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16 MAP 2022

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

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,

Appellees.

APPELLANTS' REPLY BRIEF

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

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INTRODUCTION

Appellee Wilson School District (the "School District") fails to address the central issue in this appeal. The central issue is that the School District, by considering only recently-sold properties for assessment appeals, treated a sub-class of real property taxpayers (new owners) differently than other real property taxpayers (existing owners). The School District further subdivided the sub-class by choosing to appeal only those recently-sold properties that the School District believed would generate at least a certain amount of additional tax revenue upon reassessment. Accordingly, only new owners (of properties of sufficiently high value) were subjected to appeals, were reassessed based on their current market values, and incurred tax increases. Existing owners (and new owners of lower-value properties) were left alone, allowing their assessments, and resulting tax bills, to be based on Berks County's base-year, 1994 market values.

Such differential treatment violates the Uniformity Clause of the Pennsylvania Constitution, Pa. Const. art. VIII, § 1, because, as this Court has affirmed repeatedly, with respect to real property taxation, "real property **is** the classification." *Clifton v. Allegheny County*, 969 A.2d 1197, 1212 (Pa. 2009) (emphasis in original). Thus, all real property in a county must be assessed uniformly, subject to the same standards of assessment. The School District's selective, interim, market value appeals subject only a handful of taxpayers to different assessment standards, treating those

taxpayers differently than the rest of the taxpayers in the district.

The School District and its *amici* never offer any explanation for how subjecting only certain new property owners to assessment appeals, and resulting tax increases, is consistent with the Court's repeated holdings that real property is a single class that must be assessed and taxed uniformly. Instead, the School District and *amici* generally avoid the point, eschew citation of this Court's holdings in favor of citing inconsistent lower court decisions, predict (and bemoan) the end of taxing authority interim assessment appeals, and attempt to demonize appellants GM Berkshire Hills LLC and GM Oberlin Berkshire Hills LLC (collectively, "Taxpayers") for seeking to vindicate the right under the Constitution to tax uniformity. Quite simply, none of the arguments offered by the School District or *amici* support the School District's departure from the real-property-is-a-single-class principle that this Court consistently has reaffirmed. The Court should not countenance retreat from this principle that has been a bedrock of uniformity jurisprudence for generations.

REPLY ARGUMENT

I. Undisputed Evidence Demonstrated That the School District Subjected a Sub-Class of Real Property Taxpayers to Differential Treatment, in Violation of the Uniformity Clause.

The School District initially tries to claim Taxpayers did not present sufficient evidence of the violation of the Uniformity Clause. The School District's argument

depends on ignoring the relevant precedents.

There is no dispute as to the salient facts here: 1) the School District reviewed only recently-sold properties for potential assessment appeals; 2) properties that had not been sold recently were not considered for assessment appeal, even if they were otherwise identical to ones that had sold, regardless of their market value or the relationship of their market value to their assessment; and 3) among recently-sold properties, the School District compared the sale price, adjusted by the common level ratio ("CLR"), to the property's assessment and, if the adjusted sale price exceeded the assessment by at least $150,000, the School District took an appeal. There is no dispute that the School District identified a sub-class of taxpayers (new owners) to consider for appeals, then chose a sub-class of the sub-class to take appeals against, based on the current market value of the properties the new owners had purchased. Thus, a sub-class of taxpayers was subjected to differential treatment and their properties assessed based on a different standard, current market value, than the rest of the taxpayers in the district, who were assessed based on 1994 market value.

That is all the evidence required to establish the violation of the Uniformity Clause. The School District cites some Commonwealth Court decisions (one non-precedential) to claim that Taxpayers were required to offer evidence of the ratio of assessment of other properties to prove that Taxpayers were being treated

differently. In so doing, the School District misconstrues Taxpayers' claims and ignores this Court's holdings.

This Court has explained, for more than a century, that the Uniformity Clause requires "uniformity of method in determining what share of the burden each taxable subject must bear." *Delaware, L. & W. R. Co.'s Tax Assessment*, 73 A. 429, 430 (Pa. 1909). Indeed, uniform treatment of taxpayers, not achieving true market value for an individual property, "is to be preferred as the just and ultimate purpose of the law." *In re Brooks Building*, 137 A.2d 273, 276 (Pa. 1958) (internal quotation marks and emphasis omitted).

