

# The Never-Changing Assessment: Pennsylvania's Broken Property Tax System

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## ABSTRACT

Nearly every county in Pennsylvania uses the base-year system to assess properties for purposes of ad valorem property taxation. Because counties infrequently reassess under the base-year system, its continued use results in taxpayers bearing unequal tax burdens, thereby violating federal equal protection and state uniformity jurisprudence. To have an assessment scheme that passes both federal and state constitutional standards, Pennsylvania must reform its assessment practices by mandating regular countywide reassessments and providing for greater state oversight. While academic publications have previously contemplated whether individual components of Pennsylvania assessment law are constitutional, none have scrutinized the entire system.

Pennsylvania courts and the state legislature have failed to take appropriate action to fix the property tax system. Pennsylvania courts' reluctance to strike down the base-year system as an unconstitutional violation of the Pennsylvania Uniformity Clause has further exacerbated the issues arising from the system and the state legislature has not remedied the broken statutory scheme. Pennsylvania must ensure uniform taxation among properties in each county by eliminating the base-year system.

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*While every tax is a burden, it is more cheerfully borne when the citizen feels that he is only required to bear his proportionate share of that burden measured by the value of his property to that of his neighbor. This is not an idle thought in the mind of the taxpayer, nor is it a mere speculative theory advocated by learned writers on the subject, but it is a fundamental principle written into the constitutions and statutes of almost every state in this country.*<sup>1</sup>

## I. INTRODUCTION

The Commonwealth of Pennsylvania (“Commonwealth” or “Pennsylvania”) is a state stuck in the past. Approximately half of Pennsylvania’s 67 counties use property tax assessments from the twentieth century, and about a dozen counties have not completed a countywide reassessment since 1980.<sup>2</sup> These outdated assessments are a result of Pennsylvania being one of the few states that fails to mandate regular reassessment of real property, resulting in “a county-by-county patchwork.”<sup>3</sup> Except for Philadelphia County, Pennsylvania’s counties only undertake a reassessment by a resolution of the County Board of Commissioners or by a court-mandated reassessment to correct violations of Pennsylvania’s Uniformity Clause.<sup>4</sup> Because local taxpayers usually object to voluntary reassessments of properties, reassessments are more likely to be court-mandated.<sup>5</sup>

This bizarre system of court-mandated reassessments has created a hodgepodge of case law that strictly interprets the Pennsylvania Constitution’s Uniformity Clause.<sup>6</sup> The Pennsylvania Supreme Court has consistently ruled that the Uniformity Clause “preclud[es] real property from being divided into different classes for purposes of systemic property

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1. Delaware, L. & W. R. Co.’s Tax Assessment, 73 A. 429, 430 (Pa. 1909).

2. See Andrew Chew, *Pa. Counties are Using Decades-Old Assessments for Property Taxes. It’s Inequitable.*, LEHIGH VALLEY LIVE (Nov. 25, 2022, 10:11 AM), <https://perma.cc/P6LM-HYDH>; see generally JOINT COMM. ON LEGISLATIVE BUDGET AND FINANCE, 2009–2010 SESS., PENNSYLVANIA’S SYSTEM FOR PROPERTY VALUATION AND REASSESSMENT, at S-1, S-5 (Comm. Print 2010) [hereinafter 2010 REPORT ON REAL PROPERTY VALUATION] (detailing how long, as of 2009, some counties have gone without reassessing).

3. Karen Shuey, *What You Need to Know About Countywide Property Reassessment*, THE MERCURY (Sept. 23, 2021, 6:35 AM), <https://perma.cc/EF9P-JBFZ>; see Chew, *supra* note 2.

4. See Shuey, *supra* note 3; see *How Property is Taxed in Philadelphia*, PEW CHARITABLE TRUSTS (Sept. 12, 2022), <https://perma.cc/NSE5-YF92> (noting that Philadelphia County is supposed to undergo annual reassessments); see also 53 PA. CONS. STAT. § 8848 (2023).

5. See, e.g., Alex Rose, *Court Orders New Countywide Reassessment*, DEL. CNTY. DAILY TIMES (Aug. 19, 2021, 2:17 AM), <https://perma.cc/KG3S-R4WC>.

6. See, e.g., *Downington Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 913 A.2d 194, 200 (Pa. 2006); see also *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1212–15 (Pa. 2009).

tax assessment.”<sup>7</sup> The Uniformity Clause attempts to treat all property owners the same and preclude taxing jurisdictions from treating similarly situated taxpayers differently.<sup>8</sup> In trying to achieve uniformity, Pennsylvania courts have begun to recognize the failure of the Commonwealth’s property tax regime.<sup>9</sup> Instead of articulating “a test for when the Uniformity Clause is violated,” these courts repeatedly punt the issue to the legislature.<sup>10</sup>

Contrary to the beliefs of many Pennsylvanians, the solution to property taxes is not their elimination.<sup>11</sup> The issue is neither that taxing jurisdictions, such as school districts, are too dependent on property tax revenues, nor that the taxes themselves are too high. Rather, the assessments from which the taxes are calculated are not uniform. Despite courts’ efforts to preserve assessment laws prescribed by the state legislature, the judiciary has done little more than create a system of smoke and mirrors in the name of achieving constitutional uniformity.<sup>12</sup> Ironically, the judicially approved laws have only increased the unequal tax burden. The best solution to Pennsylvania’s property tax system is a complete overhaul of its assessment laws. To resolve many of the uniformity issues resulting from the current base-year system, the legislature should mandate a regular reassessment schedule that eliminates counties’ discretion on when they should reassess.

Part II of this Article discusses Pennsylvania’s unique uniformity doctrine, the Commonwealth’s property tax system, and the uniformity doctrine’s role in the tax system. Part III analyzes why the use of the base-year system violates both the Pennsylvania Constitution and the Federal Constitution’s Equal Protection clause. Lastly, Part IV argues how

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7. *Downington*, 913 A.2d at 200 (emphasizing how going against such precedent would “represent an impermissible departure from federal equal protection jurisprudence, which sets the floor for Pennsylvania’s uniformity assessment”).

8. *See id.* at 201.

9. *See* GM Berkshire Hills LLC v. Berks Cnty. Bd. of Assessment, 290 A.3d 238, 260 (Pa. 2023) (Dougherty, J. opinion in support of reversal) (“[A]n indefinite [base-year] assessment method obviously cannot capture and reflect market fluctuations and other trends affecting future property values, in my view, the legislature would do well to repeal its indefinite use, and enact an assessment period encompassing a sound interval of years.”).

10. *Id.*; *Clifton*, 969 A.2d at 1231–33 (Baer, J., concurring) (recognizing “the unlikely prospect of prompt legislative action” that “will result in ongoing uncertainty for the Commonwealth’s . . . taxing authorities and property owners”).

11. *See* Ryan Briggs, *The Grassroots Movement to Eliminate Property Taxes In Pennsylvania*, CITY & STATE PENNSYLVANIA (Jan. 26, 2017), <https://perma.cc/MX8F-FPCV>.

12. *See, e.g., Clifton*, 969 A.2d at 1229 (overturning the lower court’s decision that found the base-year system unconstitutional on its face and instead holding that the system was unconstitutionally discriminatory as applied in Allegheny County).

assessment reforms, such as regular reassessments, would achieve the Commonwealth's constitutional goal of uniform taxation.

## II. PENNSYLVANIA'S UNIFORMITY IN ASSESSMENTS

To comprehend why Pennsylvania's property tax system is beyond repair, an understanding of the Uniformity Clause in the Pennsylvania Constitution is crucial. Generally, a uniformity clause is a state constitutional provision that mandates uniform or equal taxation and serves to constrain state lawmakers from imposing discriminatory tax burdens.<sup>13</sup> Several state constitutions have provisions that "require taxes to be both 'equal' and 'uniform,' while others require only 'uniformity.'"<sup>14</sup> Uniformity clauses commonly mandate uniformity solely within a class or group of people or property.<sup>15</sup> Even though Pennsylvania's Constitution contains a uniformity clause with these features, Pennsylvania courts have strictly interpreted its text to create a jurisprudence that is distinct from the other 47 state uniformity clauses.<sup>16</sup> This context is imperative to understanding why Pennsylvania's property tax system is unworkable under Pennsylvania's Constitution and the Federal Constitution.

### A. *The Uniformity Clause*

The Uniformity Clause of Pennsylvania's Constitution states that "[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."<sup>17</sup> When assessing real property, the U.S. Constitution's Fourteenth Amendment's Equal Protection Clause jurisprudence serves as the floor for Pennsylvania's uniformity requirement.<sup>18</sup> Federal constitutional law considers attaining rough

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13. See WALTER HELLERSTEIN ET AL., STATE AND LOCAL TAXATION CASES AND MATERIALS 248 (11th ed. 2019) (noting how uniformity clauses can encompass all state taxes or only ad valorem taxes, such as property taxes).

14. *Id.*; see, e.g., OH. CONST. art. XII, § 2 (requiring uniformity in the taxation of land and improvements); MD. CONST. Declaration of Rights art. 15 (requiring uniformity "within each class or sub-class of land [and] improvements").

15. See HELLERSTEIN, *supra* note 13.

16. PA. BAR ASS'N, REPORT OF THE PENNSYLVANIA BAR ASSOCIATION CONSTITUTIONAL REVIEW COMMISSION 118 (2011) [hereinafter PA. BAR ASS'N REPORT] (noting that the state supreme court's interpretation "prohibits [] classification . . . thus restricting the General Assembly's ability to raise revenue").

17. PA. CONST. art. VIII, §1 (1968).

18. See *Downington Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 913 A.2d 194, 200–01 (Pa. 2006) (discussing the "'floor' as 'a minimum standard of equality below which states cannot fall, a minimum standard required by the equal protection clause of the Fourteenth Amendment in the [F]ederal Constitution'" (quoting 1 WADE J. NEWHOUSE, CONSTITUTIONAL UNIFORMITY AND EQUALITY IN STATE TAXATION 27–28 (2d ed. 1984))); see also *Leonard v. Thornburgh*, 489 A.2d 1349, 1351, 1353 (Pa. 1985); U.S. CONST. amend. XIV, § 1.

uniformity when taxing similarly situated property owners, an aim shared with Pennsylvania's Uniformity Clause.<sup>19</sup> Under the Federal Equal Protection Clause, an assessor's willful, "systematic undervaluation . . . of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property."<sup>20</sup> Property owners suffer from this type of discriminatory treatment if they pay a greater share of taxes than others of the same class.<sup>21</sup> More importantly, in the context of Pennsylvania's uniformity jurisprudence, this collection of federal equal protection precedent applies "even to a class of one," which, in this instance, is real property.<sup>22</sup> Even if a governmental entity is attempting to provide uniform treatment under Pennsylvania's Uniformity Clause, these efforts may still be struck down under federal equal protection requirements.<sup>23</sup>

Pennsylvania's Uniformity Clause, which is barely older than the Federal Fourteenth Amendment, has not changed since its initial enactment in 1874, and neither has the state courts' strict interpretation of its language.<sup>24</sup> The Pennsylvania Supreme Court has held that the Clause's verbiage is all-encompassing and must be interpreted as affecting all types of taxes.<sup>25</sup> The state supreme court has long noted that "it is the duty of all the authorities dealing with this subject to administer the law in a spirit to produce as nearly as may be uniformity of result."<sup>26</sup> When property is not the subject of taxation, the Uniformity Clause permits classifications under a reasonable standard, such as the ability to generate revenue or another distinguishable characteristic.<sup>27</sup> Yet, state courts do recognize a prohibition on a graduated, or progressive, income tax.<sup>28</sup> The Pennsylvania Supreme Court justified this prohibition by ruling that a tax on income is a tax on property and that because a tax imposed at different rates on the

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19. See *Downington*, 913 A.2d at 201; *In re Sullivan*, 37 A.3d 1250, 1255 (Pa. Commw. Ct. 2012).

20. *Sioux City Bridge Co. v. Dakota Cnty.*, 260 U.S. 441, 445 (1923) (quoting *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 35, 37 (1907)).

21. See *Allegheny Pittsburgh Coal Co. v. Cnty Comm'n of Webster Cnty.*, 488 U.S. 336, 345–46 (1989) (citing *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946)).

22. *Downington*, 913 A.2d at 201 (citing *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)).

23. See *id.*

24. See PA. BAR ASS'N REPORT, *supra* note 16, at 117.

25. See *Saulsbury v. Bethlehem Steel Co.*, 196 A.2d 664, 666 (Pa. 1964) ("The Pennsylvania constitutional provision is all inclusive and is clearly not limited to requiring uniformity on property taxes alone.").

26. *Delaware, L. & W. R. Co.'s Tax Assessment*, 73 A. 429, 431 (Pa. 1909).

27. See *Aldine Apartments, Inc. v. Commonwealth*, 426 A.2d 1118, 1121–22 (Pa. 1981) (citing *Commonwealth v. Life Assurance Co.*, 214 A.2d 209, 215 (Pa. 1965)).

28. See, e.g., *Kelley v. Kalodner*, 181 A. 598, 603 (Pa. 1935).

same kind of property offends uniformity, so would a graduated income tax.<sup>29</sup>

When applying the Commonwealth's Uniformity Clause to real property, the Pennsylvania Supreme Court has long held "that real estate as a subject for taxation may not validly be divided into different classes" for ad valorem property taxes.<sup>30</sup> Because real estate is its own class of property, all property must be assessed and taxed in the same manner, regardless of whether the property is commercial or residential.<sup>31</sup> As a result, Pennsylvania precedent dictates that any action taken for or against commercial property owners must also be taken for or against residential property owners.<sup>32</sup> However, complete equality and uniformity are not necessary to fulfill the demands of the Uniformity Clause because some inequities will always persist.<sup>33</sup> So long as the method of taxation does not "impose substantially unequal tax burdens, 'rough uniformity with a limited amount of variation is permitted.'"<sup>34</sup>

### B. *Property Assessment Law in Pennsylvania*

Pennsylvania's laws governing the assessment of real property have a long, winding history. Property taxation was one of the initial means of revenue for colonial Pennsylvania.<sup>35</sup> In 1683, Governor William Penn and

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29. See, e.g., *id.* at 602 (citing *Estate of Cope*, 43 A. 79, 81 (Pa. 1899)); *Mount Airy #1, LLC v. Pa. Dep't of Revenue*, 154 A.3d 268 (Pa. 2016) (holding that a local share assessment levied on casinos at a non-uniform rate was a violation of the Uniformity Clause); *Nextel Commc'ns of the Mid-Atlantic, Inc. v. Commonwealth*, 171 A.3d 682 (Pa. 2017) (nullifying a state net loss carryover provision that permitted a flat dollar cap on the carryover deduction, creating two classes of corporate taxpayers based on whether a taxpayer could take full advantage of the carryover or was restricted by its statutory cap).

