IN THE SUPREME COURT OF PENNSYLVANIA

NO. 49-MAP-2016

VALLEY FORGE TOWERS APARTMENTS N, LP
MORGAN PROPERTIES ABRAMS RUN OWNER LP and KBF ASSOCIATES LP, et al

v.

UPPER MERION AREA SCHOOL DISTRICT and KEYSTONE REALTY ADVISORS, LLC,
Appeal of: Morgan Properties Abrams Run Owner LP; KBF Associates, LP

BRIEF OF APPELLEES UPPER MERION AREA SCHOOL DISTRICT and KEYSTONE REALTY ADVISORS, LLC

On Appeal from the September 10, 2015 Opinion and order of the Commonwealth Court of Pennsylvania in Appeal No. 1960 C.D. 2014 Affirming the Judgment of the Court of Common Pleas of Montgomery County at No. 2014-09870

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I. COUNTER-STATEMENT OF QUESTIONS INVOLVED

1. Did the Upper Merion Area School District ("School District") violate the Uniformity Clause of the Pennsylvania Constitution, Article 8, § 1 ("Uniformity Clause"), by evaluating and filing assessment appeals against the properties owned by Morgan Properties Abrams Run Owner LP, KBF Associates, LP, Gulph Mills Village Apartments LP, The Lafayette at Valley Forge LP and Valley Forge Towers Apartments N, LP (collectively, "Appellants")?

Suggested Answer: No.

Answered in the negative by the Commonwealth Court.

2. Do administrative exhaustion principles prevent Appellants from bringing their Uniformity Clause challenge as an independent equity action rather than in the pending assessment appeals?

Suggested Answer: Yes.

Answered in the affirmative by the Commonwealth Court.

II. COUNTER-STATEMENT OF THE CASE

A. Background

In the Commonwealth of Pennsylvania, "[a] taxing authority shall have 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.A. § 8855; *see also Vees v. Carbon Cty. Bd. of Assessment Appeals,* 867 A.2d 742, 748 (Pa. Commw. Ct. 2005) (holding that "school districts which feel aggrieved by any property assessment have the right to appeal" any assessment). In 2011, the Upper Merion School District ("School District") entered into an agreement with Keystone Realty Advisors, LLC ("Keystone"), a valuation consulting group, to efficiently identify meaningful assessment appeals within its geographical jurisdiction. R. 22a. Keystone agreed to recommend properties for the School District to appeal to the Montgomery County Board of Assessments (the "Assessment Board"). *Id.* In exchange, the School District agreed to pay Keystone a contingency fee of 25% of any increased tax revenue generated by a successful recommendation. *Id.*

In the case at bar, Appellants each own apartment buildings within the geographical bounds of the School District. [1] *See* R. 10a-38a. Upon Keystone's recommendations, the School District filed assessment appeals in 2011 and 2012,

challenging the then-current assessments of Appellants' properties.[2] *See id.* The Assessment Board denied the School District's appeals, and the School District appealed the Assessment Board's decision to the Court of Common Pleas of Montgomery County. *See* Trial Ct. Op., R. Appx. "C" at p. 1. Appellants intervened and filed answers in these appeals on March 8, 2013, asserting the ***exact*** Uniformity Clause challenge they raise in the present appeal as affirmative defenses. R. Appx. "A" at 13; R. 120a; *see also* Appellants' Brief in Answer to Appellees' Application for Relief, at p. 21, n.9. Even now, these appeals remain pending before the Court of Common Pleas. R. 110a.

Despite those pending proceedings, Appellants commenced a separate action against the School District and Keystone (collectively, "Appellees") by filing a complaint (the "Complaint") on May 2, 2014, in the Court of Common Pleas of Montgomery County (the "Trial Court"). *See generally* R. at 10a-38a. In this parallel action, Appellants averred – as they had in the parallel action – that the School District's decision to appeal their properties amounted to discriminatory tax treatment in violation of the Uniformity Clause. *See* R. 14a. Thus, by way of this

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[1] Valley Forge Towers Apartments N, LP, Gulph Mills Apartments, and The Lafayette at Valley Forge LP voluntarily discontinued their claims against the Appellees, and are no longer parties to this appeal.

[2] As noted in the Complaint, the School District only appealed those properties professionally recommended by Keystone. *See* R. 23a at ¶ 52 (averring that "Keystone has not recommended the appeal of any single family homes"); *see also* R. 21a at ¶ 43 (noting that "the School District did not appeal the assessments of ***any*** single-family homes in 2011 or 2012 . . .").

second action, Appellants sought to enjoin the School District from, *inter alia*, continuing to pursue the pending assessment appeals and from initiating appeals of any apartment building within the school district. R. 30a-37a. In doing so, Appellants necessarily admitted that they were already involved in ongoing appeals before the Trial Court. R. 24a-29a, at ¶¶ 58, 66, 74, 82, 92. More importantly—and equally fatal to the Complaint—Appellants alleged that Appellees had an economic motivation in pursuing these appeals. R. 22a-23a, at ¶¶ 47-51.

Appellees filed preliminary objections on May 28, 2014, asserting two independent grounds warranting the dismissal of the Complaint. *See generally* R. 39a-69a. First, Appellees argued that the Complaint failed to state a claim for relief under the Uniformity Clause in light of substantial and well-established Pennsylvania case law on the issue. *See* R. 61a-67a. Specifically, Appellees relied on a line of Commonwealth Court cases specifically holding that a school district may consider reasonable financial and economic factors in determining whether to initiate an assessment appeal. *See id.* Second, Appellees argued that, even assuming *arguendo* that Appellants stated a claim with respect to the Uniformity Clause, the Complaint must still be dismissed because they failed to exhaust their statutorily guaranteed remedies. R. 67a-68a (citing 53 Pa.C.S.A. §§ 8844-8845).

The Trial Court agreed with ***both*** of Appellees' arguments and dismissed the Complaint with prejudice on October 9, 2014. *See* Tr. Ct. Order, R. Appx. "B". The Trial Court explained:

> Appellants have no statutory or case authority to support their unprecedented assertion that there is a legal basis for an independent action seeking to enjoin a school district from exercising its right to appeal tax assessments due to an alleged inequality of tax assessments and a lack of uniformity. **Appellants are seeking to avoid the statutory procedures established for the adjudication of tax assessment appeals.** Issues concerning lack of uniformity can be properly raised in the tax assessment appeals where the county, township, school district, and board of assessment appeals are parties in the case.

R. Appx. "C", at 4 (emphasis added). "Moreover, the Commonwealth Court has consistently held that the Appellants' claims have no merit as a matter of law, even if properly raised in the litigation of a tax assessment appeal." *Id.* at 4-7 (finding that reasonable financial and economic considerations do not render a method of identifying properties for appeal arbitrary, capricious, or discriminatory).

B. The Commonwealth Court Decision

Appellants appealed the Trial Court's Order to the Commonwealth Court of Pennsylvania, raising a variety of challenges to the Trial Court's findings. *See* R. Appx. "A". As with the Trial Court, the Commonwealth Court rejected ***all*** of the Appellants' arguments on September 10, 2015, affirming the dismissal of the Complaint. *See generally id.* Addressing each of Appellants' arguments in turn,

the Commonwealth Court made four distinct findings in reaching its conclusion that the Trial Court did not err in dismissing Appellants' Complaint.

First, the Commonwealth Court held that the Trial Court did not err by relying on *In re Springfield School District*, 101 A.3d 835 (Pa. Cmmw. Ct. 2014) (hereinafter, "*Springfield II*"). R. Appx. "A", at 4-5. On appeal, Appellants contended that *Springfield II* misinterpreted this Court's opinion in *Downingtown Area School District v. Chester County Board of Assessment Appeals*, 913 A.2d 194 (Pa. 2006) (hereinafter, "*Downingtown*"), by permitting a school district to evaluate properties for appeal based on financial and economic considerations. R. Appx. "A", at 4. According to Appellants, *Downingtown* precluded the consideration of any sub-classification of property—even those rationally related to a legitimate government purpose—as a matter of law. The Commonwealth Court correctly rejected this argument, explaining that the Commonwealth Court previously "explained the significance of *Downingtown*" as not standing for such a broad conclusion.[3] *See Weissenberger v. Chester Cty. Bd. Of Assessment Appeals*, 62 A.3d 501, at 506-07 (Pa. Commw. Ct. 2013) (quoting *Downingtown*, 913 A.2d

[3] In their primary brief, Appellants contend that the Commonwealth Court erred by allowing the School District to classify real estate by use. *See* Appellants' Brief at p. 18-19. However, the Commonwealth Court said no such thing. Rather, the Commonwealth Court's actually held that "real property cannot be subdivided into classes for purposes of assessment and taxation," but that, according to *Downingtown*, "subclassifications can be considered as a 'component of the overall evaluation of uniform treatment in the application of the taxation scheme." Appx. A. at 4-5 (quoting *Weissenberger*, 62 A.3d at 506-07),

at 200 ("[W]e do not find that this general uniformity precept eliminates any opportunity or need to consider meaningful sub-classifications as a component of the overall evaluation of uniform treatment in the application of the taxation scheme.")).[4]

Second, the Commonwealth Court held that the School District "did not deliberately discriminate against an underrepresented group [thereby] violating uniformity." R. Appx. "C", at 7. In reaching this conclusion, the court applied the test set forth by this Court in *Clifton v. Allegheny Cty.*, 969 A.2d 1197, 1213 (Pa. 2009): that is, whether Appellants demonstrated that (1) the School District's appeals resulted in a classification; and (2) that such classification is unreasonable and not rationally related to any legitimate state purpose. R. Appx. "A.", at 7. As the Commonwealth Court put it, because Appellants "expressly alleged that the District was targeting high value properties for the purpose of increasing revenue, 'it is easy to envision a ***rational basis*** for [the School District] taking these appeals . . . .'" *Id.* (emphasis in original). Accordingly, the Commonwealth Court held

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[4] Appellants also claim that the Commonwealth Court "refused to recognize ***any*** limits on a school district's right to appeal tax assessments, seemingly holding that a school district's right is ***absolute*** and ***not circumscribed*** by the Uniformity Clause." Appellants' Brief at 10 (emphasis added). To the contrary, the lower court explicitly stated that "while [the School District's] right to appeal assessments is ***not*** unfettered, the case law establishes that where, as here, a school district has reasonable and financial considerations of increasing its revenue, their actions do not violate the Uniformity Clause." R. Appx. "A", at 13 (emphasis added).

that Appellees did not deliberately discriminate against Appellants in violation of the Uniformity Clause.[5] *Id.*

Third, the Commonwealth Court held that the Trial Court did not err, as Appellants argued, by relying upon a line of Commonwealth Court decisions—*e.g.*, *Weissenberger* and *Springfield II*—indisputably supporting Appellees' preliminary objections. *Id.* The Commonwealth Court rejected this argument for two reasons. First, it found that the trial court did ***not*** actually rely on these cases in dismissing the Complaint, but instead sustained Appellees' preliminary objections because the Complaint failed to state a cause of action. *Id.* at 8. Second, the Commonwealth Court held that the Appellants' distinctions between the facts of this appeal and the aforementioned cases were "belied by the

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[5] Appellants also assert that the Commonwealth Court erred as follows:

> Inexplicably, the court stated that Plaintiffs "did not allege that [the School District] selected Plaintiffs' properties based on their owners' lack of political power" . . . yet two pages earlier summarized Plaintiffs' allegations as including "[the School District] has failed to appeal the assessments of single family homes because many if not all are owned by residents who vote in local elections and it would be politically unpopular to appeal such voters' property assessments."

