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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.

AMICI CURIAE BRIEF OF NORTH PENN SCHOOL DISTRICT, BENSALEM TOWNSHIP SCHOOL DISTRICT, NORRISTOWN AREA SCHOOL DISTRICT, PENNSBURY SCHOOL DISTRICT, AND HATBORO-HORSHAM SCHOOL DISTRICT IN SUPPORT OF APPELLEE WILSON SCHOOL DISTRICT

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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I. STATEMENT OF THE INTEREST OF *AMICI CURIAE*

Amici Curiae are North Penn School District, Bensalem Township School District, Norristown Area School District, Pennsbury School District, and Hatboro-Horsham School District (collectively "School Districts"). School Districts are located in Bucks and Montgomery Counties and are taxing authorities under Pennsylvania law. Each of the School Districts utilize monetary thresholds in order to determine the financial prudence of appealing a particular under-assessed property within the confines of their respective district.

Additionally, each of the School Districts uses data pertaining to the recent sale price of a given property in order to determine whether a property is properly assessed, and if it is under-assessed, to what extent the property is under-assessed. School Districts frequently select assessments to appeal based on these criteria, and as such, this Honorable Court's decision in GM Berkshire Hills LLC may affect the manner in which School Districts approach assessment appeals in the future.

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

II. ARGUMENT

This Court's Order granting allowance of the instant appeal limited the issues to: (a) Do a school district's selective real estate tax assessment appeals violate the Uniformity Clause of the Pennsylvania Constitution when the school district chooses only recently-sold properties for appeal, leaving most properties in the district at outdated base-year values; and (b) Do a school district's selective real estate tax assessment appeals violate the Uniformity Clause of the Pennsylvania Constitution when the school district chooses only certain recently-sold properties that would generate a minimum amount of additional tax revenue for appeal, leaving most properties in the district at outdated base-year values?

1. Monetary Thresholds Do Not Violate Uniformity

Under Pennsylvania Law, "[t]he county assessment office shall assess real property at a value based upon an established predetermined ratio which may not exceed 100% of actual value. The ratio shall be established and determined by the board of county commissioners by ordinance. In arriving at actual value, the county may utilize the current market value or it may adopt a base-year market value." 53 Pa.C.S. §8843(a).

These assessments are the manner in which a county determines the value of properties for taxation purposes. However, when a county assesses the value of a

property, it must assess all properties within the county as part of a greater countywide reassessment, or else be guilty of an impermissible "spot assessment," subject to only a few limited exceptions. See 53 Pa.C.S. §8817.

In true practice in Pennsylvania, such countywide reassessments are few and far between. In the absence of such reassessments, properties within the county could end up significantly under or over assessed because the property has not been accurately reassessed in years. This of course is an undesirable result, but whereas the county, as an assessor, cannot reassess an individual property, property owners and taxing districts, such as school districts, possess the statutory right to appeal inaccurate assessments in order to obtain a more accurate valuation on any given property.

Indeed, Section 8855 of the Consolidated County Assessment Law grants a school district the "the right to appeal any assessment within its jurisdiction in the same manner, subject to the same procedure and with like effect as if the appeal were taken by a taxable person with respect to the assessment." 53 Pa.C.S. §8855.

This statute allows for more accurate assessment across the board in any given school district. If a taxpayer learns their property is over-assessed, they can appeal the assessment in an attempt to reduce the valuation and ultimately pay what they should truly owe in taxes. Likewise, if a school district learns a property is under-assessed, the statute permits the school district to appeal such assessment

with the same goal taxpayers have: to determine a fair and accurate tax liability. In effect, the school district's ability to appeal assessments acts as a safeguard to ensure the effectuation of the Pennsylvania Constitution's requirement that "[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under the general laws." Pa. Const., Art VIII, §1.

Without the school district's ability to appeal an assessment, the natural result would be that owners of under-assessed properties would receive the financial windfall of being under-assessed, and therefore under-taxed, and the taxing authority would be powerless to obtain a more accurate assessment. Stated otherwise, authorizing both taxpayers and school districts to appeal an assessment is the best way to ensure uniformity.

Nonetheless, Appellants seek to effectively remove this balance by claiming a constitutional violation where the school district's choice to appeal the assessment of their property causes them to pay their fair share of taxes. In essence, Appellants cry foul because they will not receive a financial windfall through their properties remaining under-assessed. Taking their arguments to their logical conclusions, Appellants essentially suggest that a school district's discretion to appeal assessments in itself violates uniformity, because apparently, they must appeal all assessments or none at all. Theoretically, to appeal each and

every assessment perhaps could result in a perfect world in which each and every property in a given district is perfectly assessed. However, this Court has held that taxation "is not a matter of exact science; hence absolute equality and perfect uniformity are not required to satisfy the constitutional uniformity requirement. Some practical inequalities are obviously anticipated . . ." Clifton v. Allegheny Cty., 969 A.2d 1197, 1212 (Pa. 2009).

