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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

BRIEF OF *AMICUS CURIAE* PENNSYLVANIA SCHOOL BOARDS ASSOCIATION In Support of Appellee Wilson School District

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On appeal from the July 8, 2021 Order of the Commonwealth Court of Pennsylvania, at No. 930 C.D. 2020, Affirming the January 13, 2020 and August 18, 2020 Orders of the Court of Common Pleas of Berks County at No. 18-18627

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STATEMENT OF INTEREST OF AMICUS CURIAE

Your Amicus Curiae the Pennsylvania School Boards Association ("PSBA") is a voluntary non-profit association whose membership includes nearly all of the 500 local school districts and 29 intermediate units of this Commonwealth, numerous area vocational technical schools and community colleges, and the members of the boards of directors of those public school entities. The mission of the Pennsylvania School Boards Association, organized in 1895 and the first such association in the Nation, is to promote excellence in school board governance through leadership, service and advocacy for public education. The efforts of PSBA in assisting local school entities and representing the interests of effective and efficient governance of our public schools also benefit taxpayers and the general public interest in the education of our youth.

In that capacity, PSBA endeavors to assist state and federal courts in selected cases presenting important legal issues of statewide or national significance, by offering benefit of the Association's statewide and national perspective, experience and analysis relative to the legal, policy, management, liability, fiscal, ethical and other considerations, ramifications and consequences that should inform any resolution of the particular disputed issues in such cases. For decades, PSBA's informed insight, thorough research and careful legal

analysis have made PSBA a respected and valued participant in state and federal appellate proceedings involving public schools.

PSBA files this amicus curiae brief in support of Appellee Wilson School District pursuant to Pa.R.A.P. 531(b)(i), to provide the Court PSBA's perspective about the importance of the ability of school districts and other taxing authorities to appeal from tax assessments, important not only to the support of public education programming, but also to the pursuit of uniformity and fairness in the system of local real estate taxation. In that regard, PSBA hopes to assist the Court in seeing through the smoke and mirrors conjured up by Appellant Underassessed Property Owners in an effort to cast doubt on the constitutionality of the methods used by school districts to determine when appeals should be taken so as to effectively focus precious resources where the benefit to uniformity and all taxpayers is greatest.

Accordingly, with this brief your *Amicus* Curiae PSBA urges the Court to reject the arguments of Appellants and to affirm the decision of the Commonwealth Court in this case.

STATEMENT OF CONCURRENCE IN PRELIMINARY MATTERS

Your *Amicus Curiae,* PSBA, concurs in such statements as are made in the brief of Appellee Wilson School District regarding Jurisdiction, the Order or Other

Determination in Question, Scope and Standard of Review, Questions Involved and Statement of the Case.

STATEMENT REGARDING BRIEF PREPARATION

Although the activities of PSBA, including judicial advocacy, are generally supported in part by dues paid by PSBA member entities such as the Appellant Wilson School District, no person or entity otherwise paid in whole or part for the preparation of this brief or authored it in whole or part.

SUMMARY OF ARGUMENT

This case is about fairness and good government in the operation of public school systems and the taxation essential to their services. It is also about the grossly unfair impact it would have on other taxpayers if the Uniformity Clause could be twisted into a perverse shield immunizing owners of the most severely underassessed properties from being required to pay their fair share of the overall tax burden.

A local school district must raise the bulk of the funds necessary to provide for the educational needs of the community's children through property taxes, while nonetheless exercising due regard for the economic capacity of the community. But when a school district appeals the assessment of an undervalued property, it is about much more than just recapturing revenue that is escaping fair taxation. School districts and other units of local government must at all times also strive to build and maintain a sense among taxpayers that there is integrity and fairness in the manner in which the tax burdens are apportioned, and that great care is taken in how their collective contributions are expended.

Such appeals unquestionably benefit all taxpayers who are paying their fair share of the burden of supporting governmental services. When property owners evade or are excused by virtue of underassessment from paying their proportionate fair share, other property owners must pay a higher share to make up for it.

Property owners who are thereby forced to subsidize the tax liability of under-assessed properties have no direct means to challenge underassessments except to depend on the school district or municipality to serve as their voice. Where else is the voice of the fairly assessed taxpayers everywhere forced to subsidize underassessed properties whose owners now ask this court to endorse freeloading?