Appellants' Brief at p. 11. First, Appellants' misunderstanding of the Commonwealth Court's reasoning is underscored by their own argument. Speculating that the School District deliberately discriminated against Appellants is not only a "conclusion[] of law, unwarranted inference[], argumentative allegation[], or expression[] of opinion" that courts may properly ignore, but contrary to Appellants' argument, the Complaint alleged that ***Keystone*** chose the properties for appeal and did not recommend any residential properties. R. 23a, at ¶ 52. As such, because the Commonwealth Court correctly noted that Appellants "did not allege that [the School District] selected [Appellants'] properties based on their owners' lack of political power," it correctly discarded Appellants' unsupported and unwarranted allegations of political classification. R. Appx. "C" at 7.

Complaint's allegations." *Id.* at 10. For example, although Appellants vehemently contested the validity of the decision in *Weissenberger*, they attempted to argue that "the record contains ***no evidence that UMASD used any methodology for selecting properties*** for appeal." *Id.* While this argument runs contrary to this entire lawsuit's basis—*i.e.*, intentional discrimination—the Commonwealth Court found that Appellants own allegations "do not support their purported distinctions . . ." *Id.* at 11.

Fourth, the Commonwealth Court also stated that the Trial Court "properly dismissed [the Appellants'] Complaint" after examining the exhaustion of remedies issue. *See* R. Appx. "A" at 14. After acknowledging the parties' contentions, the Commonwealth Court quoted Section 8854 of the Assessment Law with emphasis on the relevant portions to Appellants' argument. *Id.* at 11-12. Specifically, the court emphasized Section 8854(a)(9):

> (9) ***Nothing in this subsection shall:***
> (i) Prevent an appellant from appealing a base-year valuation without reference to ratio.
> (ii) ***Be construed to abridge, alter or limit the right of an appellant to assert a challenge under [S]ection 1 of Article VIII of the Constitution of Pennsylvania [the Uniformity Clause].***
> **(b) Appeals to Commonwealth Court or Supreme Court. –** The board, or any party to appeal to the court of common pleas, may appeal from the judgment, order or decree of the court of common pleas.

Id. (quoting 53 Pa. C.S. § 8854(a)(9)) (double emphasis in original). Thereafter, the Commonwealth Court observed that the assessment appeals were ***still*** pending

before the Trial Court. *Id.* at 13 ("Taxpayers in their Answers and New Matter raised the Uniformity Clause issue as they were permitted to do by statute."). "*Moreover*, our Supreme Court has held that in order to obtain equity jurisdiction, taxpayers must: (1) raise a **substantial** constitutional issue, **and** (2) lack an adequate remedy through the administrative appeal process." *Id.* (citing *Beattie*, 907 A.2d at 519) (bold emphasis in original, italic emphasis added). Thus, after concluding that Taxpayers did not lack an adequate remedy through the administrative appeals process—and were ***actively*** pursuing that remedy—the court found that Appellants ***also*** failed to raise a substantial constitutional issue. *See id.* ("It is the existence of a substantial question of constitutionality, not the mere allegation thereof, that is required."). For any and all of these reasons, the Commonwealth Court affirmed the ruling of the Trial Court.

C. The Pending Application for Relief Before This Court

Following the Commonwealth Court's decision, Appellants filed a Petition Seeking Allowance of Appeal before this Court on October 13, 2015. After the Petition was granted, Appellants submitted their primary brief on July 8, 2016. Incredulously, both the Petition and Brief focused on one narrow issue among the many that arose in this litigation: the premise that the Commonwealth Court has repeatedly misinterpreted this Court's decisions in cases such as *Downingtown Area School District*, 913 A.2d at 194. Importantly, Appellants reduce any

discussion of the exhaustion of remedies doctrine to a mere footnote in each document, proceeding as though this case-dispositive issue was not presented to, or discussed by, the Commonwealth Court.

In light of Appellants' obfuscation of the exhaustion of remedies issue, Appellees filed an Application for Relief with this Court on August 2, 2016, requesting that this Court quash this appeal. As set forth in Appellees' Application, Appellants' failure to offer any legal analysis on this case-dispositive argument necessarily waives the issue. Therefore, Appellants are bound by the Commonwealth Court's holding that they failed to exhaust their administrative remedies, necessarily mooting this appeal.[6]

III. SUMMARY OF ARGUMENT

The Commonwealth Court correctly held that the Appellants' Complaint fails to state a claim for which relief can be granted because where a school district has reasonable and financial considerations of increasing its revenue, the methods for identifying properties does not violate the Uniformity Clause. While Appellants' characterize this matter as the "first-of-its-kind," it is not. In fact, the Commonwealth Court has repeatedly addressed this ***exact*** challenge raised by Appellants here. These courts have held, *inter alia*, that taxing authorities have no ability to assess real estate, and they have as much right to utilize the statutory

appeal process provided under Pennsylvania law as a property owner. Thus, making a decision to appeal an assessment based upon reasonable economic and financial considerations is not arbitrary, capricious, or discriminatory in violation of the Uniformity Clause.

Accordingly, the Commonwealth Court's decision should be affirmed for the following reasons:

First, Appellants failed to allege enough information for a Court to determine that there is a lack of uniformity in this case. In order to establish dis-uniformity, a taxpayer must show "that his property was assessed at a higher percentage of fair market value than other properties throughout the same taxing district." *Clifton*, 969 at 1212. Instead, Appellants focus their allegations on two sub-classifications of real property within the School District—single-family homes and their own apartment complexes—and fail to demonstrate that they are paying a disproportionate amount of taxes.

Second, Appellants' charges of discrimination under the Uniformity Clause are wholly without merit. Established case and statutory law provides that the School District may consider sub-classifications that are rationally related to a

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[6] Appellants filed an Answer to Appellees' Application on August 26, 2016 and, the Application remains ripe for this Court's disposition.

legitimate government purpose in pursuit of uniformity. *Downingtown*, 913 A.2d at 200.

Third, without challenging the Assessment Law, statutory construction principles should apply to compel a result affirming the Commonwealth Court's decision. Section 1922(1) of the Statutory Construction Act provides that "the General Assembly does not intend a result that is absurd." 1 Pa. C.S. § 1922(1). However, if Appellees are prevented from making even the most basic economic and financial considerations in selecting properties for appeal, Appellees would be forced to appeal ***every*** under-assessed property to exercise its statutory right to appeal, resulting in a *de facto* school district-wide reassessment. This result is plainly absurd, and should be prevented.

Fourth, Appellants currently have pending assessment appeals before the Trial Court involving the same properties identified in the Complaint. Regardless, Appellants brought this duplicative, but (1) fail to raise a substantial constitutional issue and (2) have an adequate remedy in the statutory appeals process. As such, this Court should not allow Appellants to "avoid the statutory procedures established for the adjudication of tax assessment appeals" because they failed to exhaust their statutory remedies.

Finally, even assuming *arguendo* that the underlying Appellants' arguments survives the above, the Commonwealth Court's decision must still be affirmed

because Appellants requested the wrong relief. "[A]bsent the kind of circumstances shown in *Clifton*, which mandate county-wide reassessment, or a showing of willful discrimination by the taxing authorities, a taxpayer is entitled ***only*** to have his assessment conform with the common level existing in the district . . . ." *Smith*, 10 A.3d at 407 (emphasis added). Instead, Appellants seek broad injunctive relief precluding Appellees from, *inter alia*, continuing to prosecute the ongoing assessment appeals or initiating new appeals against the Appellants' properties. As noted by the Trial Court, however, "Appellants have no statutory or case authority to support their unprecedented assertion . . . seeking to enjoin a school district from exercising its right to appeal tax assessments . . . ." R. Appx. "C" at 4.

The law is clear, as will provided herein, that the Commonwealth correctly affirmed the Trial Court's decision to sustain Appellees' preliminary objections were properly sustained by the Trial Court.

IV. ARGUMENT

A. Appellants' Complaint Failed to Provide a Basis For a Traditional Uniformity Clause Challenge Under Pennsylvania Law.

In this appeal, ambitiously self-characterized as a "first-of-its-kind in the Commonwealth, broad-based, empirically founded constitutional challenge," Appellants purport to demonstrate "that the School District has violated its Uniformity Clause obligations to treat all property as a single class and not to

impose a greater effective property tax rate on commercial property than residential properties owned by local voters within the School District's boundaries." Appellants' Brief at p. 12. Admittedly, while this "first-of-its-kind" challenge eludes simple description, Appellants ultimately offer nothing more than insufficient, conclusory allegations of discrimination. *See generally* R. 10a-38a. However, as recognized by the Trial Court: "Appellants have no statutory or case authority to support their unprecedented assertion that there is a legal basis for an independent action seeking to enjoin a school district from exercising its right to appeal tax assessments due to an alleged inequality of tax assessments and a lack of uniformity." R. Appx. "C", at 4. Implicitly acknowledging, as they must, that no less than seven Commonwealth Court decisions directly refute their arguments, Appellants attempt to side-step any uniformity analysis by grossly misreading this Court's holdings in *Downingtown* and *Clifton.*

However, Appellants' arguments demonstrate a fundamental misreading of this Court's opinions. As discussed below, an examination of the statutory appeals process, the Uniformity Clause, and this Court's decisions reveals that the Complaint fails to state a cause of action for lack of uniformity under the standard analysis applicable to such claims. Therefore, Appellants must not be allowed to "avoid the statutory procedures established for the adjudication of tax assessment appeals" through vague, conclusory allegations of discrimination.

1. The Statutory Tax Assessment Appeal

The ability to challenge a property assessment through the appeals process is a critical tool available to taxpayers, allowing taxpayers to ensure that they are paying no more than their fair share of taxes. Similarly, the assessment appeal can be used effectively by taxing districts, such as the School District, to ensure overall uniformity in the taxing system by raising under-assessed properties to the common level in a county. *See Smith v. Carbon Cty. Bd. of Assessment Appeals,* 10 A.3d 393 (Pa. Commw. Ct. 2010). Stated differently, the ultimate effect of an assessment appeal is the same: a property owner will pay the rate of taxation that is "common" in the assessing district. *See Millcreek Twp. v. Erie County Bd. of Assessment Appeals*, 737 A.2d 335, 339 (Pa. Commw. Ct. 1999) ("Exercise of appeal rights by both the District and the property owner, will ensure that the uniformity required by our state constitution is maintained.").

