Fawn Hill Lane is in Radnor School District, while 242 Fawn Hill Lane is in Marple Newtown School District. Assume both 767 Fawn Hill Lane and 242 Fawn Hill Lane are identically assessed. Assume Radnor School District establishes a policy of filing real estate assessment appeals for properties using a monetary threshold of \$150,000 and assume both properties would meet that monetary threshold. Further, assume Marple Newtown School District does not establish a policy of filing real estate assessment appeals for properties using a monetary threshold. The result is that adjoining properties of equal value will have

unequal assessments. This is a Uniformity violation. A screen shot from Google Maps showing 767 Fawn Hill Lane and 242 Fawn Hill Lane are adjoining properties is attached hereto as Appendix A.

Alternatively, assume Marple Newtown School District adopts a monetary threshold of \$500,000, while Radnor adopts a monetary threshold of \$150,000. Again, the property in Radnor School District will be appealed, while the property in Marple Newtown School District will not. The result of using these monetary thresholds is that adjoining properties of equal value will again have unequal assessments violating Uniformity.

Now consider that there are eighteen (18) School Districts within Berks County and there are approximately sixty (60) municipalities within Berks County. A copy of a map of Berks County identifying the School Districts and municipalities within Berks County is attached as Appendix B. If each School District and each municipality adopted different economic thresholds, chaos would result. Not only would assessments of similarly valued properties throughout the entire county vary dramatically because the assessment of some properties would be appealed while the assessment of other properties would remain at base year values (1994 for Berks County), but the assessment of the same property could vary dramatically for School District and municipal tax purposes. This is the essence of non-uniformity.

Moreover, the result of allowing monetary thresholds can have a detrimental effect upon the ability of businesses to compete. For example, it is not uncommon to find a CVS pharmacy and a Walgreens pharmacy across the street from each other. Assume the CVS and the Walgreens are similar properties, across the street from each other. Also assume the two properties are in different School Districts, with each School District having a different monetary threshold. The differing monetary thresholds may cause one School District to appeal and the other School District not to appeal. Thus, one property might be assessed at current market value while the other property remains assessed at 1994 base year value. As a result of the lack of uniform tax treatment, the resulting tax burden upon the property that is appealed will be higher than the similar property that was not appealed, which may hamper that business's ability to compete with its direct competitor.

These examples illustrate that monetary thresholds, like the one imposed by the School District herein and others, throughout the Commonwealth, violate Uniformity because they treat members of the same class differently based upon an arbitrary threshold.

b. Monetary Thresholds Exclude Entire Subclasses of Properties in Violation of Uniformity

Without discovery with every School District within this Commonwealth, it is impossible to know how many School Districts are employing monetary

thresholds and, if they are, what those thresholds are. However, from cases pending before and decided by the courts thus far, there are a number of various thresholds being employed by school districts throughout the Commonwealth – including thresholds as high as \$1 million.

For instance, in *In re: Springfield School District*, 101 A.3d 835 (Pa. Cmwlth 2014) the school district selected properties for appeal with a sales price that was \$500,000 or greater than the implied market value. In *Kennett Consolidated School District v. Chester County Board of Assessment Appeals, Appeal of Autozone Development Corp.*, 228 A.3d 29 (Pa. Cmwlth 2021), the school district targeted properties underassessed by \$1 million. In *Bethlehem Area School District v. Board of Revenue Appeals of Northampton County and Lehigh Crossing Associates, LP*, 225 A.3d 212 (Pa. Cmwlth 2020), the school district targeted properties that were likely to generate at least \$10,000 in potential tax increase. In *Colonial School District v. Montgomery County Board of Assessment Appeals, Appeal of Metroplex West Associates, LP*, 232 A.3d 1051 (Pa. Cmwlth 2020), the school district targeted properties that were underassessed by \$500,000.

Coincidentally, in all of these cases, the bulk – if not all – of the properties that were appealed were commercial properties. Yet, the reality is that it is not a coincidence nor should it be a surprise. When monetary thresholds are implemented at high levels, they will almost certainly include only commercial

properties whose values are much higher than residential properties. Blessing such a system allows School Districts to subvert this Court's *Valley Forge Towers Apartments L.P. v. Upper Merion School District*, 163 A.3d 962 (Pa. 2017), holding using the guise of fairness and impartiality. This allows School Districts to do indirectly (i.e., reassess commercial properties only) what it cannot do directly. *Gray v. Nationwide Mut. Ins. Co.*, 223 A.2d 8, 11 (Pa. 1966); *Miller v. City of Beaver Falls*, 82 A.2d 34, 38 (Pa. 1951).

Moreover, monetary thresholds create a situation in which this court is constantly being asked where it should draw the line. Is a \$150,000 threshold constitutional? Is a \$500,000 threshold constitutional? Is a \$1 million threshold constitutional? At what point does a monetary thresholds' overt exclusion of an entire class of property rise to the level of a Uniformity violation?