Thus, selective appeals that target a sub-class of taxpayers are unlawful because the Uniformity Clause is "independently harmed by a systematic course of disparate treatment relative to a particular sub-classification of property." *Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist.*, 163 A.3d 962, 979 (Pa. 2017). As the Court explained, "members of the sub-class are aware that they alone have been targeted for scrutiny solely due to their membership in the sub-class; moreover, they alone must bear the costs of defending against the appeal and of any follow-up litigation in court." *Id.*

Accordingly, the Uniformity Clause can be violated by applying a different valuation method to a sub-class of real property or by other disparate treatment of the sub-class. Here, there is no question that the evidence demonstrates that the

School District treated certain new owners of property differently than other owners of property in the district by subjecting only selected new owners to appeals.

Further, there is no question that the evidence demonstrates that the new owners subject to appeal had their assessments determined by a different method than other owners. For the new owners subject to appeal, their assessments were set based on their properties' current market value, adjusted by the CLR. Other owners' property assessments were set based on their properties' 1994 market values. Only the new owners, therefore, were subjected to tax based on the appreciation in their property value between 1994 and 2019. Other owners avoided tax on the appreciation in their property values. Applying a different methodology to assess the properties of a sub-class of taxpayers violates the Uniformity Clause's guarantee of uniform treatment.[1] The evidence fully supports Taxpayers' claims.

The School District's argument also depends on its assertion that the *Valley Forge Towers* Court "approved" the use of the anticipated amount of increased tax

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[1] The School District's assertion that Taxpayers were required to present evidence that their properties were subject to a higher ratio of assessed-to-market value than similarly-situated properties is ironic considering the repeated complaint of the School District (and its *amici*) that school districts have limited publicly-available information on which to assess market values of other properties. If the *government* does not have access to such information and cannot compel it, most certainly private parties such as Taxpayers do not have it. Moreover, the School District's argument seeks to undermine this Court's precedents by skipping over the question of whether the School District targeted a sub-class of real property taxpayers for differential treatment. Under the School District's theory, local government would be licensed to selectively reassess properties based upon any sub-classification.

revenue (also referred to as a "monetary threshold") to determine which assessments to challenge. The Court, however, did not render any such holding, explaining that "[s]uch methodologies are not presently before the Court." *Id.* The School District draws inferences from the Court's statement in a footnote about not construing its rejection of the reasoning of *In re Springfield Sch. Dist.*, 101 A.3d 835 (Pa. Cmwlth. 2014), as equating with disagreement with the result in *Springfield, Valley Forge Towers*, 163 A.3d at 975 n.13. But when an issue is not before the Court, statements regarding that issue are *dicta* that have no precedential value. *Commonwealth v. Lee*, 935 A.2d 865, 867 n.4 (Pa. 2007) (*dicta* is "judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential" (internal quotation marks omitted)); *see also, Valley Township v. City of Coatesville*, 894 A.2d 885, 889 (Pa. Cmwlth. 2006) (*dicta* "is an opinion by a court on a question...that is not essential to the decision. Dicta has no precedential value."). Thus, at most, the *Valley Forge Towers* Court left open, for future consideration, the question of whether a taxing authority's use of the expected amount of tax revenue increase to select properties for appeal meets the Uniformity Clause's requirements of equal treatment and uniform method of assessment.

There is, of course, good reason for not giving precedential value to comments on issues not before the Court in a given case. Since those issues are not before the

Court in that case, the parties would not have developed an appropriate record or robust arguments, or brought to the Court's attention relevant precedents. This lack of development of the issue hampers the Court's thorough consideration of an issue and explanation of any suggested result. That can be seen in *Valley Forge Towers'* footnotes concerning the result in *Springfield*, where the Court does not mention its Uniformity Clause precedents, let alone attempt to reconcile them with taxing authorities' use of anticipated tax revenue increases to select properties for appeal. Accordingly, nothing in *Valley Forge Towers* can be construed as a holding of the Court with respect to the use of monetary thresholds by taxing authorities to select properties for assessment appeals.[2]

Furthermore, the language on which the School District relies about monetary thresholds concerns thresholds applied "without regard to the type of property in question *or the residency status of its owner*." *Valley Forge Towers*, 163 A.3d at 979 (emphasis added). Here, the School District did not meet that requirement. Rather, it explicitly considered the residency status of property owners, applying the threshold only to properties owned by new owners, and ignoring properties of