When a taxpayer or taxing authority appeals a property's assessment through this process, the Assessment Board or the Court of Common Pleas must determine: (1) the market value of the property[7] and (2) the common level ratio ("CLR")

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[7] In order to account for "the discrepancy between present-year dollars and base-year dollars, when a county board of assessment appeals alters the value associated with a particular piece of property, *see* 72 P.S. § 5347.1 (listing permissible bases for a board-initiated alteration in assessed value), the board designates the new value in terms of base year dollars." *Downingtown*, 913 A.2d at 203.

applicable at the time of the appeal. 72 Pa. Stat. Ann. § 5020-518.2(a)(1)-(2). The common level ratio is "an accepted calculation of the common level existing in the district and the standard against which the taxpayers' assessment ratio should be measured for uniformity purposes." *In re Sullivan*, 37 A.3d 1250, 1255-56 (Pa. Commw. Ct. 2012) (citing *Clifton*, 969 A.2d at 1216 (noting that "the [common level ratio] is a useful tool for a taxpayer to demonstrate that his property has been over-assessed, as it allows him to compare the assessed-to-market value of his property to the average ratio throughout the district")). "The CLR is calculated on an annual basis by [the State Tax Equalization Board] for each county using data from all arms' length sales transactions during the relevant period, supplemented by independent appraisal data and other relevant information." *Smith*, 10 A.3d at 399.

The Board or Court then applies the CLR to the fair market value of the property to obtain the revised assessment value. 72 Pa. Stat. Ann. § 5020-518.2(b). If a taxpayer believes that their property is still disproportionately over-assessed, they may bring a Uniformity Clause challenge. *See id.* at 400-01. However, as noted by the Commonwealth Court in *In re Sullivan*, this Court "implicitly acknowledged that the use of the CLR as a remedy is appropriate when an isolated lack of uniformity has been established . . ." 37 A.3d at 1256 (citing *Clifton*, 969 A.2d at 1227). As such, absent systematic unfairness or "willful discrimination by

the taxing authorities, a taxpayer is entitled only to have his assessment conform with the common level existing in the district . . . ." *Id.*

2. Uniformity Clause Challenges and *Downingtown*

Article VIII, Section I of the Constitution of the Commonwealth of Pennsylvania provides, "[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 general laws." Pa. Const. Art. VIII, § 1. Thus, in Pennsylvania, taxes must be applied uniformly upon similar types of property, "with substantial equality of the tax burden to members of the same class." *In re Brooks Bldg.*, 137 A.2d 273, 275 (Pa. 1958). As such, "a taxpayer is entitled to relief under the Uniformity Clause where his property is assessed at a higher percentage of fair market value than other properties throughout the taxing district." *Downingtown*, 913 A.2d at 199 (citing *In re Harleigh Realty Co.*, 149 A. 653, 654 (1930)). "Practical inequities can be anticipated, and as long as the taxing method does not impose substantially unequal tax burdens, 'rough uniformity with a limited amount of variation is permitted.'" *Smith,* 10 A.3d at at 400 (quoting *Clifton*, 969 A.2d at 1210-11). However, "the Uniformity Clause entitles a taxpayer to pay no more than his fair share; it does not give him a right to pay less." *Id.* at 407.

A taxpayer seeking to challenge the uniformity of an assessment—or the results of an appeal—"admits that the fair market value assigned to his or her property is correct but that other comparable properties are assigned a substantially lower fair market value and when the ratio is applied to that lower value, the owners of the comparable properties pay less than the complaining taxpayer." *Fosko v. Bd. of Assessment Appeals, Luzerne Cty.*, 646 A.2d 1275, 1279 (Pa. Commw. Ct. 1994) (citing *Banzhoff v. Dauphin County Board of Assessment Appeals*, 606 A.2d 974 (Pa. Commw. Ct. 1992)). Accordingly, a taxpayer could prove a lack of uniformity in two ways. First, "by producing evidence establishing the ratios of assessed values to market values of comparable properties based upon actual sales of comparable properties in the taxing district for a reasonable time prior to the assessment date." *Id.* Second, "by offering evidence of assessments of comparable properties, so long as the taxpayer also presents evidence to show that the actual fair market value of the comparable properties is different than that found by the taxing authority." *Id.* *Downingtown* reaffirmed this methodology as the primary form of a uniformity challenge. 913 A.2d at 205 (citing *Fosko*, 646 A.2d 1275).

In *Downingtown*, a taxpayer purchased a shopping center for approximately $10 million, $4.2 million greater than its assessment value. *Id.* at 196. The school district appealed the assessment, seeking an increase to $8.5 million in line with

the property's sale price. *Id.* At a hearing, the parties stipulated that the property's fair market value was $8.5 million, that the established predetermined ratio was 100%, and that the CLR was 85.2%. *Id.* The taxpayers presented an expert who testified that similar shopping centers in the county were assessed at rates between 34 and 69% of their current market values. *Id.* The trial court determined that this evidence was irrelevant because "shopping centers" were not a separate class for uniformity purposes and the STEB–calculated CLR superseded prior methods of determining uniformity. *Id.* at 197. Moreover, rather than apply the CLR, the trial court applied the established predetermined ratio ("EPR")[8] of 100% to the stipulated market value of $8.5 million. *Id.* The Commonwealth Court affirmed. *Id.*

In a landmark decision, this Court reversed, setting forth two important principles of uniformity jurisprudence. *See generally id.* First, this Court observed that although the Uniformity Clause precludes taxing authorities from dividing real property into separate classes for systemic tax assessment, that general principle did not eliminate the need to "consider meaningful sub-classifications as a component of the overall evaluation of uniform treatment in the application of the taxation scheme." *Id.* at 200. Thus, this Court opined: "[W]hile the

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[8] "The EPR is defined as the county's intended ratio of assessed value to market value for any given tax year, see 72 P.S. § 5342.1; Bright, 27 Summ. Pa. Jur.2d Taxation § 15:5, and thus,

Commonwealth may certainly seek to achieve overall uniformity by attempting to standardize treatment among differently situated property owners, its efforts in this regard do not shield it from the prevailing requirement that similarly situated taxpayers should not be deliberately treated differently by taxing authorities." *Id.* at 201 (footnote omitted).[9]

This Court also concluded that the statute mandating the application of the EPR where the CLR was within 15% of the EPR was facially unconstitutional. *Id.* at 204–05. This Court noted that this statute meant that the lodging of an assessment appeal could disrupt equalization. *Id.* In those circumstances, the assessment board was required to increase the property's assessed value to its current market value and apply the EPR to that value, resulting in an assessment based on present value rather than in base-year dollars. *Id.* Consequently, this Court stated:

> [I]n allowing use of the EPR rather than the CLR, the General Assembly has, in effect, carved out a class of taxpayers who are subjected to an unfairly high tax burden-namely, those whose assessment is appealed by any taxing district in which the property is

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would appear to have been conceived as a methodology to advance equalization." *Downingtown*, 913 A.2d at 203.

[9] Because the Court reached this conclusion in deciding the relevancy of taxpayer offered evidence, Appellants contend that ***only*** taxpayers may offer evidence of similarly situated properties and consider sub-classifications in assessment appeals. *See* Appellants' Brief at 28-31. However, such an argument is in direct conflict with this Court's opinion: "The constitutional mandate for uniformity in tax assessment requires uniformity in assessment of properties having like characteristics and qualities, located in the same area." *Downingtown,* 913 A.2d at 201 (quoting 71 AM.JUR.2D STATE AND LOCAL TAXATION § 124 (2004)).

> located. ***Because this classification is not based on any legitimate distinction between the targeted and non-targeted properties, it is arbitrary, and thus, unconstitutional.***

Id. (emphasis added). Contrary to Appellants' position, then, *Downingtown* clearly envisions that ***rational*** subclassifications may pass Consitutional muster. *See* id. at 200. Accordingly, the case was remanded "for consideration of the adequacy of Appellant's uniformity challenge under the *Deitch* construct, as elaborated upon in *Fosko*, and as further reconciled with federal equal protection jurisprudence." *Id.* at 205.

3. Clifton v. Allegheny County

Appellants also assert that *Clifton v. Allegheny County* conflicts with the Commonwealth Court's line of cases, thereby salvaging their Complaint. Appellants' Brief at p. 42-45. Three years after *Downingtown*, this Court held that a county's use of an outdated base-year valuation system violated the Uniformity Clause because it resulted in pervasive inequitable treatment throughout Allegheny County. *See Clifton*, 969 A.2d at 1197. Pertinent to this appeal, however, this Court specifically provided that a rational basis test is applied in the Uniformity context:

> When a taxpayer believes that he has been subjected to unequal taxation . . . he generally must demonstrate that: (1) the enactment results in some form of classification; and (2) such classification is unreasonable and not rationally related to any legitimate state purpose. *Wilson Partners, L.P. v. Bd. of Fin. & Revenue*, [737 A.2d 1215, 1220 (Pa. 1999)].

Id. at 1211.

Although this Court then stated that "[p]roperty taxation, however, is different . . . real property is the classification," the Court also acknowledged that "we have retreated from such an absolutist approach." *Clifton*, 969 A.2d at 1213 (citing *Downingtown*, 913 A.2d at 200) ("In *Downingtown*, we stated that the general uniformity requirement does not eliminate 'any opportunity or need to consider meaningful sub-classifications as a component of the overall evaluation of uniform treatment in the application of the taxation scheme.'"). Even a challenge based on classifications "resembles a taxpayer's claim before a county board of assessment appeals that his property was assessed at a higher percentage of fair market value than other properties throughout the same taxing district."[10] *Id.* at 1212.

Ultimately, *Downingtown* and *Clifton* have served as the preeminent cases guiding uniformity litigation over the past decade. Indeed, the lower courts have drawn several important principles from these decisions: (1) the common law uniformity challenge set forth in *Dietch*, with the evidentiary standard in *Fosko,* should be controlling in assessment appeals, and (2) meaningful, rational sub-

[10] Moreover, this Court stated: "Thus, in uniformity litigation, the aggrieved taxpayer must first establish the various valuations at issue, and then demonstrate how the disparate ratios of assessed-to-market value violate the uniformity requirement. A number of standards have been

classifications may be utilized by taxing districts without running afoul of those Uniformity principles. *See, e.g., In re Sullivan*, 37 A.3d 1250.