30. *Madway v. Bd. for the Assessment & Revision of Taxes*, 233 A.2d 273, 276, 277 (Pa. 1967) (citing *Jones & Laughlin Tax Assessment Case*, 175 A.2d 856 (Pa. 1962) (highlighting that real estate and machinery were constitutionally separate classifications of property)). An "ad valorem system" is any tax system premised on the value of the property or transaction being taxed. See Julia Kagan, *Ad Valorem Tax: Definition and How It's Determined*, INVESTOPEDIA (Oct. 20, 2023), <https://perma.cc/T49H-9CDP>.

31. See, e.g., *Valley Forge Towers Apts. N, LP v. Upper Merion Area Sch. Dist. & Keystone Realty Advisors, LLC*, 163 A.3d 962, 978 (Pa. 2017).

32. See, e.g., *id.* at 980 (finding that the school district's appeal policy for contesting property valuations based on type, use, and owner residency status violated the Uniformity Clause); *Deitch Co. v. Bd. of Prop. Assessment, etc.*, 209 A.2d 397, 401 (Pa. 1965); *Duffield House Assocs., L.P. v. City of Phila.*, 260 A.3d 329 (Pa. Commw. Ct. 2021) (concluding that Philadelphia's 2018 reassessment of commercial properties, absent reassessment of residential properties, violated the Uniformity Clause), *cert. denied*, 279 A.3d 1185 (Pa. Sup. Ct. 2022) (per curiam).

33. See *In re Appeal of Sullivan*, 37 A.3d 1250, 1255 (Pa. Commw. Ct. 2012) (citing *Smith v. Carbon Cnty. Bd. of Assessment Appeals*, 10 A.3d 393, 399 (Pa. Commw. Ct. 2010)).

34. *Id.*

35. See Jeffrey A. Weber et al., *Pennsylvania County Property Reassessment: Impact on Local Government Finances and the Local Economy*, CTR. FOR RURAL PENNSYLVANIA,

the Provincial Council unanimously supported the creation of a property tax.<sup>36</sup> The Provincial Council legislated that such a tax was to be “a fixed rate on every pound of ‘clear value’ on the real property.”<sup>37</sup> Despite the early existence of property taxes in Pennsylvania, it was not until the 1800s that a valuation and assessment system began to take shape.<sup>38</sup> At this time, modern practices were established, including authorizing counties to levy the tax, imposing a uniform standard of value, and providing for an assessor appeals process.<sup>39</sup> Soon thereafter, the legislature repealed the uniform standard of value requirement, instead mandating that property be valued at its “actual value,” or the price at which it would sell in a “bona fide sale.”<sup>40</sup> During the final part of the nineteenth century, the legislature permitted values to be contested by property owners.<sup>41</sup> However, appellate courts were not authorized to hear appeals from lower county courts until 1901.<sup>42</sup> The last major change before the passage of the General County Assessment Law (“GCAL”) in 1933 was the allowance of governmental entities—most notably school districts—to contest the values of properties within their territorial limits.<sup>43</sup>

The GCAL, Pennsylvania’s first modern assessment law, repealed prior assessment laws and procedures and, at the same time, laid out much of the Commonwealth’s ad valorem system as it exists today.<sup>44</sup> Though this law was repealed for Second Class A and smaller counties, the GCAL and subsequent legislation passed in 1939 still governs assessments in Allegheny and Philadelphia Counties—Second Class counties.<sup>45</sup> The

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at 5 (2010) [hereinafter *2010 Pennsylvania Reassessment Study*] (citing MINUTES OF THE PROVINCIAL COUNCIL OF PA., Vol. 1 (1852)).

36. *See id.*

37. *Id.*

38. *See* 2010 REPORT ON REAL PROPERTY VALUATION, *supra* note 2, at 61.

39. *See id.*

40. *Id.* at 61–62 (“[C]larify[ing] that a property’s actual value would be the same for different taxing bodies” as property tax existed for “state, county, city, district, ward, township, [and] borough purposes.”).

41. *See id.* at 62.

42. *See id.*

43. *See id.* at 63 (“[B]oroughs, townships, and school districts [who] felt aggrieved” by a property assessment could appeal “in the same manner as would a taxpayer with respect to his/her property.”).

44. *See generally* The General County Assessment Law, Act 155, 1933–34 Sess. Art. VI (Pa. 1933).

45. *See* PA. GEN. ASSEMB: LOCAL GOV’T COMM’N, PENNSYLVANIA LEGISLATOR’S MUNICIPAL DESKBOOK 133 (6d. 2020); *see also* General Local Government Code (53 PA.C.S.) – Omnibus Amendments, Act 93 § 6(2), 2009–2010 Sess. (Pa. 2010) (“The act of May 22, 1933 (P.L.853, No.155), known as The General County Assessment Law, is repealed insofar as it relates to Second Class A, Third, Fourth, Fifth, Sixth, Seventh and Eighth Class counties.”); Second Class County Assessment Law, Act 294, 1939–1940 Sess. (Pa. 1939); Second Class County Code, Act 230, 1953–1954 Sess. (Pa. 1953); *see generally County Classes*, UNIFIED JUD. SYS. OF PENNSYLVANIA, <https://perma.cc/56X8-XZQD> (last visited Jan. 16, 2024) (presenting counties by class based on their populations).



assessment laws of the 1930s remained mostly unexamined for the next three decades until 1968, when a study of the assessment system was undertaken by Governor Raymond P. Shafer.<sup>46</sup> Unsurprisingly, the study found that a lack of regular reassessment resulted in inequality amongst taxpayers.<sup>47</sup> The Pennsylvania Senate Finance Committee addressed potential reforms in 1976, but, other than mandating assessor certification and publication of each county's common level ratio ("CLR") by the State Tax Equalization Board ("STEB"), no consensus for property tax reform was reached.<sup>48</sup> In 1982, the first major reform to the GCAL was passed, which allowed all counties, regardless of class, to use the base-year method in assessing real property.<sup>49</sup> The base-year method allowed counties to select any year as the base year for valuing properties, and that base year could be used in perpetuity, unless a uniformity suit or county legislative enactment mandated a reassessment.<sup>50</sup>

More recently, in 2010, the aptly named Consolidated County Assessment Law ("CCAL") was signed into law.<sup>51</sup> The CCAL consolidated assessment law for Second Class A through Eighth Class counties to help eliminate the inconsistencies between county classes under the GCAL.<sup>52</sup> However, because Philadelphia and Allegheny Counties are First and Second Class counties, respectively, their assessments continue to be governed by separate statutes.<sup>53</sup> Philadelphia County is also beholden to local reforms under the Actual Value Initiative ("AVI"), and Allegheny County is bound by its home rule charter.<sup>54</sup>

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The counties' specific classes are not relevant for purposes of this Article except as otherwise discussed.

46. See *2010 Pennsylvania Reassessment Study*, *supra* note 35, at 6 (detailing each assessment study undertaken by the executive and legislative branches and their similar conclusion that a lack of regular reassessment was detrimental to taxpayer equality).

47. See *id.*

48. See 2010 REPORT ON REAL PROPERTY VALUATION, *supra* note 2, at 64–66 ("Despite significant efforts, legislative, local government, and broad public consensus could not be reached on the Committee's [] recommendations.").

49. See H.B. 2560, 1981–82 Gen. Assemb. Sess. (Pa. 1982) (enacted).

50. See 72 PA. CONS. STAT. § 5020-102 (1982); Shuey, *supra* note 3.

51. See S.B. 918, 2009 Gen. Assemb. Sess. (Pa. 2009) (enacted).

52. See *id.*; see also sources cited *supra* note 45 for a discussion in the associated parenthetical on how the county classes are determined.

53. See 53 PA. CONS. STAT. § 8801(b)(1) (2022) (providing that the consolidated county assessment chapter only applies to counties designated as Second Class A and smaller). *But see* 53 PA. CONS. STAT. § 8801(b)(2) (2022) (stating that the CCAL does apply to First and Second Class counties for purposes of the CCAL's wind turbine valuation provisions).

54. See *What is the Actual Value Initiative (AVI)?*, CITY OF PHILADELPHIA (Nov. 27, 2019), <https://perma.cc/P86V-DHRP> (noting the implementation of various assessment reforms within Philadelphia to ensure more equitable taxation); see also HOME RULE CHARTER OF ALLEGHENY COUNTY, ALLEGHENY COUNTY, Pmbl. (2022), <https://perma.cc/5S8N-FM6D> (imposing rate limitations on property tax and requiring the assessment of properties at fair market value "to the extent permitted by law").

Pennsylvania's assessment laws continue to exist under this complicated statutory framework.

### 1. Methods of Valuation

Pennsylvania's assessment laws afford counties the option to determine a property's "actual value" using either the current market value or base-year methods.<sup>55</sup> Counties are expressly prohibited from utilizing an assessment ratio that would result in an assessment exceeding 100% of a property's actual value.<sup>56</sup> The term "actual value" is not defined in the statutory scheme but has been defined by the Pennsylvania Supreme Court as "nothing more or less than market value."<sup>57</sup> The court defined "market value as the price which a purchaser willing but not obliged to buy, would pay an owner, willing but not obliged to sell, taking into consideration all uses to which the property is adapted and might in reason be applied."<sup>58</sup> In other words, market value equates to the price paid in an arm's length sale of a property.<sup>59</sup>

#### a. Current Market Value

When a county elects to determine actual value using a current market value approach, an assessor values a property annually and makes an adjustment each year based on changes in the property's actual value.<sup>60</sup> The current market value of a property is its value in the current year.<sup>61</sup> To determine a property's actual value under the current market value method, a recent sales price of the property is considered, but not conclusive.<sup>62</sup> If a sales price is used as a property's actual value, the sales price is adjusted to equalize the property's value with comparable properties within the county.<sup>63</sup> The comparable sales approach, the cost approach, and the income approach are to be evaluated "in conjunction

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55. 72 PA. CONS. STAT. § 5020-402(a) (2022); 53 PA. CONS. STAT. § 8842(a) (2022).

56. See 72 PA. CONS. STAT. § 5020-402(a)(1) (2022); 53 PA. CONS. STAT. § 8842(a) (2022).

57. *In re Hudson Coal Co.*, 193 A. 8, 10 (Pa. 1937).

58. *Id.* (citing *In re Lehigh & Wilkes-Barre Coal Co.'s Assessment*, 148 A. 301, 303 (Pa. 1929)).

59. See *Kennedy Blvd. Assoc. v. Tax Review Bd. of Phila.*, 751 A.2d 719, 723–24 (Pa. Commw. Ct. 2000).

60. *Compare Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1221 (Pa. 2009) (equating annual reassessment with current market value), with 72 PA. CONS. STAT. § 5020-102 (2022) (defining "base year"), and 53 PA. CONS. STAT. § 8802 (2022) (same).

61. See *Daugherty v. Cnty. of Allegheny*, 920 A.2d 936, 942 (Pa. Commw. Ct. 2007) (discussing why "actual value" cannot exceed current market value).

62. See 72 PA. CONS. STAT. § 5020-402(a) (2022); 53 PA. CONS. STAT. § 8842(b)(1)(i) (2022).

63. See 72 PA. CONS. STAT. § 5020-402(a) (2022); 53 PA. CONS. STAT. § 8842(b)(1)(ii) (2022).

with one another” when determining the current market value of a property.<sup>64</sup>

b. Base Year

Both the GCAL and CCAL also permit counties to use a base-year method for assessing properties, which is defined as “[t]he year upon which real property market values are based for the most recent county-wide revision of assessment . . . or other prior year[s] upon which the market value of all real property . . . is based.”<sup>65</sup> Except for Philadelphia County, all counties in Pennsylvania choose to operate under the base-year system.<sup>66</sup> In these counties, each property’s base-year assessment is used as the basis for taxation not only for the base year, but also for subsequent years.<sup>67</sup> For example, Berks County’s last reassessment was in 1994, so property taxes are calculated based on a property’s value in that base year.<sup>68</sup> If no reassessment occurs, then the tax due in the present year will still be calculated based on the 1994 actual value.<sup>69</sup> A failure to reassess results in a stagnant tax base for the county.

Under the base-year system, property values are “equalized within the county [via the CLR] and any changes by the . . . board for the assessment and revision of taxes [are] expressed in terms of base-year values.”<sup>70</sup> The CLR is “the ratio of assessed value to current market value used generally in the county as determined by the [STEB].”<sup>71</sup> Published

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64. See 72 PA. CONS. STAT. § 5020-402(a) (2022); 53 PA. CONS. STAT. § 8842(b)(1)(iii) (2022). The income approach considers the income-producing potential of the subject property. See Marshall Hargrave, *Income Approach: What it is, How it’s Calculated, Example*, INVESTOPEDIA (July 29, 2020), <https://perma.cc/8PGZ-227N>.

65. 72 PA. CONS. STAT. § 5020-102 (2022); 53 PA. CONS. STAT. § 8802 (2022).

66. See Office of Property Assessment, *FAQ*, CITY OF PHILADELPHIA, <https://perma.cc/4D3S-C2MZ> (last visited Jan. 15, 2024) (discussing why the pre-determined ratio is 100%, stating that “[s]ince Tax Year 2014, properties are now assessed at 100% of their market value” which means “the market value equals the assessed value”); see also *Reality Transfer Tax 2022 Common Level Ratio Real Estate Valuation Factors*, PENNSYLVANIA DEP’T OF REV. (Jan. 2024), <https://perma.cc/9V6E-6PEF> (denoting Philadelphia County as the only county with a CLR of 1.00, indicating that all other counties operate under a base-year system).

67. See *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1203 (Pa. 2009) (citing *Downington Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 913 A.2d 194, 202–03 (Pa. 2006)).

68. See *Reality Transfer Tax, Common Level Ratio (CLR) Real Estate Valuation Factors*, PENNSYLVANIA DEP’T OF REV. (July 2023), <https://perma.cc/L2XE-SDBU> [hereinafter *Common Level Ratio*].

69. See *Downington*, 913 A.2d at 202–03.

70. 72 PA. CONS. STAT. § 5020-102 (2022); 53 PA. CONS. STAT. § 8802 (2022).