Completely missing from the creative arguments of the Appellant Underassessed Property Owners is any theory at all as to how a taxpayer found to be paying less than a fair share of the burden at the expense of other taxpayers has any constitutional, statutory or other right to continue to pay less than a fair share, or how that could be considered fair, reasonable or constitutional. The Appellant Underassessed Property Owners apparently would prefer that school districts should make up for the resulting impairments caused to the educational programs available to the children of their community by raising tax rates on the entire community. The goal of such appeals by school districts is the opposite---to avoid tax hikes as much as possible by plugging holes through which revenue that should be available for educational needs appears to be escaping.

This Court has never questioned the constitutionality of the statutory right of taxing bodies to appeal from real estate tax assessments in the same manner as property owners themselves may do, nor has it ever suggested that such appeals are the enemy of uniformity. Quite to the contrary, this Court has explicitly recognized

that the correction of under or over-assessments via such appeals, whether the appeal is by a taxpayer or by a tax-levying government unit, is a tool that helps to promote uniformity rather than detract from it, and that when periodic county-wide reassessments fall short of maintaining uniformity, the appeal process as a tool for making up some of the difference is ineffective if it is completely one-sided.

To the contrary, the arguments of the Appellant Underassessed Property Owners would apply equally to question the constitutionality of the statutory right of property owners to appeal their own assessments to obtain a more favorable assessment than their neighbors.

There is likewise no basis for suggesting that there is anything unconstitutional about a school district's decision to use its precious financial resources to pursue appeals only where the potential return in terms of recaptured revenue is sufficient to justify the cost of litigation, and where the positive impact for other taxpayers forced to subsidize under-assessed properties is the greatest. If significantly under-assessed properties are an offense to uniformity and a burden on other taxpayers that undermines community regard for the fairness of the tax structure, what possibly could be unreasonable or unlawful about focusing the school district's finite resources on the most glaring examples? The Appellant Underassessed Property Owners instead ask this Court to endorse protection of the biggest offenders to uniformity.

This Court should not be tempted by the clever misdirection offered in the taxpayer's arguments. The financial thresholds used by school districts to select which underassessments to appeal do not divide real property into classifications based on property type or value as the taxpayer suggests. The distinctions made are instead in the magnitude of underassessment and the consequent harm to local uniformity, as well as the potential revenue to be recaptured by investing precious resources in the cost of litigating appeals.

ARGUMENT

THE PURPOSE OF THE UNIFORMITY CLAUSE IS FURTHERED, NOT OFFENDED, BY A TAXING AUTHORITY'S SELECTION OF REAL ESTATE ASSESSMENTS FOR APPEAL BASED ON FINANCIAL THRESHOLDS THAT FOCUS APPEALS UPON APPARENT UNDERASSESSMENTS THAT ARE THE MOST GLARINGLY NON-UNIFORM AND THAT UNFAIRLY IMPOSE THE LARGEST BURDENS ON OTHER TAXPAYERS.

Your *amicus curiae* the Pennsylvania School Boards Association files this brief in support of the positions of the Appellee Wilson School District, and urges that the decision of the Commonwealth Court in this case be affirmed.

This case is about fairness---the ultimate goal of the Uniformity Clause of Pennsylvania's Constitution, Article VIII, § 1. It is also about good government in the operation of public school systems, and the grossly unfair impact it would have on other taxpayers if the Uniformity Clause could be twisted into a perverse immunity shielding owners of the most severely underassessed properties from being asked to pay their fair share of the overall tax burden.

No less important is the voice of the fairly-assessed taxpayers, those who are paying their fair share, are forced to make up for what their underassessed neighbors are not paying, and whose Uniformity Clause rights are being violated by that sad state of affairs. They have no other voice in Pennsylvania's tax assessment scheme other than appeals initiated by taxing authorities.

A school district must raise the bulk of the funds necessary to provide for the educational needs of the community's children, while exercising due regard for the

economic capacity of the community, but the issues at the heart of this case are about much more than just recapturing the revenue underassessments allow to escape. In raising funds and expending them, school districts and other units of local government must at all times also strive to build and maintain a sense among taxpayers that there is integrity and fairness in the manner in which the tax burdens are apportioned, and great care taken in how their collective contributions are expended.

There can be no doubt that appeals of underassessments initiated by taxing authorities benefit all taxpayers who are shouldering their fair share of the burden of supporting governmental services. As this Court has recognized since the Uniformity Clause was in its infancy, when a property owner evades or is excused from paying its proportionate fair share of that burden, the remaining property owners must pay a higher share to make up for it. This Court has observed:

> Without intending to question complainant's motives in anything that he did or omitted to do in the premises, it may be confidently asserted that in every community there are, and probably always will be, those who are anxious to shirk their share of the public burdens, and thereby cast the same upon others.