2. A Welcome Stranger Policy Violates Uniformity Because Equal Protection is the Floor of a Uniformity Analysis

Respondent's policy herein compounds the Uniformity violation by further narrowing the class of properties for which it will file a real estate assessment appeal to those recently sold properties exceeding its monetary threshold. This means all properties within the School District exceeding the monetary threshold will not be appealed. Only those properties recently sold and exceeding the monetary threshold will be appealed.

As this Court said, “federal equal protection jurisprudence ... sets the floor for Pennsylvania's uniformity assessment.” *Downingtown Area Sch. Dist. v. Chester Cty. Bd. of Assessment Appeals*, 590 Pa. 459, 913 A.2d 194, 200 (2006) (citing 1 WADE J. NEWHOUSE, CONSTITUTIONAL UNIFORMITY AND EQUALITY IN STATE TAXATION 27-28 (2d ed. 1984)); *see also Sands Bethworks Gaming LLC v. Pa. Dep’t. of Rev.*, 207 A.3d 315, 331 (Pa. 2019) (Wecht, J., concurring). Put differently, while the imposition of a tax may violate the broader Uniformity analysis, it may not violate the Equal Protection Clause analysis of the United States Constitution, *U.S. Constitution* 14th Amendment (“Equal Protection”). The reverse is not true; if imposition of a tax violates Equal Protection, it necessarily violates Uniformity.

More than thirty years ago, the United States Supreme Court held that a “Welcome Stranger” policy, targeting recently sold properties, was an unconstitutional violation of Equal Protection. *See Allegheny Pittsburgh Coal Co. v. County Com’n of Webster County*, 488 U.S. 336 (1989). The School District’s duplicitous approach of coupling Welcome Stranger with a monetary threshold does not cure the constitutional defect; instead, it exacerbates the problem by creating a dual Uniformity violation.

In *Allegheny Pittsburgh Coal Co. v. County Com’n of Webster County*, 488 U.S. 336 (1989), Webster County was required to base assessments upon market

value. The tax assessor's practice was to assess properties based upon the declared consideration at which the property last sold. Some small adjustments were made to the assessments of properties that had not been recently sold. As the court explained, "[t]his approach systematically produced dramatic differences in valuation between petitioners' recently transferred property and otherwise comparable surrounding land." *Id.* at 341. Finding a violation of Equal Protection, the Court said:

"The equal protection clause ... protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class." We have no doubt that petitioners have suffered from such "intentional systematic undervaluation by state officials" of comparable property in Webster County. Viewed in isolation, the assessments for petitioners' property may fully comply with West Virginia law. But the fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings. The relative undervaluation of comparable property in Webster County over time therefore denies petitioners the equal protection of the law.

Id. at 345-346 (citations omitted).

Shortly after the U.S. Supreme Court decided *Allegheny Coal*, it was confronted with another Equal Protection case that argued assessments based upon current sales did not violate Equal Protection. *Nordlinger v. Hahn*, 505 U.S. 1 (1992). *Nordlinger* involved a challenge to California's Proposition 13, which established a real estate assessment system whereby real estate was reassessed based upon its current sale price. The taxpayer's reliance upon *Allegheny Coal*

was rejected by the Court and the system established by Proposition 13 was held not to violate Equal Protection. To distinguish *Allegheny Coal*, the Court said: “*Allegheny [Coal]* was the rare case where the facts precluded any plausible inference that the reason for the unequal assessment practice was to achieve the benefits of an acquisition-value tax scheme.” *Nordlinger* at 15.

Like West Virginia and unlike California, Pennsylvania’s assessment system is a market value based system – not an acquisition based assessment system. If Respondent or any taxing jurisdiction wants to adopt a policy of assessing real estate based upon its most recent acquisition price, it must amend the Pennsylvania Constitution to permit it.

Since Equal Protection is the floor for any Uniformity violation, the result of this case is all but dictated by the U.S. Supreme Court’s *Allegheny Coal* precedent. Since the School District’s policy should not be valid in light of *Allegheny Coal*, the School District’s policy should equally violate Uniformity.

VI. CONCLUSION

Because monetary threshold policies create fundamental Uniformity Clause violations which is further narrowed by limiting application of the monetary threshold only to recently sold properties, *Amici Curiae* respectfully suggest that this Honorable Court reverse the decision of the Commonwealth Court.

Respectfully submitted,



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Dated: March 14, 2022

PUBLIC ACCESS POLICY COMPLIANCE CERTIFICATE

I, Stewart M. Weintraub, hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Stewart M. Weintraub
Stewart M. Weintraub

CERTIFICATION OF COMPLIANCE WITH RULE 531(b)(3)

This Amicus Brief complies with the type-volume limitation of Pennsylvania Rule of Appellate Procedure 531(b)(3), because this brief contains 2,386 words.

