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Archaic, Inequitable, and Unconstitutional: Why Now Is the Time for an Overhaul of Property Assessment Laws in Pennsylvania, and How Reform Could Impact All Pennsylvania Real Property Owners

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Archaic, Inequitable, and Unconstitutional: Why Now is the Time for an Overhaul of Property Assessment Laws in Pennsylvania, and How Reform Could Impact All Pennsylvania Real Property Owners

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I. INTRODUCTION

A recent decision in Allegheny County Court¹ sent shockwaves through county property assessment offices statewide when a Common Pleas Judge declared Pennsylvania’s assessment laws²

1. *Clifton v. Allegheny County*, No. GD-05-028638, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202 (Pa. Ct. Comm. Pl. June 6, 2007).

2. See 72 PA. STAT. ANN. § 5020-101 et seq. (West 1995) (General County Assessment Law) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202); *id.* § 5341.1 et seq. (First Class County Assessment Law) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202); *id.* § 5452.1 et seq. (Second Class County Assessment) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202); 53 PA. STAT. ANN. § 5342 et seq. (West 1997) (Third Class County Assessment Board Law) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202); *id.* §§ 37501-37562 (Third Class City Code, Article XXV (Taxation)) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202); 72 PA. STAT. ANN. §

unconstitutional in violation of the Uniformity Clause.³ As a result, a fiercely contested battle over the methods by which the Commonwealth's counties assess real property and levy property taxes looms. The dust will eventually settle following what is guaranteed to be an extraordinarily hard-fought appeal process in the aftermath of Allegheny County Court of Common Pleas Judge R. Stanton Wettick Jr.'s June 6, 2007 opinion.⁴ When it does, a system plagued with inequities and deemed archaic by its some of its harshest critics may finally get an overhaul that many feel is long overdue.⁵

The goal of this comment is threefold. First, it will present a short history of the Commonwealth's real property assessment laws and provide an overview of the *Clifton* and *Pierce* cases that were consolidated and decided in *Clifton v. Allegheny County*.⁶ It will then provide a discussion of why these cases are likely to survive appeals, before finally exploring the avenues of potential reform and how they stand to impact the Commonwealth's real property owners.

II. A SYSTEM LACKING STRUCTURE, OVERSIGHT, AND UNIFORMITY

Prior to delving into the particularities of Judge Wettick's opinion, it is both appropriate and instructive to provide a brief overview of the history of property assessment laws in the Commonwealth. Since the onset of the real estate property tax in Pennsylvania, the General Assembly has passed and amended assessment laws, but it has never established an oversight agency to supervise the county-run assessment programs.⁷ Pennsylvania joins Delaware as one of only two states in the country that have not established such an agency, instead placing the task of assessing real property solely in the hands of the individual counties.⁸

5453.101 et seq. (West 1995) (Fourth to Eighth Class County Assessment Law) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202).

3. PA. CONST. art VIII, § 1. "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority leveling the tax, and shall be levied and collected under general laws." *Id.*

4. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202.

5. See, e.g., Terry Madonna, Pennsylvania and Local Taxes, (March 27, 2001), <http://www.fandm.edu/x3780.xml>.

6. *Clifton v. Allegheny County*, No. GD-05-028638, and *Pierce v. Allegheny County*, No. GD-05-028355, consolidated and decided *sub nom Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202.

7. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *78.

8. *Id.*

The process for assessing real property in Pennsylvania is regulated by six individual assessment laws.⁹ The Commonwealth's sixty-seven counties are broken down into eight classes with each class being governed by a distinct assessment law.¹⁰ The General County Assessment Law supplements the more specific assessment laws, which govern assessments in counties of the first through third class.¹¹ The Fourth to Eighth Class County Assessment Law exclusively governs the assessment process in all other counties.¹² Allegheny County is governed by the Second Class County Assessment Law.¹³

Pennsylvania assessment laws authorize the county assessment programs to utilize an indefinite base year system, which permits counties to use values from an assessment conducted in any year, no matter how dated, to calculate the amount of property tax to be levied on each parcel.¹⁴ The current system has been in place since the General Assembly last amended the assessment laws a quarter of a century ago, in 1982. Prior to the those amendments, state law required each county to conduct annual assessments and levy property taxes relative to the current fair market of property.¹⁵ However, the lack of an oversight agency, as Judge Wet-tick pointed out, has allowed counties to ignore assessment laws even when annual assessments were required.¹⁶ This is evidenced by the fact that some Pennsylvania counties have not conducted reassessments in nearly four decades.¹⁷