In the absence of a countywide reassessment of all properties, the best way to determine the most accurate valuation of a property, and to reduce "practical inequalities" to the greatest extent possible, is to continue to allow taxpayers and school districts to appeal assessments they know to be inaccurate. Id.

However, Appellants apparently seek to eliminate this balance and hold school districts to the impossible standard (which has already been rejected by this Court) of absolute equality and perfect uniformity. To remove school districts' discretion in such a way would essentially cause them to take the place of county assessors. While such a result is inappropriate in itself, to hold school districts to such a standard would require them to incur extreme costs and flood their respective counties' Boards of Assessment Appeals and Courts of Common Pleas with appeals which may only yield minimal increases in tax revenue. Instead, school boards have implemented procedures by which they choose which assessments to appeal in a manner which accomplishes their goal of increasing tax

revenue through more accurate assessments, while also complying with uniformity requirements.

In Valley Forge, this Court provided guidance on which assessment appeal procedures complied with uniformity requirements, and found that a practice of only appealing the assessments of one sub-classification of properties, where that sub-classification is drawn according to property type, such as commercial, apartment complex, single-family residential, or industrial, violated uniformity. See Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist., 640 Pa. 489, 499, 515 (Pa. 2017).

However, that same court chose to specifically note that "nothing in this opinion should be construed as suggesting that the use of a monetary threshold—such as the one challenged in Springfield—or some other selection criteria would violate uniformity if it were implemented without regard to the type of property in question or the residency status of its owner." Valley Forge at 517.

In regards to this monetary threshold in Springfield, the Commonwealth Court found, "[t]he School District's $500,000 threshold was based on the reasonable financial and economic considerations of increasing its revenue and the costs of filing assessment appeals. The $500,000 difference between the sale price and the implied market value represented $9,000 to $11,000 in additional tax revenue, which justified the costs of appeals. As in Vees and Weissenberger, the

method adopted by the School District to select properties for assessment appeals is not arbitrary, capricious or discriminatory. The fact that the $500,000 threshold would mostly subject commercial properties to assessment appeals does not warrant a different conclusion." In re Springfield Sch. Dist., 101 A.3d 835, 849 (Pa. Commw. Ct. 2014).

Indeed, like in Springfield, several other school districts have implemented policies incorporating monetary thresholds without regard for the classification of the property. Challenges to these monetary thresholds have survived numerous challenges on uniformity grounds. See Vees v. Carbon Cty. Bd. Of Assess. Appeals, 867 A.2d 742 (Pa. 2005) (school district's policy of appealing assessments of properties whose purchase price exceeded the assessed value by $15,000 did not violate the uniformity requirement); Kennett Consolidated School Dist. V. Chester Cty. Bd. Of Assess. Appeals, 228 A.3d 29 (Pa. Commw. Ct. 2020) (holding that monetary threshold targeting properties under-assessed by $1 million did not violate uniformity) appeal granted, 240 A.3d 611 (Pa. 2020); Sch. Dist. of Upper Dublin v. Montgomery Cty. Bd. of Assessment Appeals, 260 A.3d 1099 (Pa. Commw. Ct. 2021) (a school district's policy of proceeding on assessment appeals only where such an appeal would yield an annual tax increase of $10,000 or more did not violate uniformity).

These decisions are well-reasoned and validate such thresholds because they conform with uniformity requirements while simultaneously presenting the fairest way for school districts to exercise their appeal rights under the Consolidated County Assessment Laws. Indeed, a monetary threshold is perhaps the most reliable manner in which a school district can seek to appeal assessments and bring the largest number of properties into a more accurate valuation.

Such discretion by the school district is necessary to ensure taxes are levied in as close to a uniform manner as possible while also allowing such school districts to avoid financially imprudent assessment appeals. This discretion is exercised in tandem with a school district's discretion to set its own millage rate. Indeed, "[i]n all school districts of the second, third, and fourth class, all school taxes shall be levied and assessed by the board of school directors therein… on the total amount of the assessed valuation of all property taxable for school purposes therein." 24 P.S. § 6-672.

To endeavor to have properties assessed, and therefore be taxed, to the most accurate extent possible is the essence of uniformity. To accomplish this goal using only monetary criteria ensures that no assessment will be appealed based on how the subject property is classified, but only based on how far afield the true valuation is from the assessment. Now, Appellants apparently seek to create new classifications of properties in an attempt to manufacture a uniformity violation

where there is in fact none. In essence, Appellants put themselves in a different "classification" as property owners who are paying significantly less in taxes than they should be, as opposed to a different "classification" of property owners who may only be paying slightly less in taxes than they should truly pay.