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PROOF OF SERVICE

I, Stewart M. Weintraub, hereby certify that on this 14th day of March 2022,
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APPENDIX A

Fawn Hill Ln

767

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Google

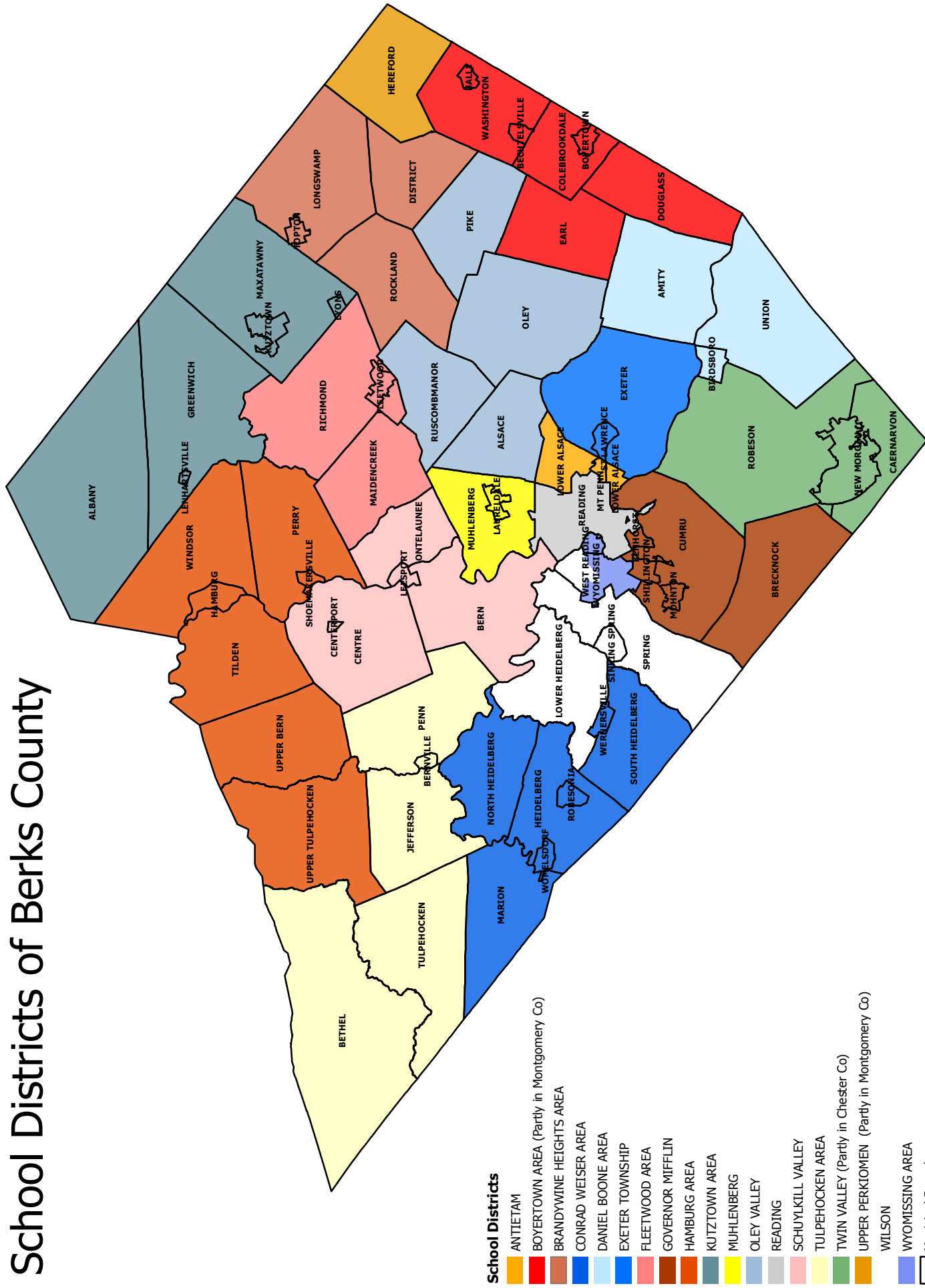
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Map data ©2022

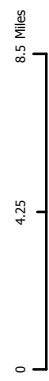
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APPENDIX B

School Districts of Berks County



Information shown is based on geospatial data from the County of Berks, and may not be copied or reproduced without express written permission from the County of Berks. The County of Berks does not assume any liability for damages caused by the use of this information.



Map Produced by Berks County GIS
 Coordinate System: State Plane Pennsylvania South
 Datum: NAD 1983