4. Appellants' Complaint Fails to State a Claim for Relief Under the Uniformity Clause.

In the present appeal, Appellants unabashedly shed any pretense of performing a traditional uniformity analysis, including, *inter alia*, setting forth ***any*** allegations that the pending assessment appeals would result in "disparate ratios of assessed-to-market value[s]" across the School District.[11] *See generally* R. 10a-38a. Because Appellants concede, as they must, that their properties are under-assessed, their sole "empirical" allegation of dis-uniformity is that the many single family homes in the School District are ***also*** under-assessed. R. 21a. This lone allegation, however, is insufficient to state a claim pursuant to the Uniformity Clause. *See Fosko*, 646 A.2d at 1279.

In order to establish a lack of uniformity, "the aggrieved taxpayer must first establish the various valuations at issue, and then demonstrate how the disparate ratios of assessed-to-market value violate the uniformity requirement." *Weissenberger*, 62 A.3d at 506 (quoting *Clifton*, 969 A.2d at 1214). Numerous courts have held that failing to make this required proof is sufficient grounds to

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developed for measuring whether a system of property valuation produces sufficiently uniform results." *Id.*

[11] In fact, Appellants' claim is more accurately characterized as one alleging deliberate discrimination, which will be addressed in Section IV.B. *infra.*

dismiss the Complaint. *See, e.g., Springfield II,* 101 A.3d at 850 ("[The taxpayer], therefore, cannot rely only on the assessments and the sale prices of the allegedly under-assessed properties listed in the monthly transfer reports, without establishing their market values, to support its uniformity challenge."); *Weissenberger*, 62 A.3d at 506; *In re Penn-Delco Sch. Dist.*, 903 A.2d 600, 606 (Pa. Commw. Ct. 2006) (observing that "it is hard to imagine any successful tax assessment appeal that could escape a charge of non-uniformity or discriminatory effect"); *In re Springfield Sch. Dist.*, 879 A.2d 335, 341 (Pa. Commw. Ct. 2005) ("It is not discrimination to appeal an incorrect assessment.") (hereinafter, "*Springfield I*"). When a taxpayer fails to refute the presumed uniformity of a predetermined ratio by presenting credible, relevant and competent evidence to the contrary, the assessment of the taxing body must prevail." *Fosko*, 646 A.2d at 1279.

Critically, Appellants do not allege the requisite facts that would entitle them to relief under the Uniformity Clause. *See generally* R. 10a-38a. For example, Appellants make no mention of: (1) the variation in assessments across the district; (2) the percentage of commercial properties under-assessed; (3) any market valuations of any comparable properties; or (4) the "correct" ratio to apply in the absence of uniformity. *See generally id.* Instead, Appellants' "empirical" analysis seemingly ignores any meaningful data in favor of a single statistic already deemed

insufficient to succeed on a uniformity challenge. *See, e.g., In re Sullivan*, 37 A.3d at 1252. Further, ignoring the values of similarly situated—*i.e.*, ***all*** other commercial properties—precludes any recognized type of uniformity challenge. *See Smith*, 10 A.3d at 393 ("As we noted above, generally, in a uniformity challenge, the taxpayer does not contest the fair market value assigned to his property. Rather, the taxpayer contests the rate of his assessment as compared to other similar properties."). As explained in *Springfield II*:

> Where a property owner presents proof of assessments of comparable properties but fails to offer any evidence as to market value, the property owner **cannot sustain his burden of proof as a matter of law** in that the common pleas court has no information upon which to make a finding as to the current market value and apply the [EPR] [or the CLR] to determine the issue of uniformity.

Springfield II, 101 A.3d at 849–50 (quoting *Finter v. Wayne Cnty. Bd. of Assessment Appeals,* 889 A.2d 678, 682 (Pa. Cmmw. Ct. 2005)). As such, Appellants' Complaint fails to state a cause of action under the Uniformity Clause, rendering further analysis unnecessary. *See Smith*, 10 A.3d at 407 ("The teaching of *Deitch*, *Downingtown*, and *Clifton* clearly establish that the Uniformity Clause entitles a taxpayer to pay no more than his fair share; it does not give him a right to pay less."). And, as set forth in the next section, Appellants' Complaint fares no better to the extent it is framed as a claim of deliberate discrimination.

B. Appellants Fail to State a Claim that Appellees Deliberately Discriminated Against Them.

1. The Commonwealth Court Did Not Hold that School Districts Have an Unfettered Right to File Assessment Appeals.

As an initial matter, this Court should disregard Appellants' mischaracterization of the Commonwealth Court's Opinion as one granting "an absolute, unfettered school district right to appeal" assessments. Appellants' Brief at p. 31. Although Appellants only set forth two citations—five pages and three sections apart from each other—in support of this interpretation,[12] even a cursory review of the Commonwealth Court's opinion belies Appellants' contention.

For example, Appellants claim that "the Commonwealth Court concluded there could be no violation of the Uniformity Clause because 'it is now well settled that municipal tax authorities, such as school districts, may appeal a property's assessments.'" Appellants' Brief at p. 30 (quoting R. Appx. "A", at 4). Stated differently, Appellants maintain that the Commonwealth Court's recognition of a school district's right to appeal assessments, ***by itself***, prevented the court from finding a violation of the Uniformity Clause. In reality, however, Appellants pulled this quote from an introductory section explaining, *inter alia*, the laws at

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[12] While Appellants only cite two quotes, they make many more uncited/unsupported assertions throughout their brief. *See, e.g.,* Appellants' Brief at p. 31 ("In fact, contrary to this Court's precedent, the Commonwealth Court has failed to recognize any limit on a school district's appeal rights.").

issue in this case—including Section 8855 of the Consolidated County Assessment Law. *See* R. Appx. "A" at 3-4. ***Nowhere*** in this section—or the Opinion—does the Commonwealth Court find that a school district's right to appeal assessments precludes a violation of the Uniformity Clause. *See generally* R. Appx. "A".

Further underscoring Appellants' mischaracterization of the Commonwealth Court's Opinion is that the lower court explicitly held that "the trial court ***did not cite the above cases for the proposition that a school district's right to appeal from assessments is absolute.***" R. Appx. "A" at 9 (emphasis added). "Rather, it relied upon them for the proposition that where, as here, the school district has **reasonable and financial considerations of increasing its revenue**, the methods for identifying properties is not arbitrary, capricious or discriminatory." *Id.* (emphasis in original). In fact, the Commonwealth Court explicitly wrote that the right to appeal is not absolute:

> ***As explained above***, while [the School District's] right to appeal assessments ***is not unfettered***, the case law establishes that where, as here, a school district has reasonable and financial considerations of increasing its revenue, their actions do not violate the Uniformity Clause.

R. Appx. "A" at 13 (emphasis added).[13] Accordingly, this Court should reject Appellants' notion that the Commonwealth Court found an unfettered right to

[13] Incredulously, Appellants carry this misreading even further by setting forth a straw man argument: "What if a School District had appealed only assessments of properties owned by racial minorities, or only the assessments of properties owned by critics of the School District's

appeal assessments. Rather, pursuant to this Court's precedent, the Commonwealth Court concluded that Appellants failed to state a cause of action for discrimination whereby a taxing authority based its decisions on legitimate government interests. *See id; see also Clifton*, 969 A.2d at 1129 ("A valid classification must be rationally related to a legitimate government interest.").

2. Standard of Review for Allegations of Discrimination in Violation of the Uniformity Clause.

The Commonwealth Court correctly applied the law governing a school district's appeal of tax assessments by analyzing whether or not a rational basis existed for the decision to appeal Appellants' property to the exclusion of others. On the basis of Keystone's recommendations, the School District made a business decision to appeal the assessments of Appellants' properties. R. 22a.-23a. In doing so, the School District acted in accordance with the Assessment Law and Pennsylvania case law.

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leadership?" Appellants' Brief at p. 37. As demonstrated in this case, such an extreme example would not even pass under the deferential rational basis review, let alone the heightened standard traditionally applied to classifications based on race. Accordingly, no court would uphold Appellants' classifications as "rationally related to a legitimate governmental purpose" and such arguments only seek to distract this Court from the true issues of this appeal.

The Assessment Law, 53 Pa. C.S.A. §§ 8801 *et seq.*, unambiguously grants taxing districts[14] the right to appeal a property's tax assessment. In pertinent part, the Assessment Law states:

> A taxing district shall have 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, and, in addition, may take an appeal from any decision of the board or court of common pleas as though it had been a party to the proceedings before the board or court even though it was not a party in fact. [. . .].

53 Pa C.S.A. § 8855 (emphasis added). The Commonwealth Court has consistently found that Section 8855—and its predecessor, Section 5350i—grants school districts the right to appeal in the same manner, subject to the same procedure and effect, as if the appeal was pursued by an individual property owner. *See* R. Appx. "A" at 4; *Weissenberger*, 62 A.3d 501; *Springfield II*, 101 A.3d 835; *Springfield I*, 879 A.2d 335; *Vees*, 867 A.2d 742; *Millcreek Twp.*, 737 A.2d at 335.

Accepting that this right to appeal exists, Appellants did not allege a violation of the Assessment Law. *See generally* R. 10a-38a. Nor did Appellants challenge the constitutionality of the Assessment Law. *See id.* Instead, Appellants alleged that the School District violated the property owner's entitlement to uniform treatment through the method applied in selecting their properties for

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[14] The Assessment Law defines a "taxing district" as "[a] county, city, borough, incorporated town, township, ***school district*** or county institution district." 53 Pa.C.S.A. § 8802. (emphasis added).

appeal. [15] R. 14a. As such, Appellants' burden is to demonstrate that the School District's appeals resulted in "deliberate, purposeful discrimination in the application of the tax before constitutional safeguards are violated." *Id.* Stated differently:

> "When a taxpayer believes that he has been subjected to unequal taxation ... he generally must demonstrate that: (1) the enactment results in some form of classification; and (2) such classification is unreasonable and not rationally related to any legitimate state purpose." . . . In the absence of classifications that are "suspect" or "sensitive," or that implicate fundamental or important rights, classifications are subject to the deferential rational basis test.

R. Appx. "A" at 7 (internal citations omitted). Therefore, a taxpayer challenging the application of a tax as arbitrary, capricious, and discriminatory must allege that a school district could have no rational basis for the methodology it employs to appeal an under-assessed property. *Id.*

For example, following *Downingtown* and *Clifton*, the Commonwealth Court was confronted by a case factually identical to the one at bar in *Weissenberger.*[16] There, a school district participated in a county-wide organization that hired a real estate appraisal firm to review the assessments of all

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[15] The Commonwealth Court in *Weissenberger* "assume[d] without deciding that an appeal by a taxing district from an assessment constitutes the application or enforcement of a tax, so as to implicate uniformity principles." 62 A.3d at 505 (citing *Vees*, 867 A.2d 742).