In truth, they are all members of the same class, and school districts simply use a monetary threshold in the interest of bringing property owners to a point in which they pay as close to what they owe as possible, without plunging the school district into chaos and financial ruin though appealing the assessment of every property regardless of the potential results of the appeal. Again, such monetary thresholds are the fairest way for a school district to ensure a property is accurately assessed without forcing the school district to incur substantial costs appealing an assessment for what amounts to a *de minimis* change in value.

In fact, the Commonwealth court recently found "nothing in [the Pennsylvania] Supreme Court's analysis in Valley Forge that precludes application of a reasonable monetary threshold for assessment appeals, based on an estimate of the minimum potential revenue gain that will make a tax assessment appeal cost-effective. Indeed, a taxing district's selection of a property for an assessment appeal that failed to take into account whether the appeal was likely to be cost-effective might well be fiscally irresponsible." E. Stroudsburg Area Sch. Dist. v. Meadow

Lake Plaza, LLC, No. 371 C.D. 2018, 2019 WL 5250831, at *5 (Pa. Commw. Ct. Oct. 17, 2019).

Thus, monetary thresholds are a fair and logical way for school districts to: (1) comply with this Court's ruling in Valley Forge, (2) appeal those assessments which deviate severely from the property's true value, and (3) abstain from appealing assessments which deviate from the property's true value in such a *de minimis* way that the additional revenue would not even cover the costs of the appeal. Such a practice promotes uniformity.

The National Association of Property Tax Attorneys, et al., in their own amicus brief, argues despite the litany of case law in support of monetary thresholds, that such thresholds violate uniformity because adjacent school districts could theoretically set different thresholds, resulting in one school district appealing an assessment while on identical facts the neighboring district would not. Such an exercise is purely theoretical, and the argument uses an extreme example fabricated in an attempt to paint monetary thresholds in the worst possible light. This argument seeks to present an imaginary fact pattern not presently before the court in order to (1) subvert repeated Commonwealth Court approval of monetary thresholds, (2) ignore what this Court specifically noted it did not disapprove of in Springfield, and (3) strip all school districts of their respective statutory authority to appeal assessments in a uniform manner. This theoretical

argument is presented in contrast to established law, all in the name of avoiding paying a fair share of taxes. Such an argument should be given no consideration in this matter.

2. A Policy of Appealing Assessments of Recently-Sold Properties Does Not Violate Uniformity

Just as monetary thresholds do not violate uniformity, neither does a school district's policy of only appealing assessments of recently-sold properties. Rather, both policies, in tandem, form the most reliable, accurate way for a school district to ensure that as many properties are properly assessed as possible.

In today's information age it is understandable to expect that taxing authorities have ample data to analyze tax assessments for potential appeals. However, as this Court has noted, taxation is not an exact science, and "absolute equality and perfect uniformity are not required to satisfy the constitutional uniformity requirement." Clifton at 1210.

Instead, taxing authorities rely on recent sales to provide market data with regards to the current price. Each property's assessment can be multiplied by a common level ratio to provide an implied fair market value. Comparing the assessment's implied fair market value to a recent sale price provides school districts with a straightforward analysis in determining how close to the current market price a property's assessments are.

School districts must utilize assessment appeals, and logically, only initiate an appeal when they have evidence to suggest that a property has been undervalued. Yet again, recent Pennsylvania jurisprudence supports the practice at issue. In a case addressing a taxing body's practice of using recent sales price to determine whether a property was under-assessed, and thus, appropriate for an assessment appeal, the Allegheny County Court of Common Pleas held:

> [T]he taxing bodies' decision to appeal only those properties that are recently sold cannot be properly described as, in any way, improperly motivated or targeted. Although [Taxpayers] may contend that every not-recently-sold property within the County is under-assessed (at least in comparison to the recently-sold property), evidence of this insinuated fact is not always as readily available. On the other hand, evidence that any individual recently sold property is under-assessed in the light of the recent sale price of that precise property for substantially more than its assessed value is always readily available. The taxing bodies are simply taking appeals where there exists readily available evidence to prove their case. The taxing bodies are not unfairly focusing on, or targeting, a particular class or type of property owner.

Martel v. Allegheny Cty., 2018 WL 10602105 (Allegheny Cty. Ct. of Com. Pleas, March 29, 2018), aff'd on other grounds, 216 A.3d 1165 (Pa. Commw. Ct. 2019).