9. See 72 PA. STAT. ANN. § 5020-101 et seq. (West 1995) (General County Assessment Law) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202); *id.* § 5341.1 et seq. (First Class County Assessment Law) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202); *id.* § 5452.1 et. seq. (Second Class County Assessment) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202); 53 PA. STAT. ANN. § 5342 et seq. (West 1997) (Third Class County Assessment Board Law) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202); *id.* § 37501-37562 (Third Class City Code, Article XXV (Taxation)) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202); 72 PA. STAT. ANN. § 5453.101 et seq. (West 1995) (Fourth to Eighth Class County Assessment Law) (*invalidated by Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202).

10. PA. LOCAL GOV'T COMM'N, *Real Estate Assessment Process in Pennsylvania . . . An Overview*, in PENNSYLVANIA LEGISATOR'S MUNICIPAL DESKTOP 141, 141 (3d ed. 2007).

11. *Id.*

12. *Id.*

13. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *12.

14. *Id.* at *9-10.

15. *Id.* State law granted Allegheny County an exception under which it was permitted to conduct triennial assessments prior to 1982. *Id.*

16. *Id.* at *78-79.

17. *Id.* at *52.

III. OVERVIEW OF JUDGE WETTICK'S OPINION

This section provides an overview of the ninety-four page *Clifton* opinion, with an emphasis on the reasoning that led Judge Wettick to declare Pennsylvania's assessment laws unconstitutional and to issue a court order requiring a countywide reassessment of real property, pending an appeal currently before the Supreme Court of Pennsylvania.

A. *Assessment History of Allegheny County*

In a brief introduction, Judge Wettick summarized the plaintiffs' argument before delving into a discussion of the assessment history of Allegheny County. In short, the plaintiffs contended that assessment laws permitting the use of base year values but lacking provisions requiring counties to conduct full reassessments violate the Uniformity Clause of the Pennsylvania Constitution because such a system produces arbitrary, unjust, and unreasonably discriminatory assessment results.¹⁸

The Administrative Code of Allegheny County provided for annual reassessments up until 2002 when the county began using the indefinite base year system permitted by Pennsylvania assessment laws.¹⁹ Prior to 2002, the county supposedly assessed properties at their actual values for the current taxable year.²⁰ The County Assessment Office completed a reassessment in 2001 for use in the 2002 tax year.²¹ An Assessment Ordinance passed in 2002 called for the reassessment for the tax year 2002 to serve as a base year for 2003-2005.²² Pursuant to that ordinance, a computer assisted reassessment was to be conducted in 2005 for use in the tax year 2006.²³ The computer assisted reassessment was carried out in 2005 and met International Association of As-

18. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *10.

19. *Id.* at *11.

20. *Id.* In fact, the county did not conduct annual countywide reassessments, and for many properties, it arrived at the next year's assessment by simply using the value from the prior year's assessment. *Id.* The county would sometimes add in slight increases and decreases for properties located in neighborhoods where property values were either rising or declining. *Id.* Sometimes entire areas within the county were actually reassessed, but such areas often did not include entire school districts. *Id.* When one area of a school district is reassessed and another is not, some property owners will inevitably pay a greater proportion of taxes relative to the actual value of their properties than others. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *11.

21. *Id.* at *13.

22. *Id.* at *14.

23. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *14.

sessing Officers (IAAO) standards but was never formally certified.²⁴ Instead, the County Administrative Code was amended to delete the requirement that assessed values meet IAAO uniformity and equality standards and to provide for the continued indefinite use of 2002 as base year for assessing real property.²⁵

B. Present Litigation

The litigation giving rise to Judge Wettick's ruling evolved from the overassessment of five Allegheny County properties and comprised two lawsuits.²⁶ Each of the properties in question share one common element: they were overassessed relative to the 2002 base year in Allegheny County. The properties owned by Kenneth Pierce and Stephanie Beechaum were overassessed because each had substantially declined in value since the base year.²⁷ Because their properties had declined in value by approximately 50% since the base year, Pierce and Beechaum were burdened with paying a disproportionate percentage of property tax relative to the current values of their properties, while owners whose properties had substantially increased in value since the base year were able to reap the benefit of property tax savings.