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[2] Since *Valley Forge Towers* renders no precedential holding on the use of monetary thresholds to select properties for appeal, the School District's *stare decisis* argument (Br. at 29-31) also fails. The School District (Br. at 31) also claims a reliance interest, asserting it "relied" on *Valley Forge Towers* in "developing" its assessment appeal selection process, but the evidence is to the contrary. The School District's solicitor testified that the School District used the same process prior to 2017, when *Valley Forge Towers* was decided. R. 27a.

longer-term owners.[3]

In addition, nothing in *Valley Forge Towers* suggests the Court would approve the use of a monetary threshold applied selectively to only a sub-class of properties in a district. Again, here, it is undisputed the School District applied the threshold only to a sub-class of recently-sold properties. Even if a standard generally would pass muster under the Uniformity Clause, selective application of that standard is unlawful. The School District's appeals must be quashed.

II. The Existence of Taxing Authorities' Statutory Power to Take Assessment Appeals Does Not Insulate the School District's Differential Treatment of Taxpayers Under the Uniformity Clause.

The School District also attempts to excuse its selective appeals of only

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[3] The School District and *amici* attempt to limit *Valley Forge Towers* to its facts, contending that it prohibits classifying real property only on the basis of use and would not limit other classifications. Taxpayers addressed this issue at length in their opening brief (at 15-21) and will not repeat those arguments here. Suffice it to say that the School District's and *amici's* argument ignores the overriding principle repeatedly stated by this Court that all real property is a single class that must be taxed uniformly. Furthermore, the Philadelphia and Pittsburgh school district *amici* include in their brief (at 23-25) an extended discussion of *In re Lower Merion Township*, 233 A.2d 273 (Pa. 1967), interpreting the case to broadly permit selective reassessment of properties. That interpretation misreads the case and is inconsistent with the single class principle set forth in that case and later decisions. *Lower Merion* permits interim reassessments when a property has been improved since the last countywide reassessment, but not for general market value increases. 233 A.2d at 278. Properties that have had improvements (or had them removed, or that have been subdivided or consolidated) have changed their characteristics, making them not similarly-situated to other properties in the county and requiring their reassessment. *See* 53 Pa. C.S. § 8817(a). By contrast, sales reflect only changes in market value and ownership, which neither *Lower Merion*, nor statute would permit to be the basis of an interim reassessment.

recently-sold properties by citing its statutory power to appeal assessments under the Consolidated County Assessment Law, 53 Pa. C.S. § 8855, but the existence of the statutory power is beside the point. Powers granted to municipal government entities are subject to the limitations of the Constitution, as this Court explained in *Valley Forge Towers*. 163 A.3d at 978 ("We do not overlook that Section 8855 gives the School District a statutory right to appeal assessments; our point is that this alone cannot justify an action which the Uniformity Clause prohibits."). Moreover, the School District simply misstates Taxpayers' challenge to the School District's actions here. The challenge is not to the fact that the School District took assessment appeals. Rather, the challenge is to the way the School District selected assessments to appeal – considering only a sub-class of properties. That process violates the Uniformity Clause.[4]

III. Whether the School District's Appeals Will Bring the Assessments of Taxpayers' Properties to the CLR Is Irrelevant Because the Uniformity Clause is Independently Harmed by Disparate Treatment of a Sub-Class of Certain New Property Owners.

The School District also contends that its selective appeals "increase" uniformity. The School District's argument, citing Commonwealth Court decisions contrary to the decisions of this Court, relies on the wrong standard and, again,

[4] The School District asserts that Taxpayers somehow waived a challenge to § 8855's constitutionality. Br. at 13. Since the School District mischaracterizes Taxpayers' claim, the waiver argument is off point.

misses the point.

A. The School District Relies on Standards Rejected by This Court.

The School District contends that Taxpayers must "'demonstrate deliberate, purposeful discrimination'" and government conduct "'not rationally related to any legitimate state purpose.'" Br. at 13-14 (quoting *Vees v. Carbon County Bd. of Assessment Appeals*, 867 A.2d 742, 746 (Pa. Cmwlth. 2005),[5] and *Weissenberger v. Chester County Bd. of Assessment Appeals*, 62 A.3d 501, 505 (Pa. Cmwlth. 2013)). These standards, however, have been rejected by this Court.