Appeal of Van Nort, 121 Pa. 118, 127–28, 15 A. 473, 473–75 (1888). Two decades later, this Court further observed:

> While every tax is a burden, it is more cheerfully borne when the citizen feels that he is only required to bear his proportionate share of that burden measured by the value of his property to that of his neighbor. This is not an idle thought in the mind of the taxpayer, nor

> is it a mere speculative theory advocated by learned writers on the subject; but it is a fundamental principle written into the Constitutions and statutes of almost every state in this country. In Pennsylvania the framers of the new Constitution embodied this principle in our organic law in terms so plain that no one should misunderstand its meaning or doubt its application, and the people by the adoption of that instrument placed the seal of their approval upon a system of taxation which has for its corner stone uniformity in the valuation, levy, and collection of all taxes.

Delaware, L. & W. R. Co.'s Tax Assessment, 224 Pa. 240, 243, 73 A. 429 (1909); cited with approval in *Downingtown Area Sch. Dist. v. Chester Cty. Bd. of Assessment Appeals*, 590 Pa. 459 at 466, 913 A.2d 194 at 199 (2006), and in *Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist.*, 640 Pa. 489 at 506, 163 A.3d 962 at 973 (2017).

There is something critical missing from the novel arguments of the Appellant Underassessed Property Owners: any theory at all as to how a property owner found to be paying less than a fair share of the overall tax burden at the expense of other taxpayers has any constitutional, statutory or other right to continue to pay less than a fair share, or how that could be considered fair, reasonable or uniform. Yet, that would be the bottom line of accepting the taxpayer's arguments: that the Uniformity Clause gives owners of the most grossly underassessed properties a constitutional right to continue to underpay and force their neighbors to make up the difference.

The Appellant taxpayer apparently would prefer that school districts should make up for the resulting impairments caused to the educational programs available to the children of their community by raising tax rates on the entire community. Of course, that is the complete opposite of the goal the School District in this case and many other school districts in the Commonwealth seek to attain by appealing the assessment of properties that have been determined by various means to be significantly under-assessed. The goal instead is to avoid tax hikes as much as possible by plugging holes through which revenue that should be available for educational needs appears to be escaping.

The web of legal reasoning woven by the Appellant Underassessed Property Owners depends entirely on turning logic and this Court's precedent completely inside out. This Court has never questioned the constitutionality of the statutory right of taxing bodies to appeal from real estate tax assessments in the same manner as property owners themselves may do, nor has it ever suggested that such appeals are the enemy of uniformity. Quite to the contrary, this Court has explicitly recognized that the correction of under or over-assessments via such appeals, whether the appeal is by a taxpayer or by a tax-levying government unit, is a tool that helps to achieve uniformity rather than detract from it. See, e.g., *Clifton v. Allegheny County*, 600 Pa. 662, 711, 969 A.2d 1197, 1227-1228 (2009).

The ability of Pennsylvania taxpayers to appeal from an assessment of their property that they believe is too high long pre-dates the Uniformity Clause and has existed in one form or another at least since 1834 if not earlier. See, e.g., Act of April 15, 1834, P.L. 509, No. 232 ("An Act relating to county rates and levies and township rates and levies"), §§ 9-16. Eventually, taxpayers were allowed to appeal further from the decisions of county commissioners on their appeals, to the courts of common pleas by virtue of the Act of April 20, 1876, P.L. 44, No. 32 ("An Act Authorizing appeals from assessments in this commonwealth to the court of common pleas"), and later, to the Superior and Supreme Courts by virtue of the Act of June 26, 1901, P.L. 601, No. 296 ("An Act Authorizing appeals from the decision of the various courts of common pleas, in assessment of taxes case, to the Supreme or Superior Court of the Commonwealth"). This has existed ever since in successive codifications of the tax assessment laws, now currently found at 53 Pa.C.S. §§ 8844, 8854 in the Consolidated Tax Assessment Law.

But it was not until 1921 that a reciprocal right of appeal first was given to the taxing bodies themselves, by the Act of May 10, 1921, P.L. 441, No. 214 ("An Act Authorizing boroughs, townships, school districts, and poor districts to appeal from assessments of property or other subjects of taxation for their corporate purposes"). This right also has existed ever since in successive codifications of the tax assessment laws, and is now currently found at 53 Pa.C.S. §§ 8854, 8855.