The properties owned by James C. Clifton, Charles and Lorrie Cranor, and Roy Simmons and Lisa Meier were overassessed because each was reassessed upward to reflect the current actual value following a real estate transfer.²⁸ Although these properties were reassessed to reflect their current market values, similar properties, which also substantially increased in value but were not subject to sale, continued to be assessed at substantially less than their current values. Thus, new homeowners such as the litigants in this case were forced to endure a property tax penalty in that they were taxed at a disproportionately higher rate than owners of similarly situated properties that had gone unsold since the base year.

24. *Id.* at *14-15.

25. *Id.* at *17.

26. *Id.* at *17-21. The lawsuit at Docket No. GD-05-028355 was initiated by Kenneth Pierce and Stephanie Beechaum. *Id.* at *17. The litigation existing at Docket No. GD-05-028638 was brought by James C. Clifton, Charles and Lorrie Cranor, and Roy Simmons and Mary Lisa Meier. *Id.* at *19.

27. *Id.* at *17-18.

28. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *19-21.

C. *Uniformity Clause*

After presenting an overview of the present litigation, Judge Wettick noted that a review of the case law construing the Uniformity Clause of the Pennsylvania Constitution is an appropriate step toward deciding whether the use of an indefinite base year system is unconstitutional.²⁹ The Uniformity Clause requires taxing authorities to levy taxes in a uniform manner.³⁰

The judge noted that while Pennsylvania's constitution does not unequivocally call for real property to be treated as a single class, the state's appellate courts have consistently ruled that the Uniformity Clause bans any legislation which would permit dividing real estate as a subject of taxation into different classes, thus requiring that all property be taxed at the same rate relative to current actual value.³¹ This has been the law of Pennsylvania since as early as 1909, when the Pennsylvania Supreme Court construed the Uniformity Clause as it relates to the property tax as follows:

Each person, natural or artificial, must bear his share of the public burdens, and the burden of each is measured by the ratio ascertained by dividing the total amount of taxes necessary to meet the public burdens in a given district by the whole valuation of property within the territorial limits of that district, and, when the ratio is thus fixed, the amount of tax to be paid by each individual property owner is determined by multiplying the assessed value of his property by this ratio. This rule has resulted from the demands made by the people upon legislative bodies for equality of taxation. The large property owner and the small holder pay upon the same ratio, and when the valuation has been ascertained and fixed upon a fair basis, which means that the valuation should be based as nearly as practicable upon market value, and, if not on market value, then upon the relative value of each property to market value, there results what is known in

29. *Id.* at *25.

30. *Id.* (citing PA. CONST. art VIII, § 1: "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority leveling the tax, and shall be levied and collected under general laws."). The text of the Uniformity Clause has not been amended since it first appeared in the Pennsylvania Constitution adopted in 1874. *Id.*

31. *Id.* at *27 (citing *Downington v. Chester County Bd. of Assessment Appeals*, 913 A.2d 194, 206 (Pa. 2006) (Cappy, C.J., dissenting); *Westinghouse Elec. Corp. v. Bd. of Prop. Assessment, Appeals and Review*, 652 A.2d 1306, 1314 (Pa. 1995); *Keebler Co. v. Bd. of Revision of Taxes*, 436 A.2d 583, 584 (Pa. 1981)).

organic and statute law as uniformity, which is the desideratum to be attained in any just system of taxation. . . . The central thought running through all the opinions is that the principle of uniformity is a constitutional mandate to the courts, to the Legislature, and to the taxing authorities, in the levy and assessment of taxes which cannot be disregarded. The purpose of requiring all tax laws to be uniform is to produce equality of taxation. Absolute equality is difficult of attainment, and approximate equality is all that can reasonably be expected. Hence it has been held that where there is substantial uniformity the constitutional requirement has been met. But all these cases hold there must be substantial uniformity, which means as nearly uniform as practicable in view of the instrumentalities with which and subject upon which tax laws operate. It is the duty of the courts in dealing with this subject to enforce as nearly as may be equality of burden and uniformity of method in determining what share of the burden each taxable subject must bear.³²