71. 72 PA. CONS. STAT. § 5020-102 (2022); 53 PA. CONS. STAT. § 8802 (2022); see generally State Tax Equalization Bd., *Policy and Procedures Manual for Market Value*, PENNSYLVANIA DEP’T OF REV. (Jan. 2020), <https://perma.cc/HDF8-HM45> (discussing the CLR calculation process).

annually on July 1, each county's CLR is calculated by comparing the median figure of the county's assessed values to sales prices for all arms-length sales within the prior calendar year.<sup>72</sup> For the STEB to determine the CLRs, all counties must accurately report this data to the STEB.<sup>73</sup> If a county performs a reassessment, then the CLR is typically set to 1.00 because the current market value is presumed to be equal to the base-year value.<sup>74</sup> When a county operates under the base-year system, property taxes imposed after the base year would not be equal to the current market value.<sup>75</sup> To determine the current market value, the base-year assessed value is multiplied by the CLR to calculate the current market value.<sup>76</sup>

However, even with the adjustment from the CLR, a county's "assessment values become inaccurate over time as the real estate market changes," particularly when one area of the county experiences a faster-growing real estate market than another.<sup>77</sup> A hot real estate market increases the growth in property values and creates a higher CLR as the ratio of assessed value to sales price increases.<sup>78</sup> Similarly, a slower-growing real estate market results in a closer ratio of assessed value to sales price, and thus a lower CLR.<sup>79</sup> In some instances, this results in the CLR dropping below 1.00, meaning properties are over-assessed as the base-year value is greater than the current market value.<sup>80</sup> Due to inflation and large fluctuations in the real estate market, a CLR of under 1.00 will

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72. See *The Common Level Ratio in Assessment Appeals*, ALLEGHENY INST. FOR PUB. POL'Y (July 27, 2022), <https://perma.cc/38QJ-VMN5>.

73. See *id.*

74. See Pete Kennedy, *What is an Accurate Property Assessment?*, SUBURBAN REALTORS ALL. (July 21, 2021, 12:00 AM), <https://perma.cc/E4MC-C2KB>; see also *Common Level Ratio*, *supra* note 68, at 25 (denoting that the CLR from January 1, 2013, to June 30, 2013, was 1.00 "to reflect an assessment base change effective January 1, 2013"). A county may choose to set the CLR to a number greater than 1.00 in the base year but only if the county sets the EPR at a higher number. See *Clifton v. Allegheny County*, 969 A.2d 1197, 1214–15 (Pa. 2009). For example, some counties that want to use a 50% assessment ratio would set the EPR and, subsequently, the CLR for the base year to 2.00. *Id.* at 1214–15.

75. See 72 PA. CONS. STAT. § 5020-102 (2022); 53 PA. CONS. STAT. § 8802 (2022).

76. 72 PA. CONS. STAT. § 5020-102 (2022); 53 PA. CONS. STAT. § 8802 (2022); see Christina Hausner, *Lancaster County Real Estate Taxes: Making Sense of Common Level Ratios and Millage Rates*, RKG LAW (July 13, 2012), <https://perma.cc/2EVP-GAP3>.

77. Kennedy, *supra* note 74; see also *The Common Level Ratio in Assessment Appeals*, *supra* note 72.

78. See *The Common Level Ratio in Assessment Appeals*, *supra* note 72; see also Kennedy, *supra* note 74.

79. See *The Common Level Ratio in Assessment Appeals*, *supra* note 72.

80. See *id.*; see, e.g., *Common Level Ratio*, *supra* note 68, at 1 (noting that after a reassessment in 2011, Adams County had a CLR of 1.00, but the CLR fell to 0.85 on July 1, 2012, meaning that a property's assessed value was 117.647% of current market value).

only be temporary.<sup>81</sup> However, in times of economic turmoil, it is a reality.<sup>82</sup>

The longer a county forgoes reassessment, the greater the CLR becomes because assessed values pull further away from sales prices.<sup>83</sup> This disparity creates a significant fluctuation in the current market value of properties via the CLR.<sup>84</sup> Despite the strong possibility of distortion and inequity from using the base-year system, the Pennsylvania Supreme Court has declined to rule the system unconstitutional.<sup>85</sup> Instead, the court focuses its efforts on determining whether a specific county's use of the system is discriminatory and therefore unconstitutional as applied in practice rather than on its face.<sup>86</sup> Before understanding why the Pennsylvania Supreme Court's logic may be flawed, the reassessment process must be analyzed.

## 2. No Consistent Standard for Ordering Property Reassessment

Pennsylvania's statutory scheme contains no clause mandating counties to conduct a regular reassessment of properties even though local measures may dictate otherwise.<sup>87</sup> While the GCAL and CCAL refer to the term *reassessment*, they do so only in the context of a prohibition on spot reassessments, reassessments to correct a clerical error, reassessments upon new construction, and the calculation of taxes following a countywide reassessment.<sup>88</sup> There is no statutory timetable or any legislative requirement that directs a county to reassess properties.<sup>89</sup> A lack

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81. See *The Common Level Ratio in Assessment Appeals*, *supra* note 72.

82. For example, Adams County reassessed during the Great Recession, resulting in the CLR falling from 1.00 in 2011 to 0.85 in 2012. *Common Level Ratio*, *supra* note 68, at 1.

83. See *The Common Level Ratio in Assessment Appeals*, *supra* note 72 (noting that "over time the problem becomes more and more unfair" as counties fail to regularly reassess); Kleman S. Strumpf, *Infrequent Assessments Distort Property Taxes: Theory and Evidence*, J. OF URB. ECON. 169, 181–87 (Sept. 1999) (using Pennsylvania as an example of how infrequent assessments under the base-year system distort property taxes and values); see, e.g., *Common Level Ratio*, *supra* note 68, at 14 (explaining that after a reassessment with a pre-determined ratio of 50% in 1995, Centre County's CLR as of July 1, 2020, was 4.13, more than doubling in 20 years from the initial CLR of 2.00). As of July 1, 2022, the CLR for Centre County was 4.67, an increase of over half a factor point from two years prior. *Common Level Ratio*, *supra* note 68, at 14.

84. See *The Common Level Ratio in Assessment Appeals*, *supra* note 72; Strumpf, *supra* note 83.

85. See *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1230–31 (Pa. 2009).

86. See *generally id.*

87. See *How Property is Taxed in Philadelphia*, *supra* note 4; see also Sharon DiPaolo, *A Fair Share of Taxes*, AMER. PROP. TAX COUNS. (Dec. 10, 2015), <https://perma.cc/VEP6-9X53>.

88. See *generally* 72 PA. CONS. STAT. § 5020; 53 PA. CONS. STAT. § 8800 (2022).

89. See *generally* 72 PA. CONS. STAT. § 5020; 53 PA. CONS. STAT. § 8800 (2022). The assessment statutory scheme contains neither of these items.

of mandated reassessment results in most counties waiting several years before undergoing reassessment.<sup>90</sup>

Instead of mandating regular reassessments, the legislature left the issue to two entities: the counties, whose commissioners may reassess through legislative action, and the courts, whose judges can mandate a countywide reassessment if property values violate the Uniformity Clause.<sup>91</sup>

a. County Commissioners Vote to Reassess

County commissioners may choose to reassess properties by passing an ordinance that directs the county assessor to begin the reassessment process.<sup>92</sup> The choice to undergo reassessment can be politically tenuous, as taxpayers, often senior citizens, voice concerns about the increase they believe the reassessment will have on their property taxes.<sup>93</sup> Because counties are barred from collecting additional tax dollars after a countywide reassessment, the tax rate must be adjusted, so the estimated revenue will not exceed projected pre-reassessment revenues.<sup>94</sup> Thus, taxpayers' concerns about changing property taxes are unfounded, yet continue to drive much of the opposition surrounding reassessment.<sup>95</sup> Though the county commissioners can enact an ordinance to pursue a county-wide reassessment, public outcry causes many elected officials to look to the courts for reassessment.<sup>96</sup>

When county commissioners do elect to reassess, the typical reason is to achieve more uniform taxation among property owners.<sup>97</sup> County commissioners also consider a voluntary reassessment because they believe the county would likely lose a uniformity lawsuit.<sup>98</sup> If so, a

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90. See DiPaolo, *supra* note 87 (“Without a mandate to reassess, some counties go decades without a reassessment. Rural Franklin County, for example, last reassessed in 1961.”).

91. See *id.*; Chew, *supra* note 2.

92. See, e.g., Evanne Gareis, *Clarion County Officials Announce Plans for Full Reassessment*, LEADER-VINDICATOR (May 12, 2022), <https://perma.cc/C9QF-6C2R>; see also Courtney Harrison, *Commissioners Approve Property Tax Reassessment in County*, WNEP (Mar. 2, 2022, 5:16 PM), <https://perma.cc/E8Q8-9VUZ>.

93. See Harrison, *supra* note 92 (describing Commissioner Chermak, who declined to support reassessment, as being concerned with senior citizens and other individuals living on fixed incomes).

94. See generally 53 PA. CONS. STAT. § 8823 (2022); see also Borys Krawczeniuk, *Reassessment a Top Issue in Lackawanna County Commissioners Races*, TIMES TRIB. (May 11, 2019), <https://perma.cc/Z8F5-F69F>.

95. See generally 53 PA. CONS. STAT. § 8823 (2022); see also Krawczeniuk, *supra* note 94.

96. See Harrison, *supra* note 922.

97. See DiPaolo, *supra* note 87.

98. See Gareis, *supra* note 922 (“The Clarion County Commissioners have elected to undertake [reassessment] proactively claiming, ‘it’s the right thing to do; the values and

voluntary reassessment will prevent lengthy litigation and an incurrence of substantial expert witness and legal fees.<sup>99</sup> Counties may also need to undergo reassessment to collect additional revenues in future tax years. For example, Indiana County only reassessed property values because its property tax rates reached their statutory caps.<sup>100</sup> Whatever reason a county elects to reassess, the action itself is clear—the county commissioners pass an ordinance mandating reassessment.<sup>101</sup> When courts become involved in making these determinations, however, the analysis is murkier.

#### b. Court-Ordered Reassessment

The Pennsylvania Supreme Court has “recognized that a taxpayer [or taxing authority] is entitled to relief under the Uniformity Clause when his property is assessed at a higher percentage of fair market value than other properties throughout the taxing district.”<sup>102</sup> The Uniformity Clause mandates that all real property in a taxing district is considered as a single class, so taxing authorities may not treat any sub-classifications unequally.<sup>103</sup> To seek a countywide reassessment, an affected taxpayer must (1) establish the valuations at issue and (2) provide evidence that the ratio of assessed-to-market value is so disparate that it violates the Uniformity Clause.<sup>104</sup> To satisfy the second element, the taxpayer may bring “evidence of the market value of his property and of similar properties of the same nature in the neighborhood.”<sup>105</sup> A taxpayer may also provide witness testimony to recent, representative sales in the same taxing district.<sup>106</sup> While evidence of similar properties is not conclusive, the court recognizes both the relevance of such evidence and the difficulty in requiring a taxpayer to evaluate every parcel’s assessment-to-value ratio

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tax burden are not shared equally among the residents within the county. Should a lawsuit occur, the county would lose.”).

99. *See id.*

100. *See* DiPaolo, *supra* note 87 (stating that while a county may undertake reassessment because of statutory caps, it rarely occurs).

101. *See, e.g.,* Harrison, *supra* note 92.

102. *Downington Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 913 A.2d 194, 199 (Pa. 2006) (citing *In re Harleigh Realty Co.*, 149 A. 652, 654 (Pa. 1930)).

103. *See Valley Forge Towers Apts. N, LP v. Upper Merion Area Sch. Dist. & Keystone Realty Advisors, LLC*, 163 A.3d 962, 975 (Pa. 2017) (citing *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1212 (Pa. 2009)).

104. *See Clifton*, 969 A.2d at 1214.

105. *In re Appeal of Brooks Bldg.*, 137 A.2d 273, 276 (Pa. 1958). *But see Appeal of Sullivan*, 37 A.3d 1250, 1257 (Pa. Commw. Ct. 2012) (noting that the court was not persuaded by “evidence pertaining only to specific geographic areas and specific transactions”).

106. *See Deitch Co. v. Bd. of Prop. Assessment*, 209 A.2d 397, 403 (Pa. 1965).

within a taxing jurisdiction.<sup>107</sup> A taxpayer need not present any ratio study if they can establish that disparities in neighboring properties' assessments led to the taxpayer being subjected to a greater tax burden than other property owners.<sup>108</sup>

To assist in parsing this standard of court-ordered reassessments, the Pennsylvania Supreme Court in *Clifton v. Allegheny County* analyzed four factors that measure whether the system of valuation in question produces roughly uniform results.<sup>109</sup> Despite their relevance to courts, the four factors are not dispositive in ordering a reassessment.<sup>110</sup> The first is the established predetermined ratio ("EPR"), which is the "ratio of assessed value to market value that must be uniformly applied in determining assessed value in a given year."<sup>111</sup> The second factor is the CLR.<sup>112</sup> The court notes that although both are helpful statistics, neither indicates whether a county's property values are uniform.<sup>113</sup> The third factor is the coefficient of dispersion ("COD"), which is a well-accepted measure of variability related to the uniformity of ratios within assessments.<sup>114</sup> Though complicated to calculate, "[t]he COD measures the average

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107. *Downington*, 913 A.2d at 199 (first citing *Keebler v. Bd. of Revision of Taxes of Phila.*, 436 A.2d 583, 584 (Pa. 1981); and then citing *In re Harleigh Reality Co.*, 149 A.653, 655 (Pa. 1930)).

108. *See In re City of Pittsburgh*, 600 A.2d 630, 633 (Pa. Commw. Ct. 1991) (remanding a trial court decision to allow a taxpayer to present a masters' report showcasing a lack of uniformity between the subject property and comparable, neighboring properties); *Farrell v. Lackawanna Cnty. Bd. of Assessment Appeals*, No. 20 CV 3591, slip op. at 1–2 (Comm. Pleas Ct. of Lackawanna Cnty. Apr. 5, 2023) (permitting an assessment reduction based on "the common ratio prevailing in the relevant neighborhoods in the taxing district").

109. *See Clifton*, 969 A.2d at 1214–17; *Appeal of Sullivan*, 37 A.3d at 1255 (citing *Smith v. Carbon Cnty. Bd. of Assessment Appeals*, 10 A.3d 393, 399 (Pa. Commw. Ct. 2010) (citations omitted) (recognizing that "as long as the taxing method does not impose substantially unequal tax burdens, 'rough uniformity with a limited amount of variation is permitted'")).

110. *See Clifton*, 969 A.2d at 1214–17, 1226 (stating that although these measures "have not been legislatively adopted and commanded," they are not wholly "irrelevant").

111. *Id.* at 1214 (citing 72 PA. CONS. STAT. § 5020-102 (2009)); *see also* 53 PA. CONS. STAT. § 8802 (2022).

112. *See Clifton*, 969 A.2d at 1215 (citing *Downington*, 913 A.2d at 200 n.8); *see also* sources cited *supra* notes 70–83 (summarizing the CLR and its fluctuation relating to a county's real estate market).

113. *See Clifton*, 969 A.2d at 1215–16; *Clifton v. Allegheny Cnty.*, No. GD05-028638, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at \*38 (C.P. Allegheny Cnty. June 6, 2007), *vacated*, 969 A.2d 1197, *remanded to* 2009 Pa. Dist. & Cnty. Dec. LEXIS 235.