[16] This Court rejected an appeal of the Commonwealth Court's decision on September 26, 2013. *See Weissenberger v. Chester Cty. Bd. of Assessment Appeals,* 621 Pa. 685, 76 A.3d 540 (2013).

apartment complexes in Chester County for the 2004 tax year. *Id.* at 503. The appraisal firm generated a report identifying potentially under-assessed apartment complexes, but recommended that the school district only appeal a complex consisting of two parcels owned by a taxpayer. *Id.* Based upon the potential for increased tax revenue, the school district made a "business decision," accepting the appraiser's recommendation and appealing the two parcels' assessments to the local assessment board. *Id.*

After the board increased the assessments of both properties, the taxpayer appealed the increased assessments to the Court of Common Pleas, "contending in part that the increased assessments were unconstitutional" and that the school district's "method for selecting properties subject to appeal was arbitrary and capricious." *Id.* at 503-04. The trial court held that the school district's decision to select for appeal one apartment complex, despite evidence that other complexes were also under-assessed, was unconstitutional. *Id.* at 504.

On appeal to the Commonwealth Court, the school district argued that the trial court "erred in concluding that the process it employed in appealing the assessments rendered the increased assessments unconstitutional." *Id.* The taxpayer maintained its challenge to the constitutionality of the application of the school district's right to appeal an assessment and, as such, it was the taxpayer's burden to demonstrate "deliberate, purposeful discrimination in the application of

the tax before constitutional safeguards are violated." *Id.* at 505. (quoting *In re Penn–Delco Sch. Distr.*, 903 A.2d at 605). Thus, as in the present appeal, because the taxpayers did not challenge the constitutionality of the underlying statute, the Commonwealth Court examined whether the taxpayer demonstrated that the school district's methodology was not rationally related to a legitimate governmental purpose. *Id.* (citing *Clifton,* 969 A.2d 1197). The Commonwealth Court determined that the taxpayer failed to meet its burden:

> Significantly, Taxpayer does not contest that its properties were under-assessed, and it does not dispute the increased value assigned to its properties. Instead, it advances the contention that the under-assessment, through which it pays comparatively less of the cost of local government, enjoys constitutional protection from School District's appeal. Not only does this position lack a common-sense allure, but it also lacks factual and legal support.

Id.

First, the Commonwealth Court held that because the school district appealed the taxpayer's property due to the "size of the potential under-assessment . . . it is easy to envision a rational basis for the School District's taking of these appeals: sufficient increased revenue to justify the costs of appeals. Judicious use of resources to legally increase revenue is a legitimate governmental purpose."[17] *Id.* at 506. Second, based on a long

[17] Moreover, the Commonwealth Court found that the taxpayer in *Weissenberger* was not entitled to relief because it failed to "first establish the various valuations at issue, and then

line of Commonwealth Court decisions,[18] *Weissenberger* held that the school district's methodology did not constitute deliberate, purposeful discrimination for three reasons: (1) a school district is expressly authorized to initiate assessment appeals; (2) a school district is not an entity clothed with the power to revise assessments or assessment ratios; and, most crucially, (3) narrowing the class of properties evaluated for appeal based upon financial and economic considerations "does not as a matter of law demonstrate deliberate, purposeful discrimination." *Id.* at 509.

One year later, in *Springfield II*, 101 A.3d 835,[19] a school district appealed the assessments of two properties, alleging that the properties should be assessed based on the recent purchase price paid by the property owner. *Id.* at 839. After the board denied the school district's appeals, the school district appealed the board of assessment's decisions to the Court of Common Pleas. *Id.* The property owner

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demonstrate how the disparate ratios of assessed-to-market value violate the uniformity requirement." *Weissenberger*, 62 A.3d at 506 (citing *Clifton*, 969 A.2d at 1214).

[18] The Commonwealth Court expressly relied upon the following: *In re Penn–Delco School District*, 903 A.2d 600; *Springfield I*, 879 A.2d 335; *Vees*, 867 A.2d 742; *Millcreek Township School District v. Erie County Board of Assessment Appeals*, 737 A.2d 335 (Pa. Cmmw. Ct. 1999); and *Allar v. Blue Mountain School District, Schuylkill County Board of Assessment Appeals*, 12 A.3d 498 (Pa. Cmmw. Ct., Nos. 162, 676, 677, 678, 711, 826, 887, 908, 1140 C.D. 2010, filed January 11, 2011) (unreported).

[19] This Court rejected an appeal of the Commonwealth Court's decision on July 28, 2015. *See In re Springfield Sch. Dist.*, 121 A.3d 497 (Pa. 2015).

intervened, alleging that the school district's selection of its properties violated the uniformity requirement. *Id.*

The property owner, in claiming that the school district violated the Uniformity Clause by selecting the owner's properties for assessment appeals, argued that the school district's method of selecting for appeals properties whose sale prices exceed implied market values by $500,000 or more was "arbitrary, capricious and discriminatory." *Id.* at 847. The property owner further contended that as a result of the school district's methodology "almost all residential properties would be excluded from assessment appeals" and that the school district "did not appeal the assessments of properties with a substantially lower assessment-to-sale-price ratio than [the property owner]'s properties." *Id.*

The Commonwealth Court reaffirmed the school district's right to file the appeals and concluded the following:

> The 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. The Uniformity Clause 'does not require equalization across all potential sub-classifications of real property (for example, residential versus commercial).'

Id. at 849 (citations omitted). As should be apparent by now, contrary to Appellants' belief that their appeal is the "first of its kind in the Commonwealth," these issues have been addressed repeatedly, thoroughly, and definitively against Appellants.

3. The Commonwealth Court Correctly Held that Appellees' Selection of Appellants' Properties Was Rationally Related to a Legitimate Government Purpose.

The Commonwealth Court correctly held that Appellants failed to state a claim for relief by alleging that the School District impermissibly considered economic and financial factors in selecting properties to appeal. Further, the Commonwealth Court correctly reaffirmed that, "[i]n the absence of classifications that are 'suspect' or 'sensitive,' or that implicate fundamental or important rights, **classifications are subject to the deferential basis test.**" R. Appx. "A" at 7 (quoting *Weissenberger*, 62 A.3d at 506). Critically, as demonstrated above, multiple courts have held that economic and financial considerations are rationally related to a legitimate government purpose. *See, e.g., Springfield II*, 10 A.3d 835, *Weissenberger*, 62 A.3d 501.

In the Complaint underlying the present appeal, Appellants allege that the School District and Keystone entered into a consulting contract whereby Keystone recommended properties for the School District to appeal in exchange for a commission. R. 22a. Appellants further allege that, as a result of Keystone's

recommendations, the School District systematically selected and appealed commercial properties, including apartment buildings, while not appealing residential properties.[20] R. 23a. Finally, Appellants allege that the School District's actions were part of an arrangement between the School District and Keystone to generate more tax revenue for the School District, which, in turn, would benefit Keystone since Keystone was paid on a contingency fee of 25% of any increased revenue generated for the School District. R. 22a-23a.

The factual similarities between this matter and *Weissenberger* are striking. In both cases, the school districts used a consultant to review properties and provide advice regarding potential assessment appeals. R. 22a; *Weissenberger*, 62 A.3d at 503. In both cases, the school districts did not file appeals of all properties within the school districts that were potentially under-assessed. R. 22a-24a; *Weissenberger*, 62 A.3d at 503. In *Weissenberger*, the school district selected certain assessment appeals to file, and the Commonwealth Court held that "it is easy to envision a rational basis for the [s]chool [d]istrict taking these appeals: sufficient increased revenue to justify the costs of appeals. Judicious use of

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[20] Although Appellants claim that "[t]his Court must accept as true Plaintiff's allegations that the School District is deliberately pursuing a scheme of assessment appeals to protect a favored group of voting homeowners and burden high-value commercial property owners with a disproportionate tax burden," this is simply untrue. Not only do Appellants fail to make such allegations in their Complaint, but a court "need not accept as true conclusions of law, unwarranted inferences, argumentative allegations, or expressions of opinion." R. Appx. "A" at 6-7 (quoting *Seitel Data, Ltd. v. Ctr. Twp.*, 92 A.3d 851, 859 (Pa. Cmmw. Ct. 2014)). As such, the Trial Court and the Commonwealth Court correctly disregarded this argument.

resources to legally increase revenue is a legitimate government purpose." 62 A.3d at 506. In this case, Appellants similarly allege that the School District did precisely what the courts have repeatedly held is permitted[21] by attempting to create sufficient increased revenue to justify the costs of appeals. R. 22a. Finally, in *Weissenberger*, the taxpayer argued that the school district's methodology and filing of assessment appeals was improper; the Commonwealth Court rejected those arguments for the reasons stated herein. 62 A.3d at 509. In this case, Appellants allege that the School District acted in the same manner as the school district in *Weissenberger*. R. 22a-23a.[22]

As illustrated above, both case law and statutory law are clear. The School District filed its assessment appeals in conformity with applicable law, and the selection of properties that could potentially generate more revenue violates neither the Pennsylvania Constitution nor the Equal Protection Clause. Simply put, the School District's actions in filing assessment appeals regarding the Appellants' properties complied with the applicable law and exercised the well-established rights granted to the School District by both the courts and the legislature. As the

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[21] The Complaint, in pertinent part, alleges the following: "[R]ather than selecting properties for appeal to further uniformity and ensure that no taxpayer pays more or less than its proportionate share of the cost of government, this arrangement rewards targeting for appeal larger, higher value commercial properties and not appealing lower value, lower assessed single family homes." R. 23a.

Commonwealth Court correctly held, "it is easy to envision a **rational basis** for [the School District] taking these appeals: sufficient increased revenue to justify the costs of appeals. Judicious use of resources to legally increase revenue is a government purpose." R. Appx. "A" at 7. Accordingly, this Court should affirm the Commonwealth Court's holding that "where, as here, a school district has reasonable and financial considerations of increasing its revenue, their actions do not violate the Uniformity Clause." *Id.* at 13.

4. The Commonwealth Court's Decision is Consistent With *Downingtown* and *Clifton*.

In order to side-step the rational basis review performed by the Commonwealth Court, Appellants attempt to deny its application in its entirety by arguing that "[g]overnmental subclassifications of real property for taxation are not permissible under the Uniformity Clause." Appellants' Brief at p. 24. In the absence of case law supporting their position, Appellants concoct their own by selectively quoting portions of this Court's opinions in *Downingtown* and *Clifton*. *See generally* Appellants' Brief. Despite Appellants' representations to the contrary, *Downingtown* and *Clifton* do not forbid the consideration of sub-classifications that are rationally related to a legitimate government purpose in selecting properties for assessment appeals.

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[22] Incredulously, Appellants also suggest that "[t]his lawsuit is entirely unlike *Weissenberger v. Chester County Bd. Of Assessment Appeals*, 62 A.3d 501 (Pa. Commw. Ct.