The available legislative record sheds no light on what may have prompted this addition in 1921, except to indicate that the legislation originating as Senate Bill No. 936 rocketed from introduction to final passage in a mere seventeen days, with unanimous approval in both houses of the General Assembly. See, *History of Senate Bills-Also House Bills in the Senate*, Pennsylvania General Assembly (1921). An observation made more recently by this Court in *Clifton* might explain why the General Assembly a century ago apparently considered it a "no-brainer" to give taxing bodies the right to appeal from assessments:

> Furthermore, successful taxpayer appeals do not increase the assessments of under-assessed properties, whose owners have no reason to appeal. Assessments of under-assessed properties are only "forced" into conformity with the county CLR by an appeal of an aggrieved municipal entity, most often the school district, and the extent to which taxing bodies pursue assessment appeals varies from municipality to municipality.

Clifton, 600 Pa. at 713, 969 A.2d at 1228. In short, when periodic county-wide reassessments fall short of maintaining even rough uniformity, as is the case in many counties, the appeal process as a tool for making up some of the difference is ineffective if it is completely one-sided.

Implicit in this observation is the fact that individual property owners forced to subsidize the tax bills of under-assessed properties have no direct means to challenge underassessments other than to depend on the school district or municipality to be their voice. When property owners believe they are paying more

than their fair share, the appeal process gives them something they can do about it. But when these property owners are having their pockets picked due to the underassessment of other properties, they have no remedy of their own.

The further observations of this Court in *Clifton* highlight the salutary impact upon uniformity of appeals by either taxpayers or taxing bodies:

> There may well be circumstances where use of the CLR and the individual appeal process adequately serves to address cases of particular inequity, and as case law demonstrates, both taxpayers and municipalities make use of the appeals process. But that process is not adequate when the inequity is pervasive, as the evidence demonstrates that it has become the case in Allegheny County. The County cannot satisfy the proportionality requirement by shifting the burden of achieving uniformity to the taxpayer or aggrieved taxing entity (most often the local public school district), whom the County would task with correcting its own constitutional deficiency. Relying upon taxpayers to "force" application of the CLR through individual assessment appeals is no substitute for a constitutionally uniform property assessment in the first instance. The County's expressed concern for "the reality of property appreciation and depreciation" counsels in favor of periodic countywide accuracy, not saddling taxpayers with the burden of curing the County's constitutionally deficient method of taxation in piecemeal fashion.

Clifton, 600 Pa. at 712, 969 A.2d at 1227–28. This Court recognized that such appeals simply were not enough to overcome the other systemic causes of non-uniformity.

Appellant's main line of attack is without basis in logic or law---the mind-boggling assertion that there could be something unfair or unconstitutional about a school district's decision to use its precious financial resources to pursue appeals

only where the potential return in terms of recaptured revenue is sufficient to justify the cost of litigation, where there is the greatest positive impact on uniformity and where there is greatest benefit to other taxpayers forced to subsidize under-assessed properties. If significantly under-assessed properties are an offense to uniformity and a burden on other taxpayers that undermines community regard for the fairness of the tax structure, what possibly could be unreasonable or unconstitutional about focusing the school district's finite resources on the most glaring examples?

If in fact there are lower-value properties that also are under-assessed, it is not a school district's doing, and as observed by this Court in *Clifton*, and it is unfair to try to shift the burden upon school districts to fix that. *Clifton*, 600 Pa. at 712, 969 A.2d at 1227–28. As this Court explained long ago:

> [A] taxpayer is not entitled to have his assessment reduced to the lowest ratio of assessed value to market value to which he could point in the taxing district if such lowest ratio does not reflect the common assessment level which prevails in the district as a whole.

Deitch Co. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cty., 417 Pa. 213, 219, 209 A.2d 397, 401 (1965).

This Court observed in *Downingtown* that attempting to evaluate the assessment-to-value ratio of every parcel in the taxing district would be a practical impossibility. *Downingtown*, 590 Pa. at 467, 913 A.2d at 199. But requiring school districts to appeal the assessments of every property appearing to be undervalued,

even where the cost of doing so far exceeds the potentially recaptured revenue, would indeed be the effect of crediting the Appellant taxpayer's arguments, as no appeal selection criteria based on a financial threshold, regardless of how small the underassessment, could then pass constitutional muster.