114. *See Clifton*, 969 A.2d at 1216 ("A high coefficient of dispersion indicates a high degree of variance with respect to the assessment ratios under consideration." (quoting *Beattie v. Allegheny Cnty.*, 907 A.2d 519, 530 n.7 (Pa. 2006))); *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at \*41–42 (explaining that "a COD of 30 in a county with 100,000 parcels of taxable property means that the assessed values of approximately one-half of the properties in the county (i.e., 50,000 properties) either exceed the common level ratio by 30% or are less than 30% of the common level ratio"); STANDARD ON RATIO STUDIES, INT'L ASS'N OF ASSESSING OFFICERS 13–14 (Apr. 2013), <https://perma.cc/9NYA-QM8M>.



percentage deviation of the ratios from the median ratio . . . .”<sup>115</sup> In Pennsylvania, the STEB is required to calculate and provide each county’s COD for the public.<sup>116</sup> The final factor is the price-related differential (“PRD”) that demonstrates inequity between high and low-value properties by showing the level of an assessment’s progressivity and regressivity.<sup>117</sup>

Before *Clifton*, the Pennsylvania Commonwealth Court used a few of these factors to order Erie County to undergo a countywide reassessment.<sup>118</sup> The court made its determination in light of the “extensive statistical data involved in [the] case,” a low CLR percentage, and a COD indicative of poor uniformity.<sup>119</sup> Later, the *Clifton* court held that Allegheny County’s base-year system was unconstitutionally discriminatory under the Uniformity Clause as applied to its assessment process.<sup>120</sup> The court made this determination after hearing evidence regarding a countywide study and a large COD and PRD.<sup>121</sup> Yet, the court did not establish any clear, intelligible standard to assist taxpayers and counties in determining when the Uniformity Clause is violated.<sup>122</sup> Instead, following the *Clifton* decision, Pennsylvanians have a patchwork of court decisions without any discernable pattern to determine when a county will be ordered to reassess its property values.

In *Appeal of Sullivan*, a taxpayer appealed their valuation, presenting a study analyzing certain geographic areas and transactions.<sup>123</sup> Despite a COD and PRD indicating a lack of uniformity, the Pennsylvania Commonwealth Court determined that the limited sample size of the study was insufficient to force a reassessment.<sup>124</sup> In making this ruling, the appellate court reasoned that because “a county-wide reassessment is a

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115. STANDARD ON RATIO STUDIES, *supra* note 114, at 13.

116. *See Clifton*, 969 A.2d at 1235 (Baer, J., concurring) (“The COD for each county in Pennsylvania is available over the internet to anyone. This availability limits the uncertainty regarding when a county’s COD is in relation to the IAAO standards.”); *see also* S. Res. 442, Sess. 1987–88 (Pa. 1987) (enacted) (defining the COD and empowering the STEB to perform its calculation).

117. *See Clifton*, 969 A.2d at 1216–17 (citing *Beattie*, 907 A.2d at 521 n.2) (discussing that a PRD over 1.03 demonstrates bias when high-value properties are appraised lower than low-value properties relative to their actual value (appraisal regressivity) and a PRD under 0.98 indicates bias when high-value properties are appraised higher than low-value ones (appraisal progressivity)).

118. *See Millcreek Twp. Sch. Dist. v. Cnty. of Erie*, 714 A.2d 1095, 1097 (Pa. Commw. Ct. 1998).

119. *Id.*

120. *See Clifton*, 969 A.2d at 1229.

121. *See id.* at 1225.

122. *See id.* at 1231–32 (Baer, J., concurring) (arguing that by not articulating any standard, the majority has subjected the Commonwealth to more litigation as parties attempt to parse the majority’s dicta).

123. *See Appeal of Sullivan*, 37 A.3d 1250, 1252–53 (Pa. Commw. Ct. 2012).

124. *See id.* at 1256–58.

momentous event, [] it simply is not reasonable to conclude that a county tax assessment system is constitutionally defective . . . based solely on a handful of publicly available statistics.”<sup>125</sup> Yet, just two decades earlier, the same court ruled that a report suggesting a lack of uniformity between a taxpayer and their neighbors’ assessments must be considered by the trial court, suggesting that no “humongous statistical study” was necessary.<sup>126</sup> The Pennsylvania Commonwealth Court dismissed its own precedent and reversed course to favor expansive countywide assessment studies, benefiting local taxing jurisdictions and harming their taxpayers.<sup>127</sup> In one instance, a court ordered reassessment after an expert provided a study of 7,300 sales and assessments over a nine-year period and additional evidence of a massive COD.<sup>128</sup> However, a study may not need to include that large of a sample. When a taxpayer demonstrated a lack of uniformity in assessment across a 4,500-property sample, the taxpayer was allowed to continue its lawsuit in pursuit of reassessment.<sup>129</sup>

With no clear judicial guidance from Pennsylvania’s highest court, Justice Baer was correct when he predicted another decade of litigation following *Clifton*.<sup>130</sup> Lower courts’ analyses continue to be inconsistent, overlooking obvious uniformity violations.<sup>131</sup> No amount of assessment studies or ratio calculations can shield Pennsylvania from its discriminatory, inequitable, and broken property tax system. The system cannot be upheld given state and federal precedent.

### III. THE BASE-YEAR SYSTEM OF PROPERTY ASSESSMENT IS UNCONSTITUTIONAL

Despite numerous executive branch studies, countless legislative committees and task forces, and endless litigation in the courts addressing the system’s flaws, Pennsylvania’s base-year system remains.<sup>132</sup> While almost every level of state government understands that the Commonwealth’s property tax system is problematic, they fail to

125. *Id.* at 1257.

126. *Id.* (citing the trial record); *see also In re City of Pittsburgh*, 600 A.2d 630, 633 (Pa. Commw. Ct. 1991).

127. *Compare In re City of Pittsburgh*, 600 A.2d at 126, *with Appeal of Sullivan*, 37 A.3d at 1257.

128. *See Rose*, *supra* note 5.

129. *See Betters v. Beaver Cnty.*, 200 A.3d 1044, 1052 (Pa. Commw. Ct. 2018).

130. *See Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1231–33 (Pa. 2009) (Baer, J., concurring).

131. *Compare In re City of Pittsburgh*, 600 A.2d at 126, *and Farrell v. Lackawanna Cnty. Bd. of Assessment Appeals*, No. 20 CV 3591, slip op. at 1–2 (Comm. Pleas Ct. of Lackawanna Cnty. Apr. 5, 2023), *with Appeal of Sullivan*, 37 A.3d at 1256–57.

132. *See generally* 2010 REPORT ON REAL PROPERTY VALUATION, *supra* note 2; *see also 2010 Pennsylvania Reassessment Study*, *supra* note 35.

recognize the actual cause of the issue.<sup>133</sup> The base-year system creates distortion and inequity throughout property tax assessments and favors some property owners at the expense of others.<sup>134</sup> In *Clifton*, the Pennsylvania Supreme Court disagreed with the Allegheny County Common Pleas Court's decision that struck down the base-year system as unconstitutional on its face.<sup>135</sup> Instead, the Pennsylvania Supreme Court acknowledged the base-year system was unconstitutional, but only as applied in Allegheny County.<sup>136</sup> Yet, the base year used for assessments in Allegheny County was not even a decade old.<sup>137</sup> Counties across Pennsylvania keep their values in place for periods far longer than Allegheny County.<sup>138</sup> Counties often wait decades before reassessing, exacerbating the lack of uniformity amongst their taxpayers.<sup>139</sup>

The base-year system cannot withstand a state Uniformity Clause challenge or a Federal Equal Protection Clause challenge as it is discriminatory on its face. In the Allegheny County Court of Common Pleas decision in *Clifton*, Judge Wettick Jr., belabored the flaws of the base-year system by comparing it to how other states value properties.<sup>140</sup> As described by Judge Wettick, the system is unconstitutional because:

(1) [base-year] assessments are not intended to assess all properties at the same percentage of assessed value to actual value, (2) [base-year] assessments inherently cause significant disparities in the ratio of assessed value to fair market value, and (3) [base-year] assessments inevitably discriminate against owners of properties in lower-value neighborhoods.<sup>141</sup>

Judge Wettick's thoughtful analysis provided the Pennsylvania Supreme Court with the means to overturn the base-year system, but the justices failed to do so.<sup>142</sup> Judge Wettick was correct, and the Pennsylvania Supreme Court erred in ruling the base-year system was only

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133. See 2010 REPORT ON REAL PROPERTY VALUATION, *supra* note 2; Briggs, *supra* note 11; see generally 2010 Pennsylvania Reassessment Study, *supra* note 35.

134. See sources cited *supra* notes 77–84.

135. See *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1229 (Pa. 2009).

136. See *id.*

137. See *id.* at 1207–09 (referencing the 2002 base year to calculate taxes in 2007, meaning the 2002 base year was only seven years old when the court ruled in 2009).

138. See DiPaolo, *supra* note 87.

139. See *id.*

140. See generally *Clifton v. Allegheny Cnty.*, No. GD05-028638, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202 (C.P. Allegheny Cnty. June 6, 2007), *vacated*, 969 A.2d 1197, *remanded to* 2009 Pa. Dist. & Cnty. Dec. LEXIS 235 (Apr. 29, 2009).

141. *Id.* at \*6. The Pennsylvania Supreme Court disagreed with this statement, instead ruling that while the statement adequately described the situation in Allegheny County, it did not implicate the entire base-year system. See *Clifton*, 969 A.2d at 1229.

142. See generally *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202.

unconstitutional as applied in Allegheny County.<sup>143</sup> In recent dicta, Pennsylvania's high court stopped just short of declaring the base-year system outright unconstitutional.<sup>144</sup> In keeping with federal equal protection and state uniformity jurisprudence, the Pennsylvania Supreme Court must take the next step and eliminate this deeply flawed assessment system.

*A. A Violation of the Uniformity Clause*

The base-year system violates Pennsylvania's constitutional mandate for uniformity in taxation. Under Pennsylvania's uniformity jurisprudence, "all real estate is a constitutionally designated class entitled to uniform treatment" and the ratio of assessed to market values must be applied equally and uniformly to real estate within a taxing jurisdiction's borders.<sup>145</sup> In other words, the Uniformity Clause requires uniform treatment among all real property as a class.<sup>146</sup> Although taxation is not an "exact science," and perfect uniformity is not constitutionally required, the base-year system still does not achieve the mandated standard of general, rough uniformity.<sup>147</sup>

Property values fluctuate over time based on factors, including the local real estate market and the broader economy.<sup>148</sup> The base-year system "ignores market realities and fails to account for the impact of market forces on a property's value over time."<sup>149</sup> When a county uses a base-year system of assessment, property assessments remain frozen for years—even decades—resulting in inequities throughout the county that increase over time.<sup>150</sup> For example, in *Clifton*, Allegheny County's 2005 property taxes were based on the County's 2002 base-year values even though some

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143. See *Clifton*, 969 A.2d at 1231.

144. See, e.g., *GM Berkshire Hills LLC v. Berks Cnty. Bd. of Assessment*, 290 A.3d 238, 250, 256 (Pa. 2023) (detailing the extensive issues with the base-year system).

145. *Valley Forge Towers Apts. N, LP v. Upper Merion Area Sch. Dist., LLC*, 163 A.3d 962, 973–74 (Pa. 2017) (citation omitted) (quoting *Westinghouse Elec. Corp. v. Bd. of Prop. Assessment, Appeals & Rev. of Allegheny Cnty.*, 652 A.2d 1306, 1314 (Pa. 1995)).

146. See *Clifton*, 969 A.2d at 1212.

147. *Id.* at 1210–11 (first citing *Leonard v. Thornburgh*, 489 A.2d 1349, 1352 (Pa.1985); and then citing *Beatty v. Allegheny Cnty.*, 907 A.2d 519, 530 (Pa. 2006)).

148. See *id.* at 1225; see also Morgan McBride, *10 Top Factors That Make Property Value Increase*, ROCKET (June 16, 2023), <https://perma.cc/2AAJ-X9AS>.

149. *Clifton*, 969 A.2d at 1226 (citing all communities within the Woodland Hills School District to show the appreciation and depreciation of their respective property values, indicating a lack of uniformity in Allegheny County; Braddock and Edgewood exemplify the immense differences in real estate submarkets across the county).

150. See *Clifton v. Allegheny Cnty.*, No. GD05-286638, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at \*64 (C.P. Allegheny Cnty. June 6, 2007) (emphasizing the "credible" testimony of "an expert in real estate valuation and methodology"), *vacated*, 969 A.2d 1197, *remanded to 2009 Pa. Dist. & Cnty. Dec. LEXIS 235* (Apr. 29, 2009); see DiPaolo, *supra* note 87.

property values regressed as much as 16% while others increased as much as 36% during this period.<sup>151</sup> If values changed this significantly in only three years, then it follows that property values in counties that have not been reassessed for decades are almost certain to be highly distorted from their base-year values. The Uniformity Clause demands “[a]ll taxes shall be uniform”; not that ‘taxes *were* uniform at some arbitrary point in the past.’”<sup>152</sup>

### 1. The Courts’ Un-Uniform Approach to Uniformity

An analysis of Pennsylvania’s property tax jurisprudence suggests that courts have not uniformly applied the Uniformity Clause to the base-year assessment system. The Pennsylvania Commonwealth Court has rendered inconsistent uniformity decisions, disregarding its own precedent. For example, the court in *In re City of Pittsburgh* allowed the plaintiff to submit a report of similar properties assessed differently from the subject property.<sup>153</sup> However, in *Appeal of Sullivan*, the Pennsylvania Commonwealth Court failed to follow *In re City of Pittsburgh* when rejecting plaintiffs’ claim “that [a plaintiff is] entitled to be taxed uniformly with similar properties of the same nature in the neighborhood.”<sup>154</sup> This flies in the face of *stare decisis* that the Commonwealth Court otherwise purports to obey.<sup>155</sup>

Additionally, despite being a lower court, the Pennsylvania Commonwealth Court is often at odds with the Pennsylvania Supreme Court on uniformity decisions.<sup>156</sup> While *Clifton* relied on the assessment study submitted into evidence, the justices also noted the importance of

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151. See *Clifton*, 969 A.2d at 1208.

152. *Id.* at 1220 (quoting one of the appellee’s briefs).

153. See *In re City of Pittsburgh*, 600 A.2d 630, 633 (Pa. Commw. Ct. 1991).

154. *Appeal of Sullivan*, 37 A.3d 1250, 1254 (Pa. Commw. Ct. 2012).

155. See e.g., *Duke Energy Fayette II, LLC v. Fayette County Bd. of Assessment Appeals*, 116 A.3d 1176, 1182 (Pa. Commw. Ct. 2015) (recognizing the importance of the Court’s “well-settled *stare decisis*” in other assessment matters).