The Court has held that any intentional or systematic disparate enforcement of the tax laws, even absent wrongful conduct, violates the Uniformity Clause. *Downingtown Area Sch. Dist. v. Chester County Bd. of Assessment Appeals*, 913 A.2d 194, 201 n.10 (Pa. 2006); *Valley Forge Towers*, 163 A.3d at 975 (rejecting Commonwealth Court requirement of deliberate discrimination to establish Uniformity Clause violation). Further, the Court has rejected the applicability of a rational basis standard in Uniformity Clause challenges. *Valley Forge Towers*, 163 A.3d at 977. Accordingly, the foundation of the School District's argument is faulty and must be rejected.

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[5] The School District's brief (at 13) identifies *Vees* as a decision of this Court; *Vees*, however, was a Commonwealth Court decision.

B. The Court Previously Rejected the Argument That Selective Appeals Can Be Justified Because They Bring the Assessments of the Appealed Properties to the CLR.

Selective appeals of only recently-sold properties cannot be justified by noting that they will bring the assessments of the appealed properties closer to the average assessed-to-market value ratio in the county. This Court expressly rejected that argument in *Valley Forge Towers* because the "Uniformity Clause can be independently harmed by a systematic course of disparate treatment relative to a particular sub-classification of property."[6] *Id.* at 979. Thus, the Court held that selective assessment appeals can violate the Uniformity Clause, even if they tend to bring assessments of the appealed properties closer to the county's average percentage of market value. *Id.*

C. Differential Appeal Policies by Taxing Authorities Within the Same County Cause Further Non-Uniform Treatment of Taxpayers Within the County, All of Whom Are Part of a Single Class Entitled to Uniform Treatment.

The School District attempts to respond to Taxpayers' point that allowing various taxing authorities in a county to apply different appeal policies, including different monetary thresholds, creates further disuniformity by subjecting taxpayers within the county to different assessment standards. Again, the School District

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[6] The School District relies on Commonwealth Court decisions that pre-date *Valley Forge Towers* for this argument. Br. at 14. As those decisions are inconsistent with the Supreme Court's subsequent decision in *Valley Forge Towers*, they are no longer good law on this point.

misses the mark.

Real property assessments are set at the county level for all properties in the county. 53 Pa. C.S. § 8841. Those assessments are used for taxation by the county, as well as municipalities and school districts. 53 Pa. C.S. § 8811(a). When the assessments change, they change for all taxing authorities within the county, including the county itself. The Uniformity Clause requires uniform tax treatment within the relevant jurisdiction, which, with respect to property assessments, is the county.

Permitting various taxing authorities within a county to use various monetary thresholds means that properties within the county would be treated inconsistently. For example, if school district #1 sets a $150,000 increase in market value as its threshold, while school district #2 sets a $500,000 increase as its threshold, properties in school district #2 with a market value increase between $150,001 and $499,999 would escape appeal, while properties in school district #1 with the same market value increase would not. Thus, only properties in school district #1 with that level of market value increase would be subject to tax on their appreciated value. Properties in both districts, however, are subject to tax at the county level, even though they have been subjected to different assessment standards. The problem is only more acute when one considers that not all school districts and municipalities take assessment appeals and that policies can change every year, while counties, as

Berks County has, use base-year values for decades at a time. Thus, allowing various taxing authorities within a county to apply differing and changing appeal standards creates disuniform treatment of properties within the same county.

The School District attempts to counter this point by suggesting it implies "virtually all taxes" would "violate the requirement of uniformity." Br. at 15. The School District's argument is specious.

The School District cites the fact that various taxing authorities set differing millage rates and that income tax and transfer tax vary, depending on income amount and property value, respectively. Br. at 15. Millage rates, however, unlike assessments, apply only within the jurisdiction of the taxing authority setting them. Only taxpayers within the taxing authority's jurisdiction are sharing the tax burden of that taxing authority. Therefore, the relevant jurisdiction for analyzing the uniformity of the millage rates is the territory of the taxing authority. That is fundamentally different from the assessments, which are used by the county as well to share its tax burden among all residents of the county. Therefore, assessments must be set uniformly throughout the county.