For example, Appellants cite *Clifton* for the proposition that "this Court has consistently interpreted the uniformity requirement of the Pennsylvania Constitution as requiring all real estate to be treated as a single class entitled to uniform treatment." Appellants' Brief at p. 25 (quoting *Clifton*, 969 A.2d at 1212). What Appellants overlook, however, is that the Court in *Clifton* then stated, "[a]lthough we have consistently recognized that the Uniformity Clause precludes 'real property from being divided into different classes for purposes of systemic property tax assessment,' we have since retreated from such an absolutist approach." *Clifton*, 969 A. at 1212–13 (citing *Downingtown*, 913 A.2d at 200). Indeed, this Court went on to quote its holding in *Downingtown*, which provided:

> [T]his Court has interpreted the Uniformity Clause as precluding real property from being divided into different classes for purposes of systemic property tax assessment, ***we do not find that this general precept eliminates any opportunity or need to consider meaningful sub-classifications as a component of the overall evaluation of uniform treatment in the application of the taxation scheme.***

Id. (emphasis added). Further, in addition to acknowledging that all sub-classifications do not necessarily run afoul of the Uniformity Clause, *Downingtown* also noted that where a "classification is not based on any legitimate distinction between the targeted and non-targeted properties, ***it is arbitrary and thus, unconstitutional.***" *Downingtown*, 913 A.2d at 205 (emphasis added). This Court

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2013)." R. 19a.

acknowledged this conclusion in *Clifton*, but determined that the "prolonged use of an outdated base year assessment, caused by market forces or other changes, cannot be characterized as a 'classification' in an attempt to cure non-uniformity." 969 A.2d at 1228. Thus, "although this Court has recently acknowledged that the uniformity requirement does not necessarily eliminate 'any opportunity or need to consider meaningful sub-classifications' in property taxation," the Court found no need to examine such an argument in *Clifton*. *Id.* (internal citations omitted).[23] *Downingtown* and *Clifton*'s application and discussion of rational basis principles underscore the meritless nature of Appellants' argument that these cases stand for the total abolishment of rational subclassifications.

Following this Court's retreat from an "absolutist approach," the Commonwealth Court in this case held:

> [A]dopting a methodology that narrows the class of properties evaluated for appeal based upon considerations such as financial and economic thresholds or by classifications of property do not as a matter of law demonstrate deliberate purposeful discrimination.

R. Appx. "A" at 5 (quoting *Weissenberger*, 62 A.3d at 506-07). This is holding is entirely consistent with this Court's finding "that a 'classification **not based on**

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[23] As noted above, Appellants attempt to limit the consideration of sub-classifications to only allow evidence offered by taxpayers. However, their argument is belied by this Court's analysis of the taxing authority's argument in *Clifton*, 969 A.2d at 1228. Moreover, such an argument is also contrary to the plain language of the uncontested Assessment Law: "A taxing district shall have 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.

any legitimate distinction between the targeted and non-targeted properties, is arbitrary, and thus, unconstitutional." R. Appx. "A" at 9 (quoting *Downingtown*, 913 A.2d at 205) (emphasis in original). The Lower Courts' application of *Downingtown* and *Clifton* was correct.

5. Assessment Appeals Based on Legitimate Governmental Purposes are Not Spot Assessments in Violation of the Pennsylvania Constitution.

As part of Appellants' misleading argument that the Commonwealth Court established an "unlimited right" for school districts to appeal assessments, they argue that "the School District is effectively engaging in unlawful spot assessments." Appellants' Brief at p. 33. To the contrary, it is well-established that a school district's appeal of a property's tax assessment is ***not*** an unlawful spot assessment. *See, e.g., In re Penn-Delco Sch. Dist.*, 903 A.2d at 606.

A spot assessment is "the reassessment of a property or properties that is not conducted as part of a countywide revised reassessment and which creates, sustains or increases disproportionality among properties' assessed values." *Shenandoah Mobile Co. v. Dauphin Cty. Bd. of Assessment Appeals*, 869 A.2d 562, 565 (Pa. Commw. Ct. 2005). The Assessment Law explicitly prohibits the county assessment office "from engaging in the practice of spot assessments." 53 Pa. C.S.A. 8843. However, the Assessment Law also unambiguously states: "*A*

change in assessment resulting from an appeal to the board by a taxpayer or taxing district shall not constitute a spot reassessment." *Id.*

Portraying assessment appeals as improper "spot assessments" is a common strategy amongst taxpayers opposing an appeal of their properties. Consequently, several courts have directly confronted this allegation and definitively held that an assessment appeal brought by a school district does ***not*** constitute an unlawful spot assessment for three distinct reasons. First, improper "selective reassessment" or "spot reassessment" is one performed "by a body clothed with the power to prepare or revise assessment rolls, value property, change the value of property, or establish the predetermined ratio[.]" *Vees*, 867 A.2d at 747. Assessment appeals brought by school districts, however, are "not initiated by a body possessing the power to prepare or revise assessment rolls, value property, change the value of property, or establish the predetermined ratio, all essential elements of the assessment process." *Id.* at 746 (citing *Millcreek Township Sch. Dist*, 737 A.2d at 335). Thus, such appeals do not constitute spot assessments. *See id.*; *see also Springfield I,* 879 A.2d at 341; *In re Penn-Delco Sch. Dist.,* 903 A.2d at 605.

Second, school districts are statutorily empowered to challenge the assessment through the appeals process. *See* 53 Pa C.S.A. § 8855. As the Commonwealth Court explained in *Springfield I*: "[t]he Law places no restrictions

on the 'methodology' employed by a school district or by an individual property owner in determining whether to appeal." *Springfield I*, 879 A.2d at 341.

Third, the Commonwealth Court has consistently held that when there is no dispute "that the property's fair market value exceeds that currently acknowledged by the County, it is not discrimination to appeal an incorrect assessment." *Id.*; *In re Penn-Delco Sch. Dist.*, 903 A.2d at 605.

In the present appeal, the assessment appeal was initiated by a body without the powers essential to the assessment process using the statutory mechanism explicitly excluded from the definition of a spot assessment by the statute. *See generally* R. 10a-38a. Moreover, Appellants do not contest that their properties are in fact under-assessed. *See id.* Accordingly, this Court should rely upon the well-developed case law by the Commonwealth Court and find that "[a] change in assessment 'resulting from an appeal to the board by a taxpayer or taxing district shall not constitute a spot reassessment.'" *Springfield II*, 101 A.3d at 848; *see also Weissenberger*, 62 A.3d at 506; *In re Penn-Delco Sch. Dist.*, 903 A.2d at 605; *Springfield I*, 879 A.2d at 341; *Vees*, 867 A.2d at 749 ("As a matter of law, the School District's use of the statutory appeal mechanism available uniformly to all interested parties does not amount to deliberate, purposeful discrimination. [. . .] Moreover, pursuant to *Millcreek*, the filing of a tax assessment appeal by a school district does not amount to an improper spot assessment.").

C. Logic and Statutory Construction Compel that the Commonwealth Court's Decision be Affirmed.

"It is fundamental that 'every statute shall be construed, if possible, to give effect to all of its provisions.'" *Springfield II*, 101 A.3d at 843 (quoting 1 Pa. C.S. § 1921(a)). It is indisputable that a school district has "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 (emphasis added). As recognized by the Commonwealth Court, Section 8855 of the Assessment Law "contains no limits on the process by which school districts decide to appeal . . . [and] places no restrictions on the 'methodology' employed by a school district or by an individual property owner in determining whether to appeal." *Weissenberger*, 62 A.3d at 504 (quoting *Springfield I*, 879 A.2d at 341).

In the present appeal, Appellants "have not raised a constitutional challenge to a taxing statute, ordinance or the application thereof." R. Appx. "A" at 13. Indeed, Appellants "did not raise a constitutional challenge to the assessment appeals statute." *Id.* Regardless, granting Appellants' requested relief would wholly undermine the Assessment Law. Consider the practical ramifications of such a holding: if Appellants are correct, then a school district may never consider reasonable economic or financial factors in selecting properties for assessment appeals. Consequently, in order to exercise its statutory right, a school district

would have to (1) analyze ***every*** property within its jurisdiction and (2) appeal ***every*** under-assessed property revealed by such analyses. This creates the absurd result of a taxing authority being forced to initiate a *de facto* school district-wide assessment when it exercises its statutory right to appeal, which is plainly not contemplated by this Court. *See Leonard v. Thornburgh* 485 A.2d 1349, 1351 (1985) ("Under the equal protection clause, and under the Uniformity Clause, absolute equality and perfect uniformity in taxation are not required.").

Further, without challenging the constitutionality of the Assessment Law, such results plainly violate the principles of statutory construction. Section 1922(1)-(3) of the Statutory Construction Act of 1972 states:

> In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others may be used:
> (1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.
> (2) That the General Assembly intends the entire statute to be effective and certain.
> (3) That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.

1 Pa. C.S. § 1922(1)-(3). Here, the statute at issue explicitly gives a school district the right to appeal an assessment "in the same manner, subject to the same procedure and with life effect as if the appeal were taken by a taxable person." Thus, a holding precluding ***any*** consideration of, *inter alia*, whether the results of the appeal will justify the cost or whether such an appeal would raise the school district's revenue is plainly absurd. This conclusion is only underscored by the

fact that, in order to exercise this statutory right, a taxing authority would have need to initiate a school district-wide reassessment—an extreme remedy typically preserved to correct pervasive inequality. *Smith*, 10 A.3d at 407 (citing *Clifton*, 969 A.2d at 1226-27).

D. Administrative Exhaustion Principles Prevent Appellants From Bringing Their Uniformity Clause Challenge As An Independent Equity Action.

As set forth in Appellees' Application for Relief—incorporated herein by reference—this appeal must be dismissed for Appellants' failure to exhaust statutory remedies. As an initial matter, Appellants wholly failed to address this case-dispositive issue in either their Petition for Allowance of Appeal or initial Brief. Similarly, the Petition and Brief lack ***any*** legal argument or analysis discussing the substance of the lower courts' holdings on this issue, resulting in the waiver of this issue.[24] *See generally* Appellants' Brief and Appellants' Petition for Allowance of Appeal. This waiver necessarily binds the taxpayers to the lower courts' holdings mandating that they exhaust their statutory remedies. With the taxpayers bound by that decision, any opinion or ruling made by this Court regarding Taxpayers' Uniformity Clause challenge can have no legal effect on this appeal and would be merely advisory. Accordingly, this Court should dismiss this

[24] In fact, the ***only*** acknowledgement of the exhaustion of remedies doctrine are in footnotes—one in their Petition and one in their Brief—admitting that this issue is not before this Court.

appeal as moot and order Appellants to exhaust their statutory remedies in the pending assessment appeals. *See* Appellees' Application for Relief.

However, in the event that this Court finds that Appellants did not waive the exhaustion of remedies argument or that Appellants adequately stated a claim for relief, the Complaint must still be affirm the Commonwealth Court's decision finding a failure to exhaust administrative remedies.