156. See, e.g., *Courts*, UNIFIED JUD. SYS. OF PA., <https://perma.cc/N3BX-CW65> (last visited Jan. 19, 2024); *GM Berkshire Hills LLC v. Berks Cnty. Bd. of Assessment*, 257 A.3d 822, 834 (Pa. Commw. Ct. 2021). In *GM Berkshire Hills LLC*, the Commonwealth Court upheld a school district’s quantitative process for estimating the property owner’s tax burden via recent sales prices because such figures would be used as evidence of market value in an assessment appeal anyways. *Id.* at 835. This decision was likely in contravention of the state supreme court’s earlier decision in *Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist.*, 163 A.3d 962, 980 (Pa. 2017)). The state supreme court later deadlocked, resulting in an affirmation of the Pennsylvania Commonwealth Court judgment. *GM Berkshire Hills LLC*, 257 A.3d at 824. *But see* *Downington Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 303 A.3d 1104, 1113–14 (Pa. Commw. Ct. 2023) (finding that a monetary threshold violated the Uniformity Clause because the school district appealed 16 assessments despite several more properties satisfying the imposed monetary threshold).

the COD and PRD in indicating a need for reassessment.<sup>157</sup> Notwithstanding the discussion in *Clifton* regarding the importance of the COD, the Pennsylvania Commonwealth Court refused to order a reassessment in Delaware County after plaintiffs presented evidence that the COD analysis indicated a lack of uniformity.<sup>158</sup> Instead, the court demanded a more intensive assessment study, increasing the costs of litigation far beyond any benefit derived therefrom.<sup>159</sup> If all property owners are to be treated as one class under the Uniformity Clause,<sup>160</sup> then it is contrary to Pennsylvania's jurisprudence to limit the ability to challenge an assessment to only property owners who can afford it.

Additionally, *Sullivan* ignores the Pennsylvania Supreme Court's determination "that tax assessments could be challenged based on the lack of uniformity in the assessment of properties having like characteristics and qualities in the same area."<sup>161</sup> Despite the holding in *Downington Area School District v. Chester County Board of Assessment Appeals*, the Pennsylvania Commonwealth Court bypassed this standard by concluding that the plaintiffs' arguments and evidence were not convincing.<sup>162</sup> However, the plaintiffs seemed to satisfy their burden of proof under *Downington* by presenting COD and PRD data indicating the need for reassessment.<sup>163</sup> Instead, the Commonwealth court looked to *Smith v. Carbon County Board of Assessment Appeals* which stated how rough uniformity is constitutionally acceptable, rather than evaluating the COD and the plaintiffs' submission of comparable properties.<sup>164</sup> When the

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157. See *Clifton*, 969 A.2d at 1226. The court recognized the importance of the ratio discussed, noting:

[T]he various standards and measures we have addressed (the CLR, COD, PRD, and IAAO criteria), which demonstrate substantial and pervasive inequity, have not been legislatively adopted and commanded. But that does not make the measures irrelevant. These standards, all of which derive from objective data, speak to the real-life effect of long-term use of a [base-year] system without reassessment.

*Id.*

158. See *id.* at 1216, 1234–35; see also *Appeal of Sullivan*, 37 A.3d 1250, 1256 (Pa. Commw. Ct. 2012).

159. See *Appeal of Sullivan*, 37 A.3d at 1257.

160. See *Valley Forge Towers Apts.*, 163 A.3d at 973–74 (2017) (quoting *Westinghouse Elec. Corp. v. Bd. of Prop. Assessment, Appeals & Rev. of Allegheny Cnty.*, 652 A.2d 1306, 1314 (Pa. 1995)).

161. *Appeal of Sullivan*, 37 A.3d at 1255 (citing *Downington Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 913 A.2d 194, 201 (Pa. 2006) (citation omitted)).

162. Compare *id.* at 1256, with *Downington*, 913 A.2d at 205 (upholding common law procedures permitting uniformity challenges to tax assessments premised upon "potential discrimination among property owners of comparable properties").

163. See *Appeal of Sullivan*, 37 A.3d at 1255–56.

164. See *id.* (noting that "rough uniformity with a limited amount of variation is permitted," but failing to expand upon that statement other than recognizing when a

evidence indicates non-uniformity, courts cannot simply cite precedent about the requirement of approximate uniformity to avoid addressing the base-year system head on. This does little to provide clarity, maintain continuity, and adhere to constitutional requirements. How can a property tax system that is premised on treating all property as one class be valid when parties receive different results depending on the court they are arguing before, or better yet, differing outcomes from the same court?<sup>165</sup>

## 2. The Effect of Using a Base-Year system

The base-year system provides abnormal results that the legislature could not have intended when enacting the base-year legislation in 1982.<sup>166</sup> To illustrate, before undertaking reassessment in 2023, Mercer County reassessed using a 1970 base year, so construction after 1970 was valued as if it was constructed in 1970.<sup>167</sup> If one structure was built in 1970 and another was constructed in 2019, both properties would be assessed based on 1970 values because they were valued as if both had been constructed in 1970. In this example, a more than 50-year-old building is being assessed the same as a newer building, providing no consideration for differences in depreciation or functional obsolescence.<sup>168</sup> It is distinctly not uniform to assess a half-century-old building the same as a new one given the significant difference in the condition of these two hypothetical buildings.<sup>169</sup>

The disparities in property valuation extend beyond issues of construction after the base year. Following *Clifton*, properties located in lower-value neighborhoods, like Braddock, often incur a greater tax burden than those in higher-value neighborhoods, like Edgewood.<sup>170</sup> This increased tax burden is a result of property values in higher-value areas tending to “appreciate at higher rates than property values in low-value neighborhoods.”<sup>171</sup> Properties that are in different areas within the same

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taxpayer is entitled to relief under Pennsylvania’s Uniformity Clause); *see also* Smith v. Carbon Cnty. Bd. of Assessment Appeals, 10 A.3d 393, 399 (Pa. Commw. Ct. 2010).

165. *Compare In re City of Pittsburgh*, 600 A.2d 630, 633 (Pa. Commw. Ct. 1991), *with Appeal of Sullivan*, 37 A.3d at 1255–56.

166. *See* H.B. 2560, 1981–82 Gen. Assemb. Sess. (Pa. 1982) (enacted) (noting the purpose of the legislation as “providing for the use of actual values in determining the taxability of persons and property”).

167. *See* Melissa Klaric, *County Properties to be Reassessed for the First Time in a Half Century*, *HERALD* (Jan. 20, 2023), <https://perma.cc/29G4-6ERL/>.

168. *See* EDWARD MARTINEZ, MARSHALL & SWIFT, *COMMERCIAL BUILDING COST DATA: BEST PRACTICES 4–5* (Apr. 2018), <https://perma.cc/YB8F-FUPQ>.

169. *See id.* at 4 (“[A] building is in the prime of life before mid-life and [] the road is downhill after that.”).

170. *See Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1225 (Pa. 2009).

171. *Clifton v. Allegheny Cnty.*, No. GD05-028638, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at \*2 (C.P. Allegheny Cnty. June 6, 2007), *vacated*, 969 A.2d 1197, *remanded to 2009 Pa. Dist. & Cnty. Dec. LEXIS 235*.

county will ultimately be assessed differently if one property is in an area of faster growth than the other. For example, using the market study in *Clifton*, a property assessed at \$100,000 in the base year in Braddock, where values declined 15%, should be assessed at a market value of \$85,000, and a property assessed at \$100,000 in the base year in Edgewood, where values grew 35%, should be assessed at a market value of \$135,000.<sup>172</sup> In *Clifton*, the CLR for Allegheny County was 1.10.<sup>173</sup> Disregarding the realities of the real estate market, this CLR results in the value of both properties being \$110,000, meaning the lower-valued property in Braddock is greatly over-assessed while the property in Edgewood is greatly under-assessed.<sup>174</sup> The property taxes borne by these taxpayers are not uniform.

The issue of disproportional taxation is exacerbated by the property assessment appeals process. Under this process, over-assessed property owners can appeal their property values, or related taxing entities, like school districts, can appeal others' under-assessed properties.<sup>175</sup> While the appeals process was envisioned as a tool to ensure assessors were not willfully undervaluing properties, the process has a more nefarious role when there are prolonged periods between reassessments.<sup>176</sup> As properties sell for amounts higher than their current market value (as calculated by applying the CLR to the assessed value), school districts will appeal a property's valuation in an attempt to align the assessed value with the sales price.<sup>177</sup> Thus, when properties are assessed at the same property tax value, but only one is sold and later appealed, that property will ultimately be assessed at a higher value than others.<sup>178</sup> The disparate valuation is true for property owners who lower their assessments via appeal because of current market value fluctuations; these property owners enjoy reductions while their neighbors, who did not appeal, bear a greater tax burden. The

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172. See *Clifton*, 969 A.2d at 1225. The calculations provided in the example are rounded and are not the exact percentages noted in the case.

173. *Id.*; *Common Level Ratio*, *supra* note 68, at 2. The CLR is for the fiscal year beginning on July 1, 2005, because the growth and decline percentages in *Clifton* are calculated for the 2005 assessment year. See *Clifton*, 969 A.2d at 1225.

174. See *Clifton*, 969 A.2d at 1225.

175. See 72 PA. CONS. STAT. § 5020-520 (2022); 53 PA. CONS. STAT. § 8855 (2022).

176. See *GM Berkshire Hills LLC v. Berks Cnty. Bd. of Assessment*, 290 A.3d 238, 240–241 (Pa. 2024) (Mundy, J., opinion in support of affirmance).

177. See, e.g., *GM Berkshire Hills LLC v. Berks Cty. Bd. of Assessment*, 257 A.3d 822, 825 (Pa. Commw. Ct. 2021) (detailing how the Wilson School District analyzed sales and selected properties to appeal assessments). The appeals process gives rise to additional Uniformity Clause concerns regarding how properties are selected for appeal, but these concerns are beyond the scope of this Article.

178. *GM Berkshire Hills LLC*, 290 A.3d at 253–54 (Donahue, J., opinion in support of reversal) (discussing how “[a] newly purchased townhouse, identical to the townhouse of a neighbor in a contemporaneously built development will be subject to an assessment appeal and the neighboring townhouse will not”).



different assessment values among similar properties exemplify the uniformity violations that the Pennsylvania Constitution should prevent.<sup>179</sup> Additionally, savvy taxpayers with the financial means to navigate the assessment appeals process are more likely to have their assessments reduced compared to poorer property owners without the means or the systemic knowledge to appeal. As a result, property owners in lower-valued neighborhoods bear a greater share of the tax burden.<sup>180</sup>

### 3. The CLR Fails to Achieve Uniformity

While the CLR provides a means to calculate a property's current market value from its base-year value, the CLR does not solve the disparities created by the base-year system.<sup>181</sup> The CLR is adjusted annually because assessments remain stagnant for years, only being updated when the property changes or an assessment appeal is brought.<sup>182</sup> The CLR is calculated by county, rather than by neighborhood or real estate submarket.<sup>183</sup> Vast assessment discrepancies, like those in *Clifton*, will continue to exist under the base-year system because the CLR covers the entire county, and a full reassessment would account for individual real estate markets.<sup>184</sup> Because the CLR does not account for these changes, its use results in some property owners paying more than their fair share of property taxes while others pay significantly less.<sup>185</sup>

Additionally, the CLR may be biased because its calculation relies on county assessors providing the STEB with the requisite informational inputs.<sup>186</sup> When submitting this information to the STEB, the counties determine what is considered a valid sale, providing ample opportunities

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179. See *Harris Cnty. Appraisal Dist. v. United Invs. Realty Tr.*, 47 S.W.3d 648, 654 (Tx. 14th Ct. App. 2001) (discussing why principles of uniform and equal taxation are violated if identical properties are taxed differently); see also *In re City of Pittsburgh*, 600 A.2d 630, 633 (Pa. Commw. Ct. 1991) (allowing the presentation of a masters' report that showcased a lack of uniformity between the subject property and comparable, neighboring properties to justify an assessment reduction).

180. See *Clifton v. Allegheny Cnty.*, No. GD05-028638, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at \*4, n.15 (C.P. Allegheny Cnty. June 6, 2007) (“[Base-year] assessments inevitably discriminate against owners of properties in lower-value neighborhoods . . . . The evidence offered in this . . . litigation shows that the use of a [base-year] system results in the overassessment of lower-valued properties and the underassessment of higher-valued properties.”), *vacated*, 969 A.2d 1197, *remanded to* 2009 Pa. Dist. & Cnty. Dec. LEXIS 235.

181. See sources cited *supra* notes 70–77.

182. See *The Common Level Ratio in Assessment Appeals*, *supra* note 72.

183. See *id.*

184. See *id.*; see also *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1225 (Pa. 2009) (providing data on the vast discrepancies found in the submarkets within the Woodland Hills School District).

185. See *Clifton*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at \*4, n.15.

186. See *The Common Level Ratio in Assessment Appeals*, *supra* note 72.

to keep the CLR artificially high.<sup>187</sup> Philadelphia County maintained the same CLR value for almost two decades despite not having reassessed in years.<sup>188</sup> Recently, Allegheny County became embroiled in litigation over artificially inflating its CLR after reporting a steep increase to the CLR from 2021 to 2022.<sup>189</sup> Allegheny County's manipulation of their CLR was accomplished by "improperly categoriz[ing] certain sales information."<sup>190</sup> It is well-established that the longer a county waits to reassess, the greater the distortion in its assessments.<sup>191</sup> Therefore, because Allegheny County's CLR remained constant for so long, it is highly likely that the county engaged in a scheme of artificial inflation.<sup>192</sup>

While Allegheny County is the only county that has faced a legal challenge and consequences for its actions, it was not necessarily the only county to influence the CLR, either by selectively providing sales information or by falsifying data given to the STEB. If counties can easily affect the CLR, then the market values contested during assessment appeals may often be incorrect. If so, property owners and taxing entities are basing appeals on erroneous information, thereby incorrectly appealing or missing valid opportunities to do so. Taxing entities are also basing their tax rates and potential tax revenues on the total assessment base, so deciding whether to appeal a property assessment can be immensely impactful to the taxing jurisdiction's budgets.<sup>193</sup> This impact to taxing entities further stems from legal fees, potential tax refunds, and future losses of tax revenue.<sup>194</sup> Because the CLR is a factor in determining

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187. See *id.* (discussing the procedural failings when submitting "valid" sales data to STEB).

188. See *Common Level Ratio*, *supra* note 68, at 51; Dusty Elias Kirk & Jeffrey G. Wilhelm, *STEB's Dramatic Change to Philadelphia's Common Level Ratio Makes This a Good Time to Consider Filing a Tax Assessment Appeal*, REED SMITH LLP (Aug. 15, 2011), <https://perma.cc/UE6K-7W6Y> ("For decades, STEB set the common level ratio for Philadelphia County a few percentage points below the county's stated ratio of 32 percent. In fact, Philadelphia's ratio has never been below 27.3 percent.").