Judge Wettick emphasized that the above-quoted opinion is rooted in tradition and has been cited by Pennsylvania appellate courts frequently over the years for the principle that the Pennsylvania Constitution requires that each citizen must bear his proportionate burden of taxation—no more or less.³³

D. Standards for Measuring Assessment Uniformity in Pennsylvania

Judge Wettick next delved into a discussion of the standards for measuring uniformity in taxation in Pennsylvania. He noted that a statistical indicator known as the coefficient of dispersion (COD) is a widely accepted tool used to measure inequality in tax assessments.³⁴ The COD is recognized as a suitable means of measuring inequality in property taxation in Pennsylvania,³⁵ although

32. *Id.* at *28-30 (quoting Delaware, Lackawanna & W. R.R. Co.'s Tax Assessment, 73 A. 429, 430 (Pa. 1909) (citations omitted)).

33. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *30-31 (citing *Downingtown v. Chester County Bd.*, 913 A.2d 194, 199 (Pa. 2007); *City of Lancaster v. Lancaster County*, 599 A.2d 289, 298 (Pa. Commw. Ct. 1991); *Long v. Kistler*, 457 A.2d 591, 593 n.6 (Pa. Commw. Ct. 1983); *Kenny v. Keebler Co.*, 419 A.2d 210, 212 (Pa. Commw. Ct. 1980)).

34. *Id.* at *41.

35. *Id.* (citing *Beattie v. Allegheny County*, 907 A.2d 530 (Pa. 2006)) (other citations omitted).

the legislature has never expressly adopted the COD standard.³⁶ The COD is described as “the average deviation from the median, mean, or weighted mean ratio of assessed value to market value, expressed as a percentage of that figure.”³⁷ The acceptable range of COD for single family residential property, according to the IAAO, falls in the range of 10.0-20.0 or lower.³⁸

A COD of 15 indicates a low level of variance, and thus general or substantial uniformity in property assessment. In a county with a COD of 15, approximately 50% of property owners are neither overassessed nor underassessed by more than 15% of fair market value.³⁹ Of the remaining property owners, half are overassessed by at least 15% of fair market value and half are underassessed by at least the same percentage.⁴⁰ Conversely, a high COD such as 40 indicates a high level of variance,⁴¹ and thus inequality, in property assessments. Specifically, a COD of 40 means that approximately 50% of property owners are neither overassessed nor underassessed by more than 40% of fair market value.⁴² Of the remaining 50% of property owners, half are overassessed by at least 40% of fair market value and half are underassessed by at least the same percentage.⁴³ Therefore, in a county with a COD of 40, a taxpayer in the most overassessed quartile will pay more than double his fair share of the property tax relative to his neighbor in the most underassessed quartile.⁴⁴ The vast disparity between a COD of 15 and one of 40 is self-evident.

The report card on CODs in many of the Commonwealth’s counties is staggeringly dreadful, and it appears to have played a prevalent role in Judge Wettick’s ruling. In his opinion, the judge cited statistical data showing that the degree of inequality in taxation directly relates to the date of a county’s last assessment.⁴⁵ The judge noted that of the Pennsylvania’s sixty-seven counties, only nine had CODs that fell within the IAAO acceptable range of 10.0%-20.0% for 2005.⁴⁶ Conversely, thirty-seven counties had

36. *Id.* at *45.

37. *Id.* at *41.

38. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *42.

39. *Id.* at *3-4.

40. *Id.* at *4.

41. *Id.*

42. *Id.*

43. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *4.

44. *Id.*

45. *Id.* at *48-57.

46. *Id.* at *48.

CODs over 30 for the same year.⁴⁷ Of those thirty-seven counties, twenty-six had CODs of 35 or more; eighteen had CODs of 40 or more; and eight had CODs of 45 or more.⁴⁸

The judge also investigated the dates of the last reassessment in each county and concluded that at least thirty-four counties have not conducted a complete countywide reassessment in the twenty-year period from 1985 through 2005.⁴⁹ Not surprisingly, there appears to be a direct correlation between a county's COD and its date of last reassessment. The data indicate that as time passes and a county becomes further removed from its reassessment date, its COD will generally escalate, creating a higher degree of inequity in property taxation. In fact, all eighteen counties that had CODs over 40 in 2005 had not conducted countywide reassessments in over two decades.⁵⁰ Additionally, of the thirty-four counties that did not conduct complete reassessments between 1985 and 2005, twenty-nine of these counties had CODs of 30 or more.⁵¹