What the Appellant Underassessed Property Owners argue is little different than what motorists cited for speeding might argue: that is unfair to give them a speeding ticket when so many others are speeding, and it is unconstitutional to pull them over just because they happened to be the vehicle zooming past the State Trooper much faster than all those around them. This Court would never credit such arguments, and it must not accept that the Uniformity Clause works that way.

This also would fly in the face of other teachings of this Court concerning the application of the Uniformity Clause: "Taxation, however, is not a matter of exact science; hence absolute equality and perfect uniformity are not required to satisfy the constitutional uniformity requirement . . . [s]ome practical inequalities are obviously anticipated, and so long as the taxing scheme does not impose substantially unequal tax burdens, rough uniformity with a limited amount of variation is permitted." *Clifton*, 600 Pa. at 685, 969 A.2d at 1210 (collecting cases; internal citations omitted). Appellant taxpayer instead asks this Court to apply the Uniformity Clause in a manner that, rather than protecting taxpayers against

substantially unequal tax burdens, has the effect of instead preserving such inequalities and immunizing them from remedy.

The financial threshold methodology used by the School District in this case, and by the school district in *In re Springfield Sch. Dist.*, 101 A.3d 835 (Pa. Commw. Ct. 2014), reargument denied (Nov. 7, 2014), appeal denied, 121 A.3d 497 (Pa. 2015), also are consistent with this Court's most recent pronouncements regarding methodology for selecting which underassessed properties to appeal, in *Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist.*, 640 Pa. 489, 163 A.3d 962 (2017). While disagreeing with one aspect of how the Commonwealth Court in *Springfield* interpreted this Court's earlier decision in *Downingtown*, the Court's unanimous opinion in *Valley Forge Towers* took pains to make clear that this did not mean the Court disapproved of the result in *Springfield*, which was to uphold the use of a monetary threshold such as the one used by the School District here. *Id.*, 640 Pa. at 510, 163 A.3d at 975 (fn. 13). The opinion explains in a subsequent footnote that:

> In Springfield the school district only appealed properties for which a recent sales price was at least $500,000 greater than its implied market value, defined as the assessed value divided by the CLR. Thus, with a CLR of, say, 83%, a parcel assessed at $1,000,000 would have an implied market value of $1,204,819 ($1,000,000 divided by 0.83). The school district would appeal the $1,000,000 assessment if the property had recently sold for at least $1,704,819—the implied market value plus $500,000.

Id., 640 Pa. at 517, 163 A.3d at 979. The opinion further stressed 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.*[19] *Such methodologies are not presently before the Court.*" *Id*.

The Appellant Underassessed Property Owners tacitly acknowledge the Court's insistence in *Valley Forge Towers* that nothing said in that opinion should be understood to condemn the kind of selection methodology based on a financial threshold used by the School District in this case. Yet they still argue that it somehow violative of the Uniformity Clause to focus enforcement on the magnitude of underassessment and consequent harm to local uniformity, as well as in the amount of revenue needing to be recaptured to justify investing precious resources in the cost of litigating appeals.

This Court should not be lured into applying the Uniformity Clause in a manner that would twist it from something beneficial that gives taxpayers protection from substantially unequal tax burdens, into something that would instead have the harmful effect of preserving such unfair burdens. Moreover, accepting the arguments of the Appellant Underassessed Property Owners would instead put in question the constitutionality of the ability for property owners to

appeal their own assessments when they believe them to be non-uniform. If a property owner can obtain a lower assessment more in line with market value than his or her neighbors, how is that any less of an offense to uniformity?

PSBA urges this court to affirm the ability of local taxing authorities to do something about the simple, mathematical fact that underassessed properties allow their owners to pick the pockets of their neighbors. Will this Court endorse the pocket picking, or will it instead endorse efforts to reduce that problem?4,0

CONCLUSION

For the foregoing reasons, as well as those set forth in the brief of Appellee Wilson School District, the decision of the Pennsylvania Commonwealth Court should be affirmed.

Respectfully submitted,

/s/ Stuart L. Knade

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the length of the foregoing brief, consisting of 4,307 words exclusive of table of contents, table of authorities and this certificate of compliance, in 14 point Times New Roman typeface, complies with the 7,000-word limit set forth in Pa.R.A.P. 531(b)(3) for an *amicus curiae* brief, and the typeface requirements of Pa.R.A.P. 124(a)(4).

I further certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Stuart L. Knade

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