189. See John Vogel, *Allegheny County Court Issues Injunction Lowering Common Level Ratio Impacting Tax Assessments Appeals*, JD SUPRA (Sept. 6, 2022), <https://perma.cc/RW75-RJXY> (resulting in the CLR increasing 28%); see also *Property Assessments: A Crucial Policy Issue for Chief Executive Candidates*, ALLEGHENY INST. FOR PUB. POL'Y (Apr. 12, 2023), <https://perma.cc/56R3-PJRC> (discussing the ongoing litigation in Allegheny County regarding its falsified CLR).

190. Vogel, *supra* note 189; see Rich Lord, *Assessing the Odds: This Year's Unusual Property Tax Appeal Season, Explained*, PUBLICSOURCE (Feb. 23, 2023), <https://perma.cc/RED4-W9RQ> (reporting that "the county submitted flawed data" in an effort to keep its CLR several percentage points higher than the sales data actually supported).

191. Strumpf, *supra* note 83.

192. *The Common Level Ratio in Assessment Appeals*, *supra* note 72.

193. See *id.* ("[A]ny tax assessment reductions due to the change in ratio will impact school districts whose 2022 fiscal years have already commenced, perhaps leading to budget shortfalls.").

194. See *id.*

whether to reassess, how to set budgets, and whether to appeal an assessment, its manipulation affects taxpayers and taxing jurisdictions during all stages of the assessment and taxation process.<sup>195</sup> Therefore, the base-year system is “produc[ing] arbitrary, unjust, and unreasonably discriminatory results” that are unconstitutional.<sup>196</sup>

#### 4. Uniformity Clause Violations in Other Contexts

Over a decade has passed since the *Clifton* decision, and the Pennsylvania Supreme Court has heard various cases implicating the Uniformity Clause. While these cases are not based on real estate assessment appeals, *Shelly Funeral Home, Inc. v. Warrington Township* and *Nextel Communications of the Mid-Atlantic, Inc. v. Commonwealth* provide examples of the relevant statute facially violating the Uniformity Clause.<sup>197</sup> Uniformity Clause protections are not limited strictly to property taxes but extend to the entirety of Pennsylvania’s system of taxation.<sup>198</sup> Although neither case specifically dealt with property taxes, the *Shelly Funeral Home* and *Nextel* holdings make clear that the base-year system cannot be upheld as constitutional.

##### a. The *Shelly Funeral Home* Decision

In 2009, the Warrington Township Board of Supervisors enacted an ordinance imposing a “\$2,600 annual business privilege tax on all businesses in the township with gross receipts over \$1,000,000;” the ordinance exempted businesses with gross receipts less than \$1,000,000.<sup>199</sup> The court had to determine if this ordinance violated a section of the Local Tax Reform Act that prevented political subdivisions from levying, assessing, collecting, or providing for such activities of “a mercantile or business privilege tax on gross receipts.”<sup>200</sup> The case turned on whether such a flat tax was effectively a tax *on* gross receipts that the legislature intended to preclude.<sup>201</sup> Overturning the tax, the court stated “that, in practical effect, the Ordinance lays a tax on that portion of a business’s gross receipts that exceed \$1,000,000.”<sup>202</sup> Regardless of how a

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195. *See id.*

196. *Clifton v. Allegheny Cnty.*, No. GD05-028638, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at \*10 (C.P. Allegheny Cnty. June 6, 2007), *vacated*, 969 A.2d 1197, *remanded to* 2009 Pa. Dist. & Cnty. Dec. LEXIS 235.

197. *See Shelly Funeral Home, Inc. v. Warrington Twp.*, 57 A.3d 1136, 1141 (Pa. 2012); *see also Nextel Commc’ns of the Mid-Atlantic, Inc. v. Commonwealth*, 171 A.3d 682, 698 (Pa. 2017).

198. *See Saulsbury v. Bethlehem Steel Co.*, 196 A.2d 664, 666 (Pa. 1964).

199. *Shelly Funeral Home*, 57 A.3d at 1137.

200. *Id.* (quoting 72 PA. CONS. STAT. § 4750.533 (2012)).

201. *See id.* at 1140.

202. *Id.* at 1141.

statute or an ordinance describes taxes, a reviewing court must “assess[] their validity based on how they operate in practice.”<sup>203</sup>

The practical effect of the base-year system is to disparately impact taxpayers by burdening some with more than their fair share of property taxes. This is exemplified in the example comparing a building constructed as of the base year in 1970 with one constructed after the base year’s implementation.<sup>204</sup> To be uniform, the newer building must be assessed the same as the other structure.<sup>205</sup> However, the base year, as “operate[s] in practice,” results in the owner of the building constructed in 1970 shouldering more of the property tax burden despite being assessed identically.<sup>206</sup> *Shelly Funeral Home* requires Pennsylvania courts assessing the validity of base-year assessments to consider the law in practice.<sup>207</sup> When analyzing the GCAL and CCAL’s practical effects, the base-year system cannot withstand scrutiny under the Uniformity Clause.

#### b. The *Nextel* Decision

The 2007 net loss carryover (“NLC”) provision in the Pennsylvania Revenue Code capped the loss a corporation could carry over from prior years to 12.5%, or \$3 million.<sup>208</sup> The *Nextel* court found that the deduction violated the Uniformity Clause because some corporate taxpayers could reduce their liabilities to zero if they had prior net operating losses of \$3 million or more, but corporations with income in excess of \$3 million and prior net operating losses incurred a tax liability that was restricted by the income cap.<sup>209</sup> By allowing the flat deduction, the NLC essentially divided corporate taxpayers with net loss carryovers into two classes—those who were limited by the 12.5% cap and those who were not.<sup>210</sup> When the same class of property, in this case, income, is taxed differently between similarly situated taxpayers, Pennsylvania’s Uniformity Clause is violated.<sup>211</sup> The court stated, “In determining whether [a] statute violates the Uniformity Clause, we do not look at its language in a vacuum; rather, we also examine how it functions when applied to establish a corporation’s net income tax liability.”<sup>212</sup>

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203. *Id.* (citations omitted).

204. See sources cited *supra* notes 166–169 and accompanying text.

205. See sources cited *supra* notes 166–169 and accompanying text.

206. See *Shelly Funeral Home*, 57 A.3d at 1141.

207. See *id.*

208. See *Nextel Commc’ns of the Mid-Atlantic, Inc. v. Commonwealth*, 171 A.3d 682, 685 (Pa. 2017); see also 72 PA. CONS. STAT. § 7401(3)4(c)(1)(A)(II) (1971).

209. *Nextel*, 171 A.3d at 686.

210. *Id.* at 698–99.

211. See sources cited *supra* notes 26–29.

212. *Nextel*, 171 A.3d at 698 (citing *Mount Airy #1, LLC v. Pa. Dep’t of Revenue*, 154 A.3d 268, 277 (Pa. 2016) (finding a tax, in practice, caused a non-uniform tax rate

Under *Nextel*, the base-year system cannot continue to exist because its authorizing statutes are inherently unconstitutional on their face.<sup>213</sup> While the Pennsylvania Supreme Court has stated that a county *could* undertake action to ensure a constitutional application of the base year, it has also indicated the need for periodic reassessment to meet this threshold.<sup>214</sup> Yet, this view is idealistic at best. In practice, counties, aside from Philadelphia, rarely, if ever, perform regular reassessments.<sup>215</sup> Even though *Clifton* held that there was no unconstitutional use of the base-year system, the court noted that “it is only through the passage of time that a base-year assessment will become stale, and thus unconstitutional.”<sup>216</sup> If courts abandon the statutory vacuum of the base year and review its practical effect, they would be confronted by an unworkable system in which counties fail to reassess properties and ignore drastic changes in market conditions among neighborhoods. *Nextel* highlights why Pennsylvania courts must find that the base-year system violates the Uniformity Clause.<sup>217</sup>

#### B. *A Violation of the Equal Protection Clause*

The base-year system is unconstitutional under the Uniformity Clause, and it is also likely to be unconstitutional under the Fourteenth Amendment’s Equal Protection Clause. Precedent holds that the floor for Pennsylvania’s Uniformity Clause is federal equal protection jurisprudence.<sup>218</sup> Because real property comprises a class of one, protections against purposeful or systemic discrimination apply.<sup>219</sup> Like the Pennsylvania Uniformity Clause precedent, federal equal protection only “contemplates the seasonable attainment of rough equality in treatment among similarly situated property owners.”<sup>220</sup> There are various examples that consider the base-year system alongside federal

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upon casinos for purposes of local share assessments, thereby violating the Uniformity Clause)).

213. *See id.*

214. *See Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1229 (Pa. 2009).

215. *See* 2010 REPORT ON REAL PROPERTY VALUATION, *supra* note 2; *see also* DiPaolo, *supra* note 87.

216. *Clifton*, 969 A.2d at 1229.

217. *See Nextel*, 171 A.3d at 698.

218. *See Downingtown Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 913 A.2d 194, 200–201 (Pa. 2006).

219. *See id.* at 201 (citing *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)).

220. *Id.* (citing *Allegheny Pittsburgh Coal Co. v. Comm’n of Webster Cnty.*, 488 U.S. 336, 346 (1989); *see also Beattie v. Allegheny Cnty.*, 907 A.2d 519, 530 (Pa. 2006) (citing *Leonard v. Thornburgh*, 489 A.2d 1349, 1352 (Pa. 1985)).

jurisprudence, showing how the floor has fallen out from under the base-year system.<sup>221</sup>

While tax classifications must withstand the Equal Protection Clause, the U.S. Supreme Court has recognized that state taxing issues are subject only to rational basis review.<sup>222</sup> Under this standard, state lawmakers are given broad discretion in legislating tax statutes containing classifications of taxpayers.<sup>223</sup> As long as there is a “rational relationship between the disparity of treatment and some legitimate governmental purpose,” the state tax’s statutory scheme does not violate the Equal Protection Clause.<sup>224</sup> Therefore, a reviewing court will only afford an aggrieved party rational basis scrutiny when challenging the base-year system under Pennsylvania’s property tax assessment laws.<sup>225</sup>

The U.S. Supreme Court’s decisions regarding property assessments are distinguished by who approved the statutory scheme—the legislature or the voters via a statewide referendum.<sup>226</sup> Despite clear inequities within the same class, the U.S. Supreme Court upheld California’s quasi-base-year system because holding otherwise was “upset[ting] the will of the people of California.”<sup>227</sup> Yet, when statutory assessment practices are at issue, the Court is more willing to strike them down when the associated tax “bears unequally on persons or property of the same class.”<sup>228</sup>

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221. See sources cited *supra* notes 151–152 and 166–173 and accompany text.

222. See *Armour v. City of Indianapolis*, 566 U.S. 673, 680 (2012) (quoting *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 (1938)).

223. See *id.* at 680–81 (quoting *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 547 (1983)).

224. *Id.* at 680 (quoting *Heller v. Doe*, 509 U.S. 312, 319–20 (1993)); see also *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992). The Court explained the standard for rational basis scrutiny in tax cases as:

[T]he Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational.

*Nordlinger*, 505 U.S. at 11 (citations omitted).

225. See *Armour*, 566 U.S. at 680–81.

226. Compare *Allegheny Pittsburgh Coal Co.*, 488 U.S. at 343 (holding that an assessment system in which only recently sold properties were reassessed was a violation of the equal protection clause), with *Nordlinger* 505 U.S. at 17–18 (1992) (upholding an assessment system that was passed via statewide referendum which reassessed recently sold properties, but all unsold properties, similar or not, had their assessments capped to a maximum 2% annual increase).

227. *Nordlinger*, 505 U.S. at 18 (describing the importance of “California’s grand experiment”); see generally CALIFORNIA PROPERTY TAX: AN OVERVIEW, BD. OF EQUALIZATION (Dec. 2018), <https://perma.cc/ZQ22-4HGV> (providing information on Proposition 13 and how a sale affects property assessments).

228. *Allegheny Pittsburgh Coal Co.*, 488 U.S. at 343 (quoting *Charleston Fed. Savings & Loan Assn. v. Alderson*, 324 U.S. 182, 190 (1945)).

The U.S. Supreme Court's most pertinent property assessment case originates in Pennsylvania's neighboring state, West Virginia.<sup>229</sup> In Webster County, West Virginia, the assessor revalued properties based on their most recent sales price but only made slight adjustments to other unsold properties.<sup>230</sup> In 1974, the Allegheny Pittsburgh Coal Company purchased a Webster County property for \$24 million, and the property was assessed at \$12 million using the county's 50% assessment ratio.<sup>231</sup> When the Allegheny Pittsburgh Coal Company sold this property to East Kentucky Energy Corporation for \$30 million, the assessor automatically increased the assessment to \$15 million as a result of the higher purchase price.<sup>232</sup> The evidence indicated that this property was "assessed at roughly 8 to 35 times more than comparable neighboring property, and these discrepancies [had] continued for more than 10 years with little change."<sup>233</sup> The U.S. Supreme Court found that the assessor's practices ran counter to the West Virginia Tax Commission's published materials, resulting in great disparities among similar properties.<sup>234</sup> Accordingly, the Court concluded, "The relative undervaluation of comparable property in Webster County over time [] denies [plaintiffs] the equal protection of the law."<sup>235</sup>

Pennsylvania counties that utilize a base-year system freeze their values at the base year, adjusting only when there are assessment appeals, new construction, or demolition.<sup>236</sup> Shockingly, the Webster County Assessor did more than most Pennsylvania assessors by adjusting all property values in the county three times in one decade.<sup>237</sup> Though the U.S. Supreme Court recognized that these actions were minimal, it is more than the efforts taken by 66 of 67 counties in Pennsylvania that only experience countywide revaluations when the base year is changed.<sup>238</sup> Even when a property is sold in Pennsylvania, assessors do not change the value unless there is an assessment appeal by taxing entities, like school districts, seeking a higher assessment.<sup>239</sup> The U.S. Supreme Court has held that it is

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229. *See id.* at 343.

230. *See id.* at 338 ("Some adjustments were made in the assessments of properties that had not been recently sold, although they amounted to, at most, 10% increases in 1976, 1981, and 1983 respectively.")

231. *See id.* at 339.

232. *See id.*

233. *Id.* at 344.

234. *See id.* at 345.

235. *Id.* at 346.

236. *See* sources cited *supra* notes 88 and 142.

237. *Allegheny Pittsburgh Coal Co.*, 488 U.S. at 338; *see* DiPaolo, *supra* note 87.

238. *See Allegheny Pittsburgh Coal Co.*, 488 U.S. at 338; *see also* 2010 REPORT ON REAL PROPERTY VALUATION, *supra* note 2, at S-2.