Counties that have conducted complete reassessments more recently tended to have lower CODs and therefore a greater degree of uniformity in property taxation. For example, Lancaster County's last reassessment in 2005 produced a COD of 14.5%, Cumberland County's last reassessment in 2005 resulted in a COD of 12.1%, and Allegheny's County's 2002 reassessment result in a 2005 COD of 22.3%.⁵² In contrast, Westmoreland County's last reassessment in 1972 produced a COD of 37.8% in 2005, Lackawanna County's last reassessment in 1973 produced a COD of 50.0% in 2005, and Luzerne County's last reassessment in 1965 produced a COD of 40.7% in 2005.⁵³ In counties with CODs similar to those of Lackawanna, Luzerne, and Westmoreland, the most overassessed taxpayers pay more than double their fair share of taxes relative to the value of their properties.⁵⁴

47. *Id.*

48. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *48.

49. *Id.* at *49-50.

50. *Id.* at *55-56.

51. *Id.* at *47, 49-50.

52. *Id.* at *47-48, 53.

53. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *52-55.

54. *Id.* at *4.

IV. THE TIME FOR REFORM IS NOW

To put it mildly, the current manner in which Pennsylvania assesses real property is undoubtedly unconstitutional when measured against the equal taxation standard set forth by the Uniformity Clause of the Pennsylvania Constitution. To be more frank, the property assessment system (or lack thereof) currently existing under the laws of this Commonwealth is deplorable. In fact, the extraordinary disparities in property taxation produced by a system promulgated under a constitution requiring substantial uniformity of taxation to the extent reasonably practicable⁵⁵ is nothing short of a constitutional joke. Indeed, the current property assessment system makes a mockery of the state constitution. It is unfathomable that it has taken this long for a system plagued by decades of inequities to be declared unconstitutional.

In an extensively researched opinion supported by a wealth of case law, Judge Wettick has laid the foundation needed to finally bring reform to a system laced with inequalities. As the judge observed repeatedly throughout his opinion, Pennsylvania courts have consistently construed the state constitution to require equality in taxation to the extent reasonably achievable.⁵⁶ The statistical data accompanying this observation conclusively establish that the use of an indefinite base year system fails to conform to this strict uniformity standard. The data clearly show that the further removed a county becomes from its base year, the more likely it is that the county's COD will swell.

Independent of any and all other factors which have or may have contributed to the vast disparities currently existing in the Pennsylvania's assessment system, Pennsylvania property assessment laws are unconstitutional based on the sheer fact that an indefinite base year is permitted. This is true because the use of an indefinite base year, as evidenced by the statistical data previously cited, does not satisfy the requirement of uniformity in taxation to the extent reasonably practicable. Instead, the indefinite base year makes it inherently impossible for the assessment system to conform to the requisite standard. Furthermore, it is irrefutable, based on statistical evidence, that periodic reassessments result in a higher degree of uniformity in taxation than any assessment system permitting the use of an indefinite base year.

55. *Id.* at *3.

56. *Id.* at *3, 30.

Thus, the reasoning supporting Judge Wettick's declaration that the Commonwealth's assessment laws are unconstitutional in violation of the uniformity clause is unequivocally sound. As previously noted, the judge's opinion is supported by an abundance of unambiguous case law requiring substantial uniformity. To further bolster the argument that this case will be upheld on appeal, an exhaustive search failed to discover any case law in this Commonwealth endorsing the use of an indefinite base year assessment system as constitutionally sound. Therefore, there is no reason to suspect that this case has a realistic chance of being overturned by the Supreme Court of Pennsylvania.

Because it appears inevitable that the current version of the Pennsylvania's property assessment laws is constitutionally doomed, it is appropriate to evaluate the possible avenues of property tax reform. Assuming the case survives the pending appeal, there appear to be three potential ways to solve the constitutional dilemma.