The School District's argument about income and transfer taxes is hard to grasp. This Court has rejected the use of a graduated income tax, *Kelley v. Kalodner*, 181 A. 598, 602 (Pa. 1935), and the federal definition of income for tax basis, *Amidon v. Kane*, 279 A.2d 53, 60 (Pa. 1971), so the income base and the tax rate are

consistent among taxpayers, regardless of the amount or type of income on which they are taxed. Transfer taxes similarly apply a consistent rate to the value of the property transferred. If the School District's point is that persons with higher income amounts or selling higher value property pay higher amounts of tax, it is meritless and unresponsive to Taxpayers' point that allowing different taxing authorities within the same county to set varying appeal thresholds (or none at all) creates disuniform treatment of taxpayers within the county.

IV. The School District's Desire to Maximize the Additional Tax Revenue Generated From Its Selective Assessment Appeals and Administrative Convenience Cannot Justify Differential Treatment of Certain New Property Owners.

The School District further contends that using the amount of anticipated increase in tax revenue to select properties for appeal "attempts to strike a balance between appeal costs and tax revenue" and "is rationally based." Br. at 16. Again, the School District cites erroneous standards, since, as noted above, this Court has rejected the rational basis standard in Uniformity Clause cases. Moreover, as this Court explained in *Valley Forge Towers* in rejecting cost-efficiency as a basis for treating taxpayers differently, "[w]here there is a conflict between maximizing revenue and ensuring that the taxing system is implemented in a non-discriminatory way, the Uniformity Clause requires that the latter goal be given primacy." 163 A.3d at 980.

The Constitution often imposes administrative burdens or costs on

government to protect citizens' rights. The Uniformity Clause does not contain an exception for administrative convenience or cost-efficiency. Rather, it requires equal treatment of taxpayers, regardless of whether that is convenient or maximizes the government's net revenue goals. *See, Amidon*, 279 A.2d at 55 (non-uniform taxation cannot be upheld because it is "expedient"); *Mount Airy #1, LLC v. Pennsylvania Dep't of Rev.*, 154 A.3d 268, 278 (Pa. 2016) (non-uniform taxation cannot be upheld because it would be significant source of new revenue).

The same principle undermines the School District's assertion that it can review only recently-sold properties for appeal because it does not have access to more information relevant to market value for other properties. While consulting recent sales prices may be a convenient way to identify properties to reassess (and selectively raise their taxes), nothing prevents the School District from reviewing all properties to determine which may be assessed below their adjusted market value.

School districts can, if they choose to do so, evaluate if a property is assessed below its adjusted market value without a current sale price for the property. Assessments for each property, along with physical, locational, and use characteristics, are publicly available. Sales data for comparable properties are available publicly. Commercial services gather and publish data relevant to property values, such as rental rates and capitalization rates.

Using such information, as well as sales data, county assessors value

properties – whether sold recently or not – when they reassess properties. Counties have no more access to information than school districts, nor do counties have the authority to compel taxpayers to provide property information or allow property inspections, yet they still perform market valuations.

As the cases demonstrate, school districts often engage consultants to assist them in identifying properties for appeal. The School District's resolution authorizing its selective appeal program here approved engaging a consultant,[7] but the School District eschewed doing so in favor of the easy road of considering only the sub-class of recently-sold properties. Neither administrative convenience nor cost efficiency justify treating a sub-class of properties in a different manner than other properties in the district.[8]

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[7] The School District suggests that its chief financial officer ("CFO") was assisted by a "retained professional appraiser," (Br. at 1), but the CFO's testimony is unequivocal that the School District did not consult an appraiser in selecting properties for appeal. R. 10a-24a. The School District cites only its resolution, R. 37a, which authorizes the District's Business Office to retain an appraiser but does not actually do so.

[8] The School District contends that a ruling for Taxpayers would require it to "appraise" every property in the district, Br. at 23, while the Philadelphia and Pittsburgh school district *amici* (at 21) claim school districts would be required to obtain "certified appraisals" before taking appeals, which they all contend is cost-prohibitive and impossible considering the limits of the information available publicly. The School District and its *amici* create a straw man to attempt to justify their sub-classification of properties. Taxing authorities need not obtain certified appraisals or appraise every property to support taking appeals. They must, however, apply uniform standards to all properties, and not target only new owners for assessment increases while allowing longer-term owners to escape review.