239. *See, e.g.,* GM Berkshire Hills LLC v. Berks Cnty. Bd. of Assessment, 290 A.3d 238, 240–41 (Pa. 2023); *see generally* SELF-EVALUATION GUIDE SUBCOMMITTEE OF THE LOCAL GOVERNMENT COMMISSION PROPERTY ASSESSMENT REFORM TASK FORCE, 2017–18

not the role of the aggrieved taxpayer to “[seek] an upward revision of the taxes of other members of the class,” but rather the taxpayer should experience the relief of uniform valuation.<sup>240</sup>

Pennsylvania’s circumstances are worse than *Allegheny Pittsburgh Coal*. Even though Pennsylvania assessors do not directly increase recently sold properties’ assessments like in *Allegheny Pittsburgh Coal*, the circumstances of Pennsylvania’s base-year system are analogous.<sup>241</sup> Absent a sale, property assessments remain stagnant; recently sold properties only undergo “reassessment” via appeal while similar neighboring properties’ assessments remain untouched.<sup>242</sup> In *Allegheny Pittsburgh Coal*, a singular assessor went rogue, bending West Virginia’s assessment law to their own practices, whereas Pennsylvania’s codified base-year system encourages such inequities.<sup>243</sup> The U.S. Supreme Court noted, “The Equal Protection Clause is not satisfied if a State does not itself remove the discrimination . . . .”<sup>244</sup> To date, Pennsylvania has taken no corrective measures to rectify the base-year system’s constitutional failings.<sup>245</sup>

To ensure the demands of the Equal Protection Clause are met, Pennsylvania must take steps to ensure that recently sold properties do not carry a greater tax burden than their similarly situated neighbors. There is no relationship between the disparate treatment of these taxpayers and any legitimate state purpose, and there is no rational reason to assess and tax owners of similarly situated properties differently.<sup>246</sup> Because the base-year system does not make such assessment adjustments, except in rare

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SESS., PENNSYLVANIA PROPERTY ASSESSMENT GUIDE: A SELF-EVALUATION GUIDE FOR COUNTY OFFICIALS, at 6.

240. *Allegheny Pittsburgh Coal Co.*, 488 U.S. at 346 (quoting *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946)); see also *Sioux City Bridge Co. v. Dakota Cnty.*, 260 U.S. 441, 446–47 (1923) (“[I]t is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of under-assessed property in the taxing district.”).

241. While the assessor is not increasing values, taxing entities themselves pursue such increases by closely monitoring recently sold and commercial properties’ assessments. See *Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist.*, 163 A.3d 962, 965–66 (Pa. 2017).

242. See sources cited *supra* notes 175–180.

243. See *Allegheny Pittsburgh Coal Co.*, 488 U.S. at 345 (“The Webster County assessor has, apparently on her own initiative, applied the tax laws of West Virginia in the manner heretofore described, with the resulting disparity in assessed value of similar property.”).

244. *Id.* at 346 (quoting *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946)).

245. See Justin Sweitzer, *Can Pennsylvania Erase Property Taxes Without Wiping out Education?*, CITY & STATE PENNSYLVANIA (Oct. 17, 2022), <https://perma.cc/N7BS-BCQK> (“For years, property taxpayers have been itching for a solution that brings down their tax burdens, while education advocates and school district officials have been cautious to upend a system that is reliant on property tax dollars.”).

246. See sources cited *supra* note 224.



instances, the system is unable to withstand rational basis scrutiny and is, therefore, unconstitutional under the Fourteenth Amendment's Equal Protection Clause.

*C. Delaware's Base-Year assessment System was Declared Unconstitutional*

While opponents may argue that throwing out an entire method of assessment is judicial activism, it would not be the first time a court has done so. In 2020, Delaware's Court of Chancery ruled that the state's property tax system was unconstitutional.<sup>247</sup> The judicial declaration forced Delaware's three counties and state legislature to take action to fix its "broken [] system of property tax assessments," that being a base-year system.<sup>248</sup> In reaching its decision, the Delaware Court of Chancery analyzed data similar to Pennsylvania courts, ultimately recognizing that "[t]he counties' outdated assessments conceal a reality of non-uniformity beneath a cloak . . . ."<sup>249</sup> Delaware counties violated the state's uniformity clause because the counties' assessments "treat[ed] owners of similar properties differently" by using "decades-old valuations when preparing their assessment rolls."<sup>250</sup> These assessments are similar to Pennsylvania counties whose assessments are generally just as stagnant.<sup>251</sup>

The Delaware Court of Chancery's decision serves as more than just an example of a court ordering a state to abandon the base-year assessment system. Its decision supports many of the arguments that opponents of the base-year system put forth. Particularly, the Delaware Court of Chancery makes arguments analogous to those found within Judge Wettick's *Clifton* opinion.<sup>252</sup> With Delaware's assessment system overturned and its legislature implementing regular reassessments, Pennsylvania is the only state operating under a true base-year system.<sup>253</sup> If Delaware's assessment

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247. See Xerxes Wilson & Jeanne Kuang, *Judge Rules Delaware Property Tax System Unconstitutional; Major Changes to Residents' Bills Could Follow*, DEL. ONLINE (May 11, 2020, 8:27 AM), <https://perma.cc/6L65-X5Z5>.

248. *In re Del. Pub. Schs. Litig.*, 239 A.3d 451, 465, 467 (Del. Ch. 2020) ("None of the counties have any plan or intention to update their base-year valuations. Each thus uses an indefinite-base-year method of property assessment."), *cert. denied*, 277 A.3d 296 (Del. 2022).

249. *Id.* at 464, 487–96 (analyzing sales ratios, the COD, and the PRD to conclude that Delaware counties' assessments were not uniform).

250. *Id.* at 464.

251. See sources cited *supra* notes 65–69.

252. See generally *Clifton v. Allegheny Cnty.*, No. GD05-028638, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at \*76–\*127 (C.P. Allegheny Cnty. June 6, 2007), *vacated*, 969 A.2d 1197, remanded to 2009 Pa. Dist. & Cnty. Dec. LEXIS 235. Through an extensive survey, Judge Wettick found that Delaware's statutes did not require any regular reassessment, which resulted in the adoption of a base-year system. *Id.* at \*88–89.

253. See *id.* At the time of Judge Wettick's opinion, "Pennsylvania and Delaware [were] the only states without requirements that assessments be based on current or

system could not withstand a less stringent uniformity clause, how can Pennsylvania's withstand its own?<sup>254</sup>

#### IV. RECOMMENDATIONS FOR A CONSTITUTIONAL SYSTEM OF ASSESSMENT

If the base-year system was deemed unconstitutional on its face, then the statutory structure would default to a current market value system, requiring counties to reassess all properties annually.<sup>255</sup> Philadelphia County, the Commonwealth's largest county, struggles to reassess its parcels annually despite having the broadest tax base to support annual reassessment.<sup>256</sup> Any new assessment system must provide counties with the ability to comply without returning to a quasi-base-year system—in which counties only reassess properties annually if they have the available means and resources. A quasi-base-year system cannot occur because it may encourage discriminatory behavior currently exhibited by the base-year system.<sup>257</sup> Because counties do not have the means to publish complete assessment records, annual assessments are likely not feasible.<sup>258</sup> To avoid these issues and others, like potential accusations of spot reassessments, Pennsylvania must consider other methods of assessment.<sup>259</sup>

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relatively current actual values.” *Id.* No other state has since legislated a base-year system. With Delaware's base-year system unconstitutional, Pennsylvania remains the sole state using it. *Id.*; see also H.R. 62, 152 Leg., Reg. Sess. (Del. 2023) (amending the Delaware Code to require that each county reassess real property every five years using the fair market value standard of valuation); JOAN YOUNGMAN, A GOOD TAX 38–40 (2016) (discussing that while New Jersey and New York both experienced periods of unvarying assessments, both states have seen more frequent reassessment, unlike Pennsylvania). This Article does not consider states with caps on property values, like California, as operating under a base-year system because the values change when there is a change of ownership, making it an acquisition value system.

254. *Compare In re Del. Pub. Schs. Litig.*, 239 A.3d 451, 487 (Del. Ch. 2020), *cert. denied*, 277 A.3d 296 (Del. 2022), with *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1211–14 (Pa. 2009).

255. See 72 PA. CONS. STAT. § 5020-402(a) (2022); 53 PA. CONS. STAT. § 8842(a) (2022).

256. See *How Property is Taxed in Philadelphia*, PEW (Sept. 12, 2022), <https://perma.cc/B5WZ-6G8V> (detailing why Philadelphia County has not undergone annual reassessments even though there is a statutory requirement to do so).

257. See sources cited *supra* notes 167–180.

258. See, e.g., *Assessment*, FOREST CNTY. PENNSYLVANIA, <https://perma.cc/LN9C-T4QW> (last visited Feb. 8, 2024) (illustrating how a county does not provide assessment information aside from basic ownership data).

259. See 53 PA. CONS. STAT. § 8801(b) (2022) (defining “spot reassessment” as the “reassessment of a property or properties by a county assessment office that is not conducted as part of a countywide revision of assessment and which creates, sustains[,] or increases disproportionality among properties’ assessed values”).

### A. Regular Reassessment

Mandating regular reassessments is a clear solution to Pennsylvania's issues. Studies commissioned by state-level actors recognized "the possible benefits of regular reoccurring countywide reassessments."<sup>260</sup> Almost every other state requires its counties to undertake some form of regular reassessment of property, whether annually or every few years.<sup>261</sup> Except New York, no state delays countywide reassessments as long as Pennsylvania.<sup>262</sup> Because most Pennsylvania counties do not have the resources to manage an annual reassessment, several states' systems cannot be considered as a viable model.<sup>263</sup> To capture the market value of properties and minimize the burden on counties, Pennsylvania's best choice for frequency of reassessment is once every three years.<sup>264</sup> Two of Pennsylvania's neighboring states, Maryland and Ohio, utilize a form of the three-year assessment system.<sup>265</sup>

#### 1. Maryland's Assessment System

Unlike Pennsylvania, in which the STEB's only power is calculating counties' CLRs, Maryland's state-level Department of Assessments and Taxation ("SDAT") appraises all properties in the state every three years.<sup>266</sup> Typically, SDAT divides up each county and the City of Baltimore into three assessment regions and assesses one region every

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260. *2010 Pennsylvania Reassessment Study*, *supra* note 35, at 6.

261. *See generally* Clifton v. Allegheny Cnty., No. GD05-028638, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at \*76–127 (C.P. Allegheny Cnty. June 6, 2007) (detailing each state's assessment system and reassessment schedule), *vacated*, 969 A.2d 1197, *remanded to* 2009 Pa. Dist. & Cnty. Dec. LEXIS 235.

262. *See id.* *But see Reassessments*, N.Y. STATE DEP'T OF TAX'N & FIN., <https://perma.cc/FGA3-DTPP> (last visited Feb. 8, 2024) (stating that while "New York State does not require municipalities to conduct reassessments," it does encourage municipalities to undergo the process to ensure fairness, even providing aid for those that undergo cyclical reassessment). New York's policy of encouraging reassessments is in sharp contrast to the function of Pennsylvania's STEB.

263. *See How Property is Taxed in Philadelphia*, *supra* note 256.

264. *See* Colin McNickle, *The Only Real Fix for the Assessments Mess*, ALLEGHENY INST. FOR PUB. POL'Y (Nov. 7, 2022), <https://perma.cc/H7RA-9U29>.

265. *See* MD. CODE ANN., TAX-PROP. § 8-104 (LEXIS 2023); *see also* OHIO REV CODE ANN. §5715.33 (LEXIS 2023). Though Ohio assesses on a sexennial cycle, a revaluation after three years is typically completed via the triennial update. *See, e.g., Frequently Asked Questions about the 2023 Triennial Update*, BUTLER CNTY. AUDITOR'S OFF., <https://perma.cc/N9YV-5G6D> (last visited Feb. 27, 2024).

266. *See* Alfred Maiello, *Assessment Law Update*, MAIELLO BRUNGO & MAIELLO ATT'YS AT LAW (May 14, 2013), <https://perma.cc/B9TJ-W9V4> (listing the STEB's functions as using statistical methods to calculate each county's CLR, maintaining a reassessments operations manual, creating a database for counties to report values, developing training programs, and standardizing contracting services for reassessment); *Real Property*, MARYLAND DEP'T OF ASSESSMENTS AND TAX'N, <https://perma.cc/A4W8-79LA> (last visited Feb. 8, 2024).

year, phasing in any increases in assessed value over the three-year assessment cycle.<sup>267</sup> The SDAT is responsible for setting the standards by which the state's properties are assessed.<sup>268</sup> The agency also appoints an assessment supervisor for each of the states' counties who reports to the SDAT,<sup>269</sup> and the local assessor then collects the property taxes based on the SDAT's values.<sup>270</sup>

While Maryland has a strong, centralized assessment system, Pennsylvania's assessments are more fragmented because each county completes its own reassessments.<sup>271</sup> Pennsylvania counties decide whether to reassess in-house or contract with third-party appraisal companies to complete the valuation work on their behalf.<sup>272</sup> In stark contrast to the SDAT in Maryland, the STEB's role in Pennsylvania is primarily taking the sales data received from each of the counties and using it to calculate the CLR.<sup>273</sup> Given the haphazard manner in which Pennsylvania's counties assess, it would be beneficial for property owners to have consistent, statewide standards.<sup>274</sup> However, Pennsylvania cannot mimic how Maryland divides counties into thirds, reassessing each county in a different year of the cycle, because such an undertaking likely violates the Uniformity Clause.<sup>275</sup> Previously, when Allegheny County was divided into thirds, and only one third was reassessed in any given year, the court found that there was "a substantial question of constitutionality going directly to the validity of the assessment scheme."<sup>276</sup> This structure is also likely to be found unconstitutional because some properties experience changes in value at different rates than others.<sup>277</sup> For instance, under Maryland law, a property with an unchanged assessment is taxed on its full value for three years whereas a property with a changed assessment would have its increased value spread out over three years, resulting in this

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267. See *A Homeowner's Guide to Property Taxes and Assessments*, MARYLAND DEP'T OF ASSESSMENTS AND TAX'N, <https://perma.cc/T77T-8SEW> (last visited Feb. 8, 2024).

268. See MD. CODE ANN., TAX-PROP. § 2-202 (LEXIS 2023).

269. See *id.* § 2-105.

270. See *A Homeowner's Guide to Property Taxes and Assessments*, *supra* note 267.

271. See ZHOU YANG, PENNSYLVANIA, LINCOLN INST. OF LAND POL'Y 1, <https://perma.cc/6GLD-RQCZ> (last visited Feb. 8, 2024) ("The real property tax system of Pennsylvania is highly decentralized, with numerous variations . . . among the various taxing entities.").

272. See *id.*

273. See Maiello, *supra* note 266.

274. See sources cited *supra* notes 88–89. This change would be particularly helpful to those who own multiple properties across different counties.

275. See *Borough of Greentree v. Bd. of Prop. Assessments*, Appeals & Review, 328 A.2d 819, 825 (Pa. 1974).

276. *Id.*

277. See, e.g., *id.*; *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1225 (Pa. 2009).

property owner not being taxed on their full value until the third year.<sup>278</sup> The resulting difference in taxation among members of the same class would likely violate the Uniformity Clause.