A. Amend Assessment Laws and then Enforce Them

The first and probably most likely solution would be for the General Assembly to reform the Commonwealth's assessment laws. Amending these laws to conform to the constitution is a two-step process. First, the General Assembly must eliminate the use of an indefinite base year and impose a requirement of periodic, if not annual, reassessments. Secondly, the legislature must establish an oversight agency for the purposes of implementing the assessment programs on a county-by-county basis and ensuring that each conforms to the Uniformity Clause.

A strong argument can be made that annual reassessments are not necessary to achieve the standard of substantial uniformity to the extent reasonably practicable. In fact, if assessment laws were amended to require counties to reassess on a triennial basis, it is likely that such an amendment would survive constitutional challenges. This is true because reassessments cost counties significant time and money. Therefore, it may not be reasonably practicable to require annual reassessments. However, it is certainly reasonably practicable to impose a standard requiring periodic reassessments. In fact, of the forty-eight states requiring periodic reassessments, only twenty-two require annual reassess-

ments.⁵⁷ In any event, the existing laws which lack any required timeframe for reassessment are undeniably unconstitutional. Thus, if the General Assembly chooses to amend the assessment laws in order to achieve constitutional conformity, it must include provisions requiring counties to conduct full countywide reassessments periodically.

Simply eliminating the use of an indefinite base year system and requiring periodic reassessments, however, is not enough to achieve compliance with the constitutional standard of substantial uniformity. As previously noted in this comment, Pennsylvania is one of just two states that have failed to institute a state-run oversight agency to assist the assessment programs in the individual counties to ensure that property tax levying is actually carried out in a manner consistent with the constitutional standard. Even prior to the 1982 amendments to the laws, when Pennsylvania assessment laws required annual reassessments, many counties ignored this requirement. As Judge Wettick noted, this is evidenced by the fact that some counties have not conducted full reassessments in nearly four decades.⁵⁸

If amendment to the assessment laws is the avenue ultimately chosen by the General Assembly, it is necessary that any amendments include the establishment of an oversight agency. Otherwise, many county assessment programs will continue to run rampant and ignore the constitutional standard of equality in taxation. Without an oversight agency this will be true regardless of whether the law permits utilization of an indefinite base year, whether it calls for annual reassessments, or whether it falls somewhere in between. In other words, the letter of the law is meaningless if the Commonwealth continues its decades-old tradition of neglecting to enforce it.

B. A Constitutional Amendment to the Uniformity Clause

An alternative to legislative reform of the property assessment laws would be a constitutional amendment to the Uniformity Clause which would permit the existence of inequities in taxation beyond the degree the law can reasonably be expected to proscribe.⁵⁹ Such a solution is less likely given the history of such efforts in other states. Although eight states have passed consti-

57. *Id.* at *80-81.

58. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *52.

59. *See supra* note 32 and accompanying text.

tutional amendments to allow for a greater degrees of variance in the levying of taxes, each such state also has property assessment laws which require either annual or periodic reassessments.⁶⁰ It is unlikely that such a measure would garner the support necessary unless it were paired with a proposed legislative amendment to eliminate the use of an indefinite base year system and implement a system requiring periodic reassessments. This is the case because many states, including the Commonwealth of Pennsylvania, require voter approval of a statewide referendum in order to amend their respective constitutions. It is unfathomable to think voters would ever approve a referendum that would increase the already vast disparities in property taxation.

C. Abolish the Property Tax Altogether

Even if reform brought about significant improvements to the current system, calculating a tax based on assessment values of real property is at best an imperfect science. Therefore, the best solution to achieve uniformity in taxation would be to abolish the assessment-based property tax all together. Such an idea would be considered radical by many, but is actually very logical. Clearly, the current assessment laws have undoubtedly led to the formation of county-level assessment systems laced with inequities. Furthermore, some might argue that the concept of a property tax paid to the taxing body in proportion to the value of one's property is inherently unjust. Such a taxing scheme burdens property owners to fund the taxing body's budgetary needs, while leaving non-property owners with essentially no accountability. Would true uniformity not require all citizens within a taxing district to pay a share of the necessary tax revenues rather than just those who own property?