The School District also argues that its targeting of recently-sold properties for assessment appeals does not run afoul of the Uniformity Clause because it serves as a "check and balance" against taxpayers who exercise their statutory right to appeal their assessments. The School District's argument again misses the mark.

First, the Constitution is designed to provide "checks and balances" on *government* by, for example, dividing powers among different branches of government. The purpose of constitutional checks and balances is to prevent any branch of government or government officer from collecting too much power. The constitution is not intended to provide a "check" or "balance" against private persons exercising rights granted by the legislature.

Second, the Uniformity Clause restrains and limits government's taxing power, not actions of private parties. The School District is a government actor. It must conform its conduct to the standards of the Uniformity Clause when initiating assessment appeals. The Uniformity Clause has no bearing on the right of private persons to appeal assessments or take any other action to ensure that they are not obligated to pay more taxes than the law requires.

V. Differential Treatment of New Property Owners Is Unconstitutional Whether Initiated by a County Assessing Authority or a Taxing Authority.

The School District's brief (at 24-27) chooses to attempt to distinguish the selective reassessments of Taxpayers' properties due to the School District's appeals

from the "Welcome Stranger" reassessments held to violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336 (1989).[9] The School District relies solely on the idea that the reassessments at issue in *Allegheny Pittsburgh Coal* were initiated by the county assessor, while the reassessment of Taxpayers' properties in this case was initiated by an appeal by a different government entity, in this case, a taxing authority. The School District tries to discount, for the same reason, decisions in several cases under the Uniformity Clause where this Court or the Commonwealth Court held that selective reassessments by counties were unconstitutional. Br. at 27-28. The School District's distinction is without constitutional significance and its selective appeals violate both federal and state law.

As this Court has explained, the Equal Protection Clause is the "constitutional floor for Pennsylvania's uniformity system." *Downingtown*, 913 A.2d at 200. In *Allegheny Pittsburgh Coal*, the Supreme Court held that a West Virginia county's selective reassessments of only recently-sold properties violated the Equal Protection Clause because "intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one

[9] The Court declined review of the equal protection issue, but Taxpayers address it here since the School District raised it in its brief.

taxed upon the full value of his property." 488 U.S. at 345-46.[10] Since federal equal protection law is the floor for Pennsylvania's uniformity jurisprudence, actions violating federal equal protection principles also violate Pennsylvania uniformity law. *Sands Bethworks Gaming, LLC v. Pennsylvania Dep't of Rev.*, 207 A.3d 315, 331 (Pa. 2019) (Wecht, J., concurring).

That the reassessments in *Allegheny Pittsburgh Coal*, or the Pennsylvania cases involving selective reassessments, were initiated by the county assessor, rather than a taxing authority, makes no difference from a constitutional perspective. The School District does not even attempt to explain *why* it matters that it initiated the reassessment of Taxpayers' properties, rather than the county doing so. The federal and state constitutions limit the conduct of local government actors, including both counties and school districts. Whether the reassessment of Taxpayers' properties was initiated by the county or the School District is of no moment – Taxpayers were selected for differential treatment and had their properties reassessed because of government action, while most other properties have not been reassessed. Such selective reassessment of a sub-class of new property owners is not permitted.

Further, the School District's argument flatly ignores that this Court rejected such a distinction in *Valley Forge Towers*. The Court held that the constitution "does

[10] West Virginia, like Pennsylvania, required all taxable real estate to be taxed uniformly as a single class, based on the market value of the real estate. *Id.*

not permit the government, including taxing authorities, to treat property sub-classifications in a disparate manner." 163 A.3d at 975. The Court further held that there is no "constitutionally meaningful distinction" between the authority to set or revise assessments (as performed by the assessor) and the statutory power to appeal assessments (as granted to taxing authorities). *Id.* at 978 n.18. The powers granted to the county and to the taxing authorities both are subject to the constraints of the federal and state constitutions, and neither power may be used to treat a sub-class of properties differently.

Any distinction, in the context of a constitutional analysis, based on whether the assessing authority or the taxing authority initiated the reassessment has been rejected. The outcome is the same either way – the new owner is treated differently than other property owners because the new owner's property is reassessed based on its current market value, while other properties are not. This is indistinguishable from *Allegheny Pittsburgh Coal* and the decisions of Pennsylvania courts and violates both the federal Equal Protection Clause and the Uniformity Clause.