1. Exhaustion of Statutory Remedies in Pennsylvania

This Court has held that "[i]t is fundamental that prior to resorting to judicial remedies, litigants must exhaust all the adequate and available administrative remedies." *Maryland Cas. Co. v. Odyssey Contracting Corp.*, 894 A.3d 750, 754 (Pa. Super. 2006) (quoting *County of Berks, ex rel. Baldwin v. Pennsylvania Labor Relations Board*, 678 A.2d 355, 360 (Pa. 1996)). The doctrine of exhaustion of administrative remedies acts as a restraint upon the exercise of a court's equitable powers and "acknowledges that an unjustified failure to follow the administrative scheme undercuts the foundation upon which the administrative process was founded." *Shenango Valley Osteopathic Hospital v. Department of Health*, 451 A.2d 434 (Pa. 1982). The failure to pursue a statutory remedy "creates a jurisdictional defect" and "[a] court is without power to act until [the] statutory remedies have been exhausted." *Maryland Cas. Co.*, 894 A.3d at 754-55 (citing *Muir v. Alexander*, 858 A.2d 653, 660 (Pa. Commw. Ct. 2004)).

As explained by the Pennsylvania Superior Court:

> Section 1504 of the Statutory Construction Act of 1972 provides that in all cases where a statutory remedy is provided or a duty is enjoined by any statute, the statutory remedy shall be strictly pursued rather than a remedy at common law. 1 Pa.C.S.A. § 1504. . . . "Even where a constitutional question is presented, it remains the rule that a litigant must ordinarily follow statutorily-prescribed remedies." *Muir*, 858 A.2d at 660.

Maryland Cas. Co., 894 A.3d at 754-55. Accordingly, to overcome the presumption that a litigant must exhaust all statutory remedies in an assessment case, a plaintiff must prove that it "(1) raise[d] a **substantial** constitutional issue, **and** (2) lack[ed] an adequate remedy through the administrative appeal process." R. Appx. "A" at 13 (quoting *Beattie*, 907 A.2d at 519).

In the context of a tax assessment appeal, the remedies set forth in the Assessment Law are the mandatory and exclusive remedies for challenging an appeal. *See Hanoverian, Inc. v. Lehigh County Bd. of Assessment*, 701 A.2d 288, 289 (Pa. Commw. Ct. 1997) (noting that the statutory remedy for review of tax assessment first by board of assessment and subsequently by court of common pleas is mandatory and exclusive); *Aquarian Church of Universal Service v. County of York*, 494 A.2d 891, 892 (Pa. Commw. Ct. 1985). Indeed, as noted by the Commonwealth Court, this mandatory process includes challenges to an assessment appeal brought pursuant to the Uniformity Clause. R. Appx. "A" at 12-13. Accordingly, in the interest of judicial economy, any such challenge should be

brought in the assessment appeal, rather than by initiating a duplicative lawsuit. *See Commonwealth v. Geyer*, 687 A.2d 815, 818 (Pa. 1996) ("[T]he interests of judicial economy are served by relieving the court system of repetitious litigation of any nature.").

This case is nearly identical to *Fox v. Cty. of Clearfield*, 2011 WL 10845573 (Pa. Commw. Ct. July 15, 2011). In *Fox*, a taxpayer, individually and on behalf of a "Committee of Concerned Citizens," filed an action in the Court of Common Pleas seeking declaratory relief under the Uniformity Clause and an order directing the county to perform a county-wide reassessment. *Id.* at *1. In pertinent part, the taxpayer alleged that "his property 'is being taxed at a higher percentage of [its] fair market value than other properties throughout the taxing district,' which is unconstitutional pursuant to *Clifton*" and results in "an illegal, discriminatory effect among the County's taxpayers." *Id.* In support thereof, the taxpayer presented "various statistical standards recognized by Pennsylvania courts in determining the uniformity of taxation, particularly the Price–Related Differential (PRD), Coefficient of Dispersion (COD), and the [CLR]"—to establish a lack of uniformity. *Id.* The county filed preliminary objections based on, *inter alia*, the taxpayer's failure to exhaust his statutory remedies "by appealing his assessment under the [Assessment] Law and that equity jurisdiction is not appropriate here

because '[a] uniformity challenge to a particular assessment can and must be raised in a statutory appeal.'" *Id.* at *2.

The trial court sustained the county's preliminary objections, holding "that, although equitable jurisdiction is available if a taxpayer raises a substantial constitutional issue, such as a frontal attack on an underlying tax statute, and lacks an adequate remedy through the administrative appeal process, the Complaint did not satisfy these requirements and it would not invoke its equitable jurisdiction." *Id.* Specifically, the taxpayer "failed to support his contention that his property is being taxed at a higher rate of fair market value than other properties, relying only on ***generalized*** and ***conclusory*** allegations of 'taxation inequality,' which were insufficient to confer equitable jurisdiction here." *Id.* (emphasis added).

The taxpayer appealed to the Commonwealth Court, arguing that *Clifton* "authorizes individual taxpayers to bring equitable actions claiming violations of the Uniformity Clause due to outdated county tax assessments that result in pervasive tax inequities." *Id.* at *4. Applying the two-part test set forth in *Beattie*, the Commonwealth Court affirmed, specifically distinguishing between the taxpayers' allegations of systemic discrimination and dis-uniformity from those of *Clifton*. *See generally id.*

First, the Commonwealth Court held that the taxpayer failed to present a substantial constitutional issue. Although the complaint set forth "statistical

predicates for showing mass, systemic, nonuniform assessments, . . . the Supreme Court cautioned that its decision [in *Clifton*] was not a 'suggestion . . . that deviation from one or more [standards] *proves a lack of uniformity.*'" *Id.* at *6 (quoting *Clifton*, 969 A.2d at 1226-27) (emphasis in original). As such, "the pleading of the deviation of one or more of these statistical predicates" does not, by itself, sufficiently allege a lack of uniformity or raise a substantial constitutional issue. *See id.*

Second, the Commonwealth Court concluded that the remedy available to the taxpayer through the administrative appeals process was not inadequate. *Id.* at *7. In pertinent part, the taxpayer alleged that ***his*** property was being overtaxed; therefore, he was seeking relief pursuant to his own property's assessments. *Id.* The Commonwealth Court, relying upon *Jordan v. Fayette County Board of Assessment Appeals*, 782 A.2d 642 (Pa. Cmmw. Ct. 2001),[25] found that a taxpayer arguing "that *he* is paying a disproportionately high amount of taxes on *his* property when compared to other properties in the taxing district . . . can readily be

[25] In *Jordan v. Fayette County Board of Assessment Appeals*, a group of taxpayers filed a class action with the trial court alleging that the county was assessing their properties in a different manner than other properties. 782 A.2d at 643. Accordingly, the taxpayers alleged that these non-uniform assessments resulted in their having to pay a disproportionate share of property taxes in violation of the Uniformity Clause. *Id.* The trial court sustained the county's preliminary objection and dismissed the action for lack subject matter jurisdiction. *Id.* at 643–44. On appeal, the taxpayers alleged—as Appellants do here—that the statutory process provided for by the Assessment Law was constitutionally inadequate. *Id.* at 644. This Court rejected the taxpayers' arguments, holding that the administrative remedy was adequate and, therefore, the trial court did not err in declining to exercise its equitable jurisdiction. *See id.*

resolved by using the appeal procedures set forth in the [Assessment] Law, including the application of the CLR to determine the proper assessed value of [the taxpayer's] property." *Fox*, at *8. The lower court explained:

> To hold otherwise in this matter would be to encourage the "premature interruption of the administrative process" that would "undercut[ ] the foundation upon which the administrative process was founded," *Jordan*, 782 A.2d at 646 (quoting *Shenango Valley Osteopathic Hospital*, 451 A.2d at 438), which would not "ensure [that] claims will be addressed by the body having expertise in the area," *Beattie*, 907 A.2d at 532 (Cappy, J., concurring).

Id. at *8. Appellants bring a nearly identical claim to the one brought in *Fox*, and, as discussed below, the lower court's decision should be affirmed for substantially the same reasons.

2. Appellants Fail to Set Forth a Substantial Constitutional Issue.

Appellants fail to set forth a substantial constitutional issue, as required by this Court in *Beattie*, for two reasons. First, Appellants' conclusory allegations of non-uniformity are insufficient to compel a trial court to exercise its equity jurisdiction. Second, Appellants allegations of discrimination lack any "statutory or case authority to support their unprecedented assertion that there is a legal basis for an independent action seeking to enjoin a school district from exercising its right to appeal tax assessments." *See* R. Appx. "C" at 4.

As in *Fox*, Appellants filed a Complaint outside of the statutory appeals mechanism seeking declaratory judgment, injunctive relief, and damages. *See* R.

10a-38a. Moreover, Appellants alleged that "approximately 80.6% of all single-family homes in Upper Merion have an assessment-to-market value below the 2012 CLR for Montgomery County." R. 10a. These allegations are insufficient to "prove a lack of uniformity."[26] *Clifton*, 969 A.2d at 1226-27. As noted by the Commonwealth Court, "It is the existence of a substantial question of constitutionality, not the mere allegation thereof, that is required." R. Appx. "A" at 13.[27]

Additionally, Appellants' attack upon the School District's right to appeal tax assessments does not actually raise a constitutional challenge. The Commonwealth Court explained:

> Here, however, [Appellants] have not raised a constitutional challenge to a taxing statute, ordinance, or the application thereof. Rather, [Appellants] are challenging [the School District's] right to appeal tax assessments. Thus, Taxpayers cannot meet the first requirement [of *Beattie*].

R. Appx. "A" at 13. Further, the Commonwealth Court found that the Complaint's allegations do not demonstrate that the School District deliberately discriminated

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[26] Indeed, in *Fox,* the taxpayers set forth three separate statistical allegations—including the relevant COD, PRD, and CLR—which was more detail than alleged in the Appellants' Complaint, yet still insufficient to disregard the *Fox* taxpayers' failure to exhaust administrative remedies. *See* 2011 WL 10845573, at *6.