It is well established that the Pennsylvania Constitution requires substantial uniformity in taxation. It is also quite apparent that the assessment systems in many of the Commonwealth's counties are falling short of meeting this standard. Therefore, instead of wavering over how to achieve this standard through extensive reforms, a better solution might be the elimination of the assessment-based property tax and the imposition of a flat tax so each citizen can pay his fair share. Should reformers ultimately decide a graduated taxing scheme is the proper solution,

60. *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at *84-85.

then why not eliminate the property tax and impose a tax similar to the federal income tax in order to raise the necessary revenue? Not only would such a solution undoubtedly achieve a higher degree of equality through eliminating the arbitrary nature of the property tax, it would also eliminate the aggravation of spending countless time, money, and energy on periodically reassessing real property to achieve substantial uniformity. Furthermore, the waste of significant time and money through the litigation of assessment appeals would be a thing of the past.

V. THE IMPACTS OF REFORM

Perhaps the most critical question is how *Clifton v. Allegheny County*—paired with the reform likely to follow in its aftermath—stands to affect Pennsylvania. In the short term, nothing will change, due to the pending appeals. Allegheny County and the rest of the Commonwealth's counties will continue to operate under the current assessment laws until the appeal process concludes. Judge Wettick's order provides for a comprehensive countywide reassessment to occur in 2009, contingent upon the completion of the appeals process, otherwise in 2010.⁶¹

Obviously, any avenue of reform should have the goal of achieving equality in taxation. Therefore, real property owners currently underassessed and paying less than their fair share of taxes can expect reform to increase their tax obligations. Likewise, taxpayers currently enduring more than their fair share of property tax obligations stand to gain relief.

Should reform include a change to periodic assessments, new home owners stand to benefit. This is true because school districts regularly appeal assessment values of recently purchased properties. Districts often do this because school officials know that the new buyer faces a losing battle trying to argue that the purchase price of the property is less reflective of the current value than the amount of the last assessment conducted several years prior. Thus, under the current system, the new home owner is often forced to pay property tax relative to the present value of his property, while his neighbor may be paying tax relative to the value of his property when it was last assessed several years prior. In other words, even though adjacent properties might have equivalent market values, a new home owner could pay a signifi-

61. *Id.* at *134.

cantly higher tax than his neighbor. Reform must correct this inequity.

The benefits new home owners stand to receive should reform become a reality will come at the expense of real estate investors. Under the indefinite base year system real estate investors are often able to garner considerable tax savings. Investors take advantage of the system by purchasing properties and then subsequently improving them, elevating the market value. Hence, the real estate investor enhances the value of his property through improvements but is currently permitted to pay a property tax relative to the lower market value the property was assessed at during the base year. Even if a school district appeals the assessment value of an investment property, the investor is still likely to save on taxes relative to his improved property's current market value. This is the case because the only evidence that the district will have to present to prove the value of the property is the purchase price, which is likely less than the actual value of the property following renovations and upgrades. A shift to a system requiring periodic reassessments would eliminate this windfall—to the detriment of real estate investors, but justly so.

VI. CONCLUSION

In sum, there exist absolutely no legal grounds for reaching any conclusion other than that the two cases currently pending appeals before the Supreme Court of Pennsylvania will ultimately be upheld. Therefore, the General Assembly will likely be charged with the task of reforming the property assessment laws to conform to the constitutional requirement of uniformity. In order to achieve this goal, the legislature could take one of three paths.

The first and most likely is to amend the laws to eliminate the utilization of an indefinite base year in favor of periodic reassessment. Such a solution should also be accompanied by the establishment of a state-run agency to oversee the individual county assessment systems, thus ensuring conformity with the newly amended laws. A second and less likely solution would be a constitutional amendment to the Uniformity Clause to reduce or eliminate the current standard of uniformity. This avenue of reform is unlikely because it would require a statewide voter referendum that would stand little to no chance of passing without a concomitant amendment to the law requiring periodic reassessment.

Finally, the least likely but probably most sensible solution would be to eliminate the assessment-based property tax altogether in favor of a more uniform and easier to calculate scheme of taxing. One such method would be to impose a flat tax on all real property owners. Another logical taxing scheme would calculate the amount of tax by utilizing a formula equivalent to that used to calculate federal income tax obligations. Abolishing the assessment-based property tax would cure many of the pitfalls created by the current system and would actually improve the ability of taxing bodies to levy taxes more equitably. Once and for all, it is time to end the nightmare that is the property tax in Pennsylvania and move forward with a method of tax-levying that will achieve the dual purposes of providing revenue to meet the public needs and attaining equality in taxation.

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