VI. The Principle That the Amount or Value of a Taxpayer's Property Subject to Tax Cannot Be Used as a Basis to Treat Taxpayers Differently Bars Taxing Authorities From Choosing to Appeal Assessments Only of Recently-Sold Properties That Are Worth Enough to Generate a Certain Additional Amount of Tax Revenue.

The School District also attempts to distinguish *Mount Airy* and *Nextel Communications, Inc. v. Commonwealth, Dep't of Rev.*, 171 A.3d 682 (Pa. 2017).

Br. at 28-29. Those cases hold that the value or amount of a taxpayer's property subject to tax may not be used as a basis to treat similarly-situated taxpayers differently. The School District simply ignores the principle underlying these decisions. The School District asserts that the cases involved differential tax rates, rather than the basis of the property subject to tax, or exemptions, but the School District's characterizations are incorrect and the principles stated in those cases are not limited to their particular facts.

For example, *Nextel* involved the statutory limitation of the amount of a "net loss carryover" that a taxpayer could claim as a deduction against its current-year income, which relates to the income basis of the property subject to appeal. *Id.* at 685. In *Amidon*, 279 A.2d at 63, the Court rejected use of the federal definition of income, which resulted in variation in taxpayers' income basis used to calculate their income tax. The tax rates in these cases did not vary, but the bases to which the rates were applied did, which violated the Uniformity Clause. The principle holds, whether the variation in treatment of similarly-situated taxpayers affects the tax rate or the basis to which it is applied: government cannot use the quantity or value of a taxpayer's property subject to tax to treat the taxpayer differently than other similarly-situated taxpayers. Thus, the School District's use of the value of properties to decide which to subject to assessment appeals runs counter to this longstanding principle of uniformity re-affirmed by the Pennsylvania Supreme

Court in *Mount Airy* and *Nextel*.

The School District also asserts that the Court's decisions in *Kelley* and *Saulsbury v. Bethlehem Steel Co.*, 196 A.2d 664 (Pa. 1964), are not on point because they involve income tax and an occupational privilege tax, respectively, rather than real estate tax. Br. at 29. Those cases were decided under the Uniformity Clause, applying well-established uniformity principles that govern all types of taxes in Pennsylvania. The School District offers no reason why the reasoning of the Court's decisions in *Kelley* and *Saulsbury* are limited to the particular taxes at issue in those cases and, indeed, there is none. Accordingly, the reasoning of those cases is generally applicable and, in this case, requires the Court to reject the School District's selective appeals because they treat Taxpayers differently than other similarly-situated taxpayers on the basis of the value of the Taxpayers' property subject to tax.

VII. Taxpayers Will Pay Their Fair Share of Taxes Only if They Are Assessed Using the Same Standards and Base-Year Values as Other Taxpayers, Not if They Are Singled Out for Reassessment to Satisfy the School District's Desire to Increase Its Revenue.

Finally, the School District and its *amici* attempt to claim that, by targeting only certain new property owners for assessment increases, the School District is attempting to ensure those taxpayers are paying what the School District and the *amici* characterize as the taxpayers' "fair share" of taxes. The *amici* resort to name-calling, asserting Taxpayers are "scofflaws," Phila./Pitts. Br. at 14, or suggesting

that they are "freeload[ing]" and "pick[ing] the pockets" of other taxpayers in the district, Pa. Sch. Bds. Ass'n Br. at 5, 19. Contrary to these assertions, there is no evidence that Taxpayers have not paid their duly-issued tax bills. All Taxpayers are asking is that their right under the Constitution to be assessed and taxed in a uniform, lawful manner be respected.

More importantly, the concept that Taxpayers, but for the reassessment of their properties, would not be paying their "fair share" of taxes is erroneous. First, as explained in Taxpayers' opening brief (at 22-23), Taxpayers will pay their "fair share" only if the School District's appeals are quashed and their prior assessments reinstated. Only if the Court grants that relief will Taxpayers be assessed pursuant to the standard set by, and generally prevailing in, Berks County – the 1994 market value of their properties.