[27] Further distinguishing the present appeal from *Clifton*, is that *Clifton* involved the pervasive inequity in Allegheny County with a lengthy history of litigation as opposed to "a single taxpayer Complaint, [containing] no allegations of a pervasive history of litigation, invalid assessments and reassessments, or numerous individual assessment appeals in the County." *Fox*, 2011 WL 10845573 at *6.

against the Appellants because making reasonable and financial considerations of increasing revenue does not violate the Uniformity Clause. *See id.* Thus, as recognized by the Commonwealth Court, Appellants "have not raised a constitutional challenge to a taxing statute, ordinance or the application thereof." R. Appx. "A" at 13. Further, Appellants "did not raise a constitutional challenge to the assessment appeals statute." *Id.* This is precisely the issue addressed in *Jordan v Fayette County Board of Assessment Appeals*:

> [T]his argument ignores the precise distinction drawn in [*Borough of Green Tree v. Bd. of Prop. Assessments, Appeals & Review of Allegheny Cty.*, 328 A.2d 819, 825 (Pa. 1974)] between a substantial "frontal attack" on the constitutionality of a tax statute (as in *Borough of Green Tree*) and a constitutional challenge to the application of the statute . . . . ***In the former situation, exercise of equity jurisdiction is appropriate; in the latter, it is not.*** This is because, "the more direct the attack on the statute, the more likely it is that exercise of equitable jurisdiction will not damage the role of the administrative agency charged with enforcement of the act, nor require, for informed adjudication, the factual fabric which might develop at the agency level." *Borough of Green Tree*, 328 A.2d at 825. Thus, "[w]hen a constitutional attack is brought against the ***application*** of a tax statute, the board is the proper authority to hear the challenge." *Consol. Gas Supply Corp. v. County of Clinton*, 470 A.2d 1113, 1115 (Pa. Commw. Ct. 1984)(en banc).

Jordan, 782 A.2d at 646. Accordingly, Appellants fail to raise a substantial constitutional issue, and the Commonwealth Court's Order should be affirmed.

3. Appellants Have an Adequate Remedy Through the Statutory Appeals Process.

Even assuming, *arguendo*, that a substantial constitutional issue exists, the

Complaint must still fail because Appellants have an adequate remedy in statutory appeal process.[28] The allegedly inadequate statutory remedy reads as follows:

> (9) ***Nothing in this subsection shall:***
> (i) Prevent an appellant from appealing a base-year valuation without reference to ratio.
> (ii) ***Be construed to abridge, alter or limit the right of an appellant to assert a challenge under [S]ection 1 of Article VIII of the Constitution of Pennsylvania [the Uniformity Clause].***
> **(b) Appeals to Commonwealth Court or Supreme Court.** – The board, or any party to appeal to the court of common pleas, may appeal from the judgment, order or decree of the court of common pleas.

R. Appx. "A" at 12 (quoting 53 Pa. C.S. § 8854(a)(9)) (double emphasis in original).[29]

However, the Complaint alleged that "Defendants' scheme imposes on Plaintiffs – owners of multi-family apartment buildings – the obligation to pay more than their proportionate share of the cost of government." R. 14a.

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[28] As an initial matter, Appellants assert that they do not possess an adequate remedy at law because they "do not seek review of an individual tax assessment," but instead seek to bar the School District from pursuing the ongoing appeals entirely to prevent a violation of the Uniformity Clause. *See* Appellants' Brief in Answer at p. 21-22. However, as in *Millcreek Twp. v. Erie County Bd. of Assessment Appeals*, "[t]he [School] District has merely filed an appeal, as it is permitted to do in accordance with the [Assessment] Law. At this stage, no reassessment has occurred." 737 A.2d at 339. The Commonwealth Court has held that the "mere filing of an appeal by the [School District] challenging a property owner's assessment" does not violate the Uniformity Clause. *Id.* ("Absent a change, in assessment, [the taxpayer's] constitutional arguments are premature at this point."). Accordingly, as demonstrated by *Millcreek*, the fact that Appellants' assessments are ***still*** unchanged only underscores why they should be compelled to exhaust their statutory remedies before bringing a second action in equity.

[29] Further, "when a taxpayer 'believes that his property has been inequitably assessed,' he 'may appeal the assessment to the county board of assessment appeals.'" *Fox,* 2011 WL 10845573, at *4 (quoting *Clifton*, 969 A.2d at 1213 n. 23).

Appellants aver that the pending assessment appeals "will have significantly increased non-uniformity and improperly placed a disproportionate tax on [each Appellant's property] in violation of the Uniformity Clause, because 80.6% of single-family residences in Upper Merion will have assessment-to-market value ratios below [that property]." *See* R. 24a-30a. As in *Fox*, Appellants are really one individual property owner concerned about the disproportionate assessment of his own properties.[30] This is ***exactly*** the type of "issue that can readily be resolved by using the appeal procedures set forth by the [Assessment] Law . . . ." *Fox,* 2011 WL 10845573, at *8.

In fact, and beyond even the facts of *Fox*, Appellants did ***precisely*** that and raised this ***exact issue*** in the pending appeals.[31] However, as recognized by the Trial Court at the inception of this appeal:

> Appellants are seeking to avoid the statutory procedures established for the adjudication of tax assessment appeals. Issues concerning lack of uniformity can be properly raised in the tax assessment appeals where the county, township, school district, and board of assessment appeals are parties in the case.

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[30] Valley Forge Towers Apartments N, LP, Gulph Mills Apartments, and The Lafayette at Valley Forge LP voluntarily discontinued their claims against the Appellees, consequently, the only properties left in this appeal are owned by one property owner.

[31] Inexplicably, while Appellants concede that they raise these same in the ongoing assessment appeals as affirmative defenses and new matter (*see* Appellants' Brief in Answer at p. 6), they ***also*** argue that such challenges are entirely meritless. *See generally* Appellants' Brief in Answer. Thus, faced with the Hobson's choice of admittedly violating Pa. R.C.P. 1023.1(c) or having an adequate remedy through the appeals process, Appellants seemingly leave this contradiction unaddressed.

R. Appx. "C" at 4. Incredulously, Appellants' Brief in Answer and Opposition to Appellees' Application for Relief seemingly concedes the fundamental flaws in their appeal because the Commonwealth Court has, *inter alia*, rejected the very evidence Appellants believe support their claims. *See* Appellants' Brief in Answer at p. 22-23. Critically, Appellants cannot, or will not, explain why such rejections or limitations are appealable within the context of an assessment appeal. *See generally* Appellants' Brief and Appellants' Brief in Answer. Moreover, the flaw in Appellants' argument is underscored by the very fact that no less than seven Commonwealth Court cases exist directly addressing the claims they now bring in an independent lawsuit—each of which, until this case, was denied an appeal by this Court. Accordingly, this Court should affirm the lower courts' holding for Appellants' failure to exhaust their statutory remedies.

E. Appellants' Complaint Fails to Request the Proper Relief Pursuant to the Uniformity Clause.

Even assuming that Appellants adequately stated a claim under the Uniformity Clause and did not fail to exhaust their statutory remedies, the lower court's decision must still be affirmed because Appellants request the wrong relief.

A Pennsylvania court "may sustain the [preliminary] objection only if the plaintiffs' complaint fails to state a cause of action which, if proved, ***would entitle them to the relief requested*** . . . ." *Madden v. Jeffes*, 482 A.2d 1162, 1164 (Pa. Cmmw. Ct. 1984) (citing *Wells v. Pittsburgh Board of Public Education*, 374 A.2d

1009 (Pa. Cmmw. Ct. 1977)) (emphasis added). However, in Counts I and III of the Complaint, Appellants request ***injunctive*** relief enjoining Appellees from: (1) pursuing the ongoing assessment appeals of Appellants' properties; (2) accepting, implementing or following any recommendation of Keystone concerning the appeal of ***any*** real property within the School District; (3) "selectively appealing" the assessments of ***any*** multi-family apartment building properties within the School District; and (4) initiating appeals in violation of the Uniformity Clause. R. 32a-36a. However, as stated by the Trial Court:

> Appellants have no statutory or case authority to support their unprecedented assertion that there is a legal basis for an independent action seeking to enjoin a school district from exercising its right to appeal tax assessments due to an alleged inequality of tax assessments and a lack of uniformity.

R. Appx. "C" at 4. Nothing in the Complaint or elsewhere justifies blanket injunctive relief entirely preventing Appellants from exercising their right to appeal the Appellants' assessments or ***any other*** property based on economic and financial considerations.

At its core, the Complaint primarily alleges—albeit inadequately—that Appellees' method of narrowing properties to select for appeal "imposes on ***Plaintiffs***—the owners of multi-family apartment buildings—the obligation to pay more than their proportionate share of the cost of government." R. 14a (emphasis added); *see also* R. 15a ("That squarely places on Plaintiffs the obligation to pay

more than their proportionate share of the cost of government in violation of the Uniformity Clause."). And despite Appellants' peculiar request for relief, allegations that individual taxpayers are "paying a disproportionately high amount of taxes on [their] property when compared to other properties in the taxing district" are best resolved through "the application of the CLR." *Fox*, 2011 WL 10845573, at *8. Indeed, "absent the kind of circumstances shown in *Clifton*, which mandate county-wide reassessment, or a showing of willful discrimination by the taxing authorities, a taxpayer is entitled ***only*** to have his assessment conform with the common level existing in the district, not with a small sample of properties being taxed at a lower than average level." *Smith*, 10 A.3d at 407 (emphasis added). While it is presumed that this common level is captured by the CLR—calculated by STEB—taxpayers are free to prove the CLR is unrepresentative and a different ratio should be applied to their property. *See id.*

Further, even if Appellants argue that the tax inequalities caused by the School District's appeals are "systematic" or "pervasive," Appellants should have sought a school district wide reassessment. *See In re Sullivan*, 37 A.3d at 1257.[32]

Puzzlingly, Appellants also request that this Court commit the same sub-classification of real property that Appellants vehemently oppose in this appeal. R.

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[32] It should be noted that this claim would also fail because Appellants "failed to present any county-wide analysis," and instead focused on the assessment-value of two sub-

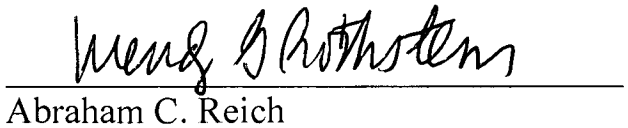
32a-36a. Specifically, Appellants seek relief enjoining Appellees from appealing ***any*** multi-family apartment building properties within the School District. *See id.* This request—seeking to exempt a specific subclassification of property from assessment appeals—effectively concedes, as this Court's precedent clearly identifies, that rational subclassifcations of property are a necessary component in achieving uniformity.

V. CONCLUSION

For all the foregoing reasons, the Upper Merion Area School District and Keystone Realty Advisors, LLC request that this Honorable Court affirm the Commonwealth Court's decision.

Respectfully submitted,

Fox Rothschild LLP

By: 

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classifications of properties (single-family homes and specific multi-family home apartment complexes). *See id.*

CERTIFICATE OF COMPLIANCE

I, Wendy G. Rothstein, Esquire attorney for Appellees, hereby certify this brief contains 13,141 words, as counted by the undersigned's Microsoft Word word processing software, and it therefore complies with the 14,000 word limit set by Pa.R.A.P 2135 (a)(1).

Dated: September 7, 2016

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complexes). *See id.*

CERTIFICATE OF SERVICE

I, Wendy G. Rothstein, Esquire, hereby certify that I am this day serving two copies of the foregoing Brief upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

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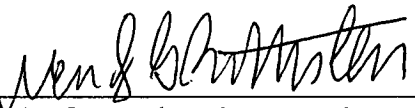

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