Put simply, a school district can only appeal an assessment when it knows a given property is under-assessed. That Appellants claim a uniformity violation where school districts ensure they can actually prove their case before filing an appeal defies logic. Practically, Appellants ask this Court to suppress the only

evidence some school districts have to determine if a property is under-assessed, and effectively remove a taxing body's ability to appeal assessments.

Notably, in their own amicus brief, the National Association of Property Tax Attorneys, et al., mischaracterize Appellees' practice of appealing recently-sold properties as a 'Welcome Stranger' policy, and in support of this mischaracterization, seek to vastly expand the United States Supreme Court's ruling in Allegheny Pittsburgh Coal Co. v. Cty. Comm'n of Webster Cty., WV, 488 U.S. 336 (1989). In truth, that case has no application here, as Allegheny dealt with a valuation placed on a property by a county assessor (in a different state with different tax laws) rather than a taxing body such as a school district, and the county assessor unilaterally changed all assessments based on recent sales prices. Here, a school district has no authority to assess property, and instead must appeal to the independent board once it has acquired the only evidence it can in order to warrant such an appeal, and still only once it has determined whether the assessed value is far enough from its true value that an appeal is financially prudent. As such, there is no "intentional systematic undervaluation by state officials" of other properties. Id.

On the contrary, the monetary threshold used by school districts ensures that all property types are treated fairly and equally to the greatest extent possible. Truly, if the school district were privy to information regarding the true current

valuation of every property, then it would surely appeal each and every assessment which meets that monetary threshold. This is the complete opposite of an intentional systemic undervaluation, as the school district's true intent is to eliminate undervaluation and maximize tax revenue, and it does so by the only means it can: by appealing properties it believes are undervalued.

Indeed, the distinction between the county assessor in Allegheny, and the school districts in the instant case, is key. For a county assessor to automatically change the assessment of a property once it is sold would be an impermissible spot assessment, but again, this case is not examining the actions of the county assessor. Instead, it examines school districts, which are statutorily permitted to appeal properties it believes are undervalued. Of course, the school district's option to appeal an assessment is discretionary, and this discretion, alongside the taxpayer's right to appeal assessments, allows the school district to attempt to bring as many properties' assessments as close to their true value as is economically feasible. Indeed, "[e]xercise of appeal rights by both the [school district] and the property owner will ensure that the uniformity required by our state constitution is maintained." Millcreek Twp. School Dist. V. Erie Cty. Bd. Of Assess. App., 737 A.2d 335, 339 (Pa. Commw. Ct. 1999).

The claim that relying on sales price as a basis to appeal an assessment violates uniformity is simply another attempt by taxpayers to avoid paying their

fair share in taxes. If Appellants get their way, absent a countywide reassessment, school districts would be required to essentially assume the "assessor" role of the county and hire experts to review every parcel in the district. Such a result is over burdensome for school districts, and if this Court were to find for Appellants, school districts would essentially be rendered powerless to initiate any assessment appeals.

Instead, *Amici Curiae* respectfully requests this Court uphold the school district's practice of using recent sale price to determine if a property is under-assessed as constitutional. Such a practice, in combination with the use of monetary thresholds, clearly complies with both this court's reasoning in Valley Forge and all Pennsylvania jurisprudence subsequent to that decision.

To put it plainly, to affirm the Commonwealth Court would allow school districts to continue implementing their written policies containing monetary thresholds, and without regard to property classifications, in order to selectively appeal severely under-assessed properties and thereby require property owners to pay their fair share of taxes. To find that such practices violate uniformity would effectively end any means for a school district to initiate an appeal, thus resulting in taxpayers paying an unfairly low tax amount, even when the property's purchase price provides a clear indication that there is a wide gap between the assessment's implied fair market value and the recent sale price.

III. CONCLUSION

Monetary thresholds have passed constitutional muster every time the issue has been considered by any court in this Commonwealth. This is because monetary thresholds are the fairest way to allow a school district to select assessments to appeal without completely stripping the district of any discretion and forcing them to either appeal all assessments, or none at all. The use of a recently-sold property's sale value as a means to determine whether such property is under-assessed is simply a school district using what information is available to them to ascertain the prudence of such an appeal. To effectively strip school districts of their appellate rights would only allow taxpayers to pay an unfairly low tax amount even when the property purchase price provides a clear indication that there is a wide gap between the assessment's implied fair market value and the recent sale price.

Respectfully submitted,

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Dated: May 12, 2022

PUBLIC ACCESS POLICY COMPLIANCE CERTIFICATE

I, Alexander M. Glassman, 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.

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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 3,640 words.

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I, Alexander M. Glassman, hereby certify that on this 12th day of May, 2022, I caused a true and correct copy of the foregoing Amicus Brief to be served electronically via the Court's PACFile filing portal, upon the following:

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