The contrary assertion is premised on the fact that, based on their pre-appeal assessments, Taxpayers were assessed at a percentage of their properties' current market value less than the CLR. But the CLR is not the standard set by the county for assessments. Rather, counties choose a base year to set market value and an established predetermined ratio ("EPR"). 53 Pa. C.S. § 8842(a). The CLR, roughly the average assessed-to-market ratio in the county, is calculated after the county issues its assessments for a given year. Counties make no effort to conform assessments to the CLR.

Here, Berks County uses a 1994 base year and 100% EPR. Tr. Ct. Op. at 11. That is the appropriate standard to use to assess whether Taxpayers are paying their "fair share" of taxes. Pursuant to that standard, Taxpayers were properly assessed before their assessments were changed on appeal.

Moreover, if paying tax based on a ratio of assessed-to-market value of less than the CLR makes one a "scofflaw," "freeloader," or "pickpocket," those characterizations apply to approximately half of all taxpayers in every county in the Commonwealth. By definition, since the CLR represents an average assessed-to-market value ratio, approximately half of all taxpayers pay tax based on assessed-to-market value ratios less than the CLR.

All of those taxpayers, however, are similarly-situated and part of the single class of real estate owners. The Uniformity Clause precludes treating some of those taxpayers differently because they recently purchased their properties, or because increasing their assessments would generate enough additional revenue to make it worth the School District's while to ask for an increase.

The attempt of the School District and *amici* to claim the mantle of "good government" by selectively choosing certain new taxpayers for tax increases does nothing to save its argument under the law and lacks credibility. As a legal matter, non-uniform taxation cannot be upheld even if the Court would deem it "just" or "wise." *Amidon*, 279 A.2d at 55.

Moreover, the School District (and its *amici*) plainly were motivated to take selective assessment appeals to increase revenue, not to make assessments uniform.[11] The School District's solicitor admitted that the School District looked to "gain [ ] financially" from the appeals by increasing its tax revenue. R. 33a. The School Boards Association *amicus* brief (at 5) makes the goal of school districts in taking appeals even more explicit. As the *amicus* admits, its members use appeals to "plug[ ] holes" in their budgets, without having to pass generally applicable tax increases.

This is the opposite of "good government." Improving balance sheets through selective tax increases on certain taxpayers because the market value of their properties increased, while allowing most taxpayers to avoid tax on their increased market value, is an attempt to avoid the political accountability that comes with a millage increase that affects all taxpayers and must be debated and passed publicly.

Any interest school districts have in uniformity, in the sense of consistency in ratio of assessed-to-market value, is incidental to their goal of raising additional revenue without passing a general millage increase. If school districts truly were concerned about uniformity in assessments, they would not take piecemeal appeals. Instead, they would demand regular countywide reassessments. That would equalize

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[11] As this Court has recognized, because individual assessment appeals affect only the properties subject to the appeal, they are not an effective method of creating uniform assessments. *Clifton*, 969 A.2d at 1228.

the assessments of all properties, not just raise the taxes of a few taxpayers.[12] But a countywide reassessment does not serve the school districts' purpose because, by statute, a countywide reassessment must be revenue-neutral. 53 Pa. C.S. § 8823. In other words, the action that could improve uniformity generally does nothing to help school districts increase revenue without voting to increase millage rates. That is why school districts rarely ask for such relief and, instead, focus on selective appeals to attempt to increase their revenue without political accountability. School districts' selective appeals are neither "good government," nor, more importantly, consistent with the Uniformity Clause.

[12] Countywide reassessments serve the interests of taxpayers whose properties are assessed at an assessed-to-market value ratio higher than the CLR, as their relative share of tax burden should fall upon countywide reassessment. While claiming to be concerned about such taxpayers, the School District and its *amici* apparently only consider those taxpayers "fairly" assessed and never seek to reduce their taxes.

CONCLUSION

For all the foregoing reasons, and those stated in Taxpayers' opening brief, Taxpayers respectfully request that the Court reverse the decision of the Commonwealth Court and order the 2019 Assessments of the properties reinstated.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

I hereby certify that the foregoing Reply Brief contains 6411 words and does not exceed the word limit pursuant to Pa. R.A.P. 2135(a)(1).

/s/ Glenn A. Weiner
Glenn A. Weiner

CERTIFICATION OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I 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/ Glenn A. Weiner
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