## 2. Ohio's Assessment System

Like Maryland, Ohio also utilizes a form of the three-year assessment cycle. Ohio's counties are each responsible for conducting a full reappraisal every six years and performing a triennial update in which the auditor applies a neighborhood trend factor to values after the cycle's first three years, or triennium.<sup>279</sup> Similar to Pennsylvania, each Ohio county is responsible for conducting its reappraisal, whether by county employees or an outside appraisal firm.<sup>280</sup> Most counties' appraisal cycles do not align with their neighboring jurisdictions.<sup>281</sup> Although Ohio's state-level authority to check county valuations may be weaker than that of Maryland's SDAT, Ohio's Department of Taxation ultimately approves the counties' valuations and trend factors.<sup>282</sup> When counties stagger their appraisal cycle with other counties, the state Department of Taxation can more efficiently oversee counties' appraisal practices and procedures.<sup>283</sup>

Despite Ohio's assessment process being stronger than Pennsylvania's, the triennial update is cause for concern.<sup>284</sup> The triennial update analyzes appraisal and sales studies from the prior three years and any information regarding a property's ability to produce income.<sup>285</sup> The process often results in blanket increases and decreases to property values, but rather than applying this change to the county as a whole, it is applied

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278. See, e.g., *Borough of Greentree*, 328 A.2d at 825; *A Homeowner's Guide to Property Taxes and Assessments*, *supra* note 267 (presenting an example of a phased-in property assessment).

279. See OHIO REV CODE ANN. §5715.33 (2023); see also Sue Lusk-Gleich, *How Reappraisals Affect Your Property Taxes*, KW CAP. PARTNERS, <https://perma.cc/U9B8-L2WU> (last visited Feb. 27, 2024) (discussing how a neighborhood trend factor is derived from sales in each individual neighborhood).

280. See, e.g., Matt Drzik, *Updates on Property Reassessment Provided at Commissioners' Work Session*, BEAVER CNTY. RADIO (Jan. 18, 2023), <https://perma.cc/8445-DH3F>; see also Stephanie Stanley, *Pike Auditor Enters Appraisal Contract with Tyler Technologies, Inc.*, PIKE CNTY. NEWS WATCHMAN (July 28, 2015), <https://perma.cc/YPR6-3V66>.

281. See *Year of Sexennial Reappraisal and Triennial Update for Ohio's 88 Counties 2023–2028*, OHIO DEP'T OF TAX'N, <https://perma.cc/HVM2-5YNH> (last visited Feb. 8, 2024).

282. See OHIO ADMIN. CODE 5703-25-07 (2023).

283. See *id.*

284. See Lusk-Gleich, *supra* note 279 (defining the triennial update as “a review of sales over the period of 3 years, since the last appraisal”).

285. See *Sexennial and Triennial Revaluations*, LAKE CNTY., <https://perma.cc/FK7S-WEAF> (last visited Jan. 18, 2024).

to all properties of a class within a neighborhood or taxing district.<sup>286</sup> Similar to *Clifton*, not all submarkets appreciate or depreciate equally, so when a submarket fails to match the lines of a taxing district, a triennial update results in some properties being over or under-assessed.<sup>287</sup> For individual properties, just because one property is geographically close to another does not mean the fair market value has increased or decreased by the same percentage.<sup>288</sup> These blanket value adjustments could lead to more Uniformity Clause challenges, so Ohio's triennial update will likely not suffice in Pennsylvania.

### B. Taxing Entities' Right to Appeal Assessments

A lack of regular reassessments is not the only issue plaguing Pennsylvania's assessment system. Another problem involves taxing authorities' ability to file property value appeals against landowners within their jurisdiction.<sup>289</sup> Taxing entities, like school districts, are aggressive in pursuing these claims because of the base-year system's failings.<sup>290</sup> Because assessments remain unchanged, often for decades at a time, school districts' only means to access new funding is to increase tax rates or increase the tax base itself.<sup>291</sup> As tax rate increases are unpopular with voters, and can eventually reach statutory caps, school district appeals are often targeted at property owners who do not vote for local elected office, like commercial property owners and out-of-state taxpayers.<sup>292</sup>

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286. See, e.g., Jon Baker, *Triennial Update Brings Higher Property Taxes in Tuscarawas County*, TIMES REP. (Oct. 15, 2019, 3:16 PM), <https://perma.cc/647L-HKBM> (“The increases varied by neighborhood. At least a half dozen neighborhoods around the county saw no increase. Most saw increases of 4.6%, 11%[,] or 18.5%.”). The “class” referred to here is based on property type because Ohio does not treat real property as a single class. See *Real Property Tax – General*, OHIO DEP’T OF TAX’N, <https://perma.cc/9L3M-5Q7R> (last visited Mar. 24, 2024) (identifying non-business property tax deductions and other reductions to non-commercial property types).

287. See generally *Clifton v. Allegheny Cnty.*, 969 A.2d 1197 (Pa. 2009); SBN Staff, *Uneven Commercial Real Estate Market a Challenge for Buyers*, SMART BUS. (Apr. 30, 2021, 10:51 AM), <https://perma.cc/UQ5X-JDYE>.

288. See, e.g., SBN Staff, *supra* note 288 (discussing the differences between the industrial, office, and retail markets in Cleveland, Ohio despite all being classified as commercial for purposes of a triennial update).

289. See 53 PA. CONS. STAT. § 8855 (2022).

290. See generally Jason Webb, *Welcome Home, Suckers—Constitutional Problems with the Pennsylvania Property Tax Assessment Appeals System*, 4 PITT. TAX REV. 85 (2006) (discussing the merits, or lack thereof, of the assessment appeals system); *Valley Forge Towers Apts. N, LP v. Upper Merion Area Sch. Dist. & Keystone Realty Advisors, LLC*, 163 A.3d 962 (Pa. 2017) (upholding the constitutionality of taxing entities' ability to appeal property values but narrowing the methodology with which they may select properties for appeal).

291. See Elise Person, *98 Percent of Schools in PA have had to Raise Taxes to Provide an Adequate Education*, LOCAL 21 NEWS (Apr. 7, 2023, 6:17 AM), <https://perma.cc/UD46-2KP9>.

292. See *Valley Forge Towers Apts.*, 163 A.3d at 966.

These appeals result in similar, neighboring properties being taxed differently because one property's value was contested by the school district, usually due to a recent sale of the property.<sup>293</sup> School districts selectively appeal property values to grow their otherwise stagnant tax bases, further distorting values and straying from uniform taxation.<sup>294</sup>

Twice in the last decade, Pennsylvania's Supreme Court has addressed how school districts selectively appeal properties.<sup>295</sup> Most recently, the justices deadlocked on whether using monetary thresholds that disproportionately target commercial properties in selecting properties to appeal violated the Uniformity Clause.<sup>296</sup> While other states, such as Ohio, provide school districts with the ability to contest valuations, regular reassessment should reduce the number of these appeals.<sup>297</sup> If regular reassessments were to occur, this issue is unlikely to reach the state's highest court because a school districts' tax base would grow with the market instead of relying on assessment appeals.<sup>298</sup>

### C. *A Constitutionally Uniform Assessment System for Pennsylvania*

Because the current base-year system is unconstitutional under both federal and state law,<sup>299</sup> Pennsylvania must devise a new assessment system. The systems in Maryland and Ohio are potential alternatives if they can satisfy Pennsylvania's stringent uniformity standard.<sup>300</sup> To meet this standard, Pennsylvania should adopt the three-year assessment cycle with a new assessment value determined every three years on January 1, thereby eliminating the issues surrounding phase-ins and triennial updates.<sup>301</sup> A three-year reassessment mandate must replace the base-year system in the CCAL and GCAL and leave the current market value approach intact, allowing counties the flexibility to conduct reassessments more frequently than once every three years, if needed.

Opponents may argue that reassessments every three years do not solve all existing issues and that constant revaluations are a waste of

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293. See Noah Fardo, *3 Reasons Allegheny County Needs a Reassessment Now*, FLAHERTY, FARDO, ROGEL, & AMICK (Nov. 8, 2022), <https://perma.cc/4SBB-6GKA>.

294. See sources cited *supra* note 168–169.

295. See *Valley Forge Towers Apts.*, 163 A.3d 962 at 979–80; see also *GM Berkshire Hills LLC v. Berks Cnty. Bd. of Assessment*, 290 A.3d 238, 246 (Pa. 2023).

296. See *GM Berkshire Hills LLC*, 290 A.3d at 260; Matthew Santoni, *Pa. Justices Split Over 'Welcome Neighbor' Tax Appeals*, LAW 360 (Feb. 28, 2023, 6:57 PM), <https://perma.cc/CPL9-GXFT> (resulting in an affirmance of the Pennsylvania Commonwealth Court's decision to uphold the practice).

297. See H.R. 126, 134th Gen. Assemb., Reg. Sess. (Oh. 2022) (limiting to the ability of local governments to contest property values).

298. See sources cited *supra* notes 260–264.

299. See discussion, *supra* Part III.

300. See sources cited *supra* notes 266–287 and accompanying text.

301. See sources cited *supra* notes 266–287 and accompanying text.

government time and taxpayer dollars, but these arguments are misplaced.<sup>302</sup> Opponents may point to Erie County's plan to reassess once every ten years, arguing that once a decade is enough.<sup>303</sup> Others may emphasize that high property taxes are the true problem, not a lack of uniformity amongst property owners.<sup>304</sup> Yet, it is precisely the infrequency of reassessment that creates a substantial under- or overpayment of property taxes.<sup>305</sup> Regular, shorter-term reassessment reflects the taxpayer's liability with the appreciated value of properties that have not recently sold, rebutting the argument of high taxes.<sup>306</sup> In addition, regular reassessment results in a lower likelihood of valuation appeals, thereby reducing assessor's workloads and preventing taxing entities from anticipating any resulting tax refunds from the appeal.<sup>307</sup> While regular reassessment may not solve all Pennsylvanians' complaints, it alleviates many of the existing issues.

Regular reassessments must occur, and the STEB also needs to be reformed. The STEB's role in assisting counties with their reassessments must be increased. The entire reassessment process cannot be entrusted to local assessors. However, the STEB should not be given full assessing authority, like Maryland's SDAT, but should oversee the process by approving valuation procedures and assisting counties with their reassessments, similar to Ohio.<sup>308</sup> The STEB cannot continue to engage in purely mundane responsibilities, like recording counties' self-reported sales and calculating ratios.<sup>309</sup> Regular reassessments would eliminate the need for CLR and other ratios, so the agency would be able to assume these additional oversight duties.<sup>310</sup> Moreover, counties like Allegheny, which have previously exerted improper influence over their CLRs, will require increased oversight.<sup>311</sup> While it may be argued that the Commonwealth is usurping local authority, additional supervision over

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302. See, e.g., Harrison, *supra* note 92.

303. See DiPaolo, *supra* note 87; but see McNickle, *supra* note 264.

304. See Harrison, *supra* note 92.

305. See Justin Higginbottom, *State Provisions for Property Reassessment*, TAX FOUND. (Apr. 29, 2010), <https://perma.cc/WM9R-X3LQ> (explaining that "variations in market value necessitate regular *reassessment* of the property in order to levy an equitable property tax").

306. See *id.*; DiPaolo, *supra* note 87; Clifton v. Allegheny Cnty., No. GD05-028638, 2007 Pa. Dist. & Cnty. Dec. LEXIS 202, at \*64-\*67 (C.P. Allegheny Cnty. June 6, 2007), ("[P]eriodic assessment updates are required to reflect the trends in the market."), *vacated*, 969 A.2d 1197, *remanded to* 2009 Pa. Dist. & Cnty. Dec. LEXIS 235.

307. See DiPaolo, *supra* note 87 ("Frequent reassessments benefit property owners. When the appeals process corrects errors, the data . . . under-lying the assessments improves and yields more accurate values in the next reassessment.").

308. See sources cited *supra* notes 266-283 and accompanying text.

309. See Maiello, *supra* note 266.

310. See 72 PA. CONS. STAT. § 5020-102 (2014); 53 PA. CONS. STAT. § 8802 (2022).

311. See sources cited *supra* notes 177-185 and accompanying text.



local authorities is required when citizens are financially harmed from incorrect sales data submissions that results in unequal tax liability.<sup>312</sup> State oversight would also benefit smaller counties that lack expertise in conducting assessments. Rather than relying on other counties' assessors, a reformed STEB can ensure smaller counties receive the necessary assistance.

Finally, Pennsylvania's reformed assessment system would have to determine whether taxing entities, like school districts, should be allowed to appeal landowners' assessments. As a result of the Pennsylvania Supreme Court deadlock, the selection process for how school districts may appeal properties remains undecided.<sup>313</sup> School districts continue to test their authority to choose properties. First, they tested whether they could only pursue non-voting landowners.<sup>314</sup> Now, they use supposedly neutral monetary thresholds to make that determination.<sup>315</sup> School districts justify this selection by explaining that they do not have the resources to review every assessment within the district.<sup>316</sup> School districts should not be able to utilize "blatant subclassification[s] of property for tax assessment appeal purposes" because it deprives property owners of their rights under the Uniformity Clause of the Pennsylvania Constitution and the Equal Protection Clause of the U.S. Constitution.<sup>317</sup>

Rather than allow school districts to continue to test the limits of appealing property values before running afoul of the Uniformity Clause, the need for school districts to appeal must be eliminated entirely. Regular reassessments would allow values to continually reflect the market and account for recent sales, thereby removing the need for aggrieved taxing authorities to file appeals to begin with. Repealing the base-year system and implementing regular reassessments will bring uniformity to a broken tax system, but only if taxing entities are no longer afforded the right of assessment appeal.

## V. CONCLUSION

Pennsylvania's base-year system of assessment is an unconstitutional violation of both federal equal protection jurisprudence and state uniformity law. By using the same assessment values indefinitely, counties allow property assessments to grow more distorted with each

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312. See Ryan Deto, *Allegheny County Opens Special Appeal Period for 2022 Property Assessments*, TRIB LIVE (Feb. 1, 2023, 1:33 PM), <https://perma.cc/7H8E-8N3J>.

313. See generally *GM Berkshire Hills LLC v. Berks Cnty. Bd. of Assessment*, 290 A.3d 238 (Pa. 2023).

314. See *id.* at 253–54 (Donohue, J. opinion in support of reversal).

315. See *id.* at 253–55.

316. See *id.*

317. *Id.* at 251.

passing year. Over time, these distortions result in properties being over-assessed and under-assessed, contributing to inaccurate tax bills. Though the Pennsylvania Supreme Court has recognized the inherent issues of the base-year system, it continually declines to overturn the entire system and, instead, mandates reassessment for specific counties, punting the constitutional issue to the legislature.<sup>318</sup> Neither the court or the legislature has taken proper action, leading to further litigation and uncertainty.<sup>319</sup> Specifically, the legislature should remember that “the Uniformity Clause prohibits disparate treatment in order to avoid political accountability”<sup>320</sup> and overhaul the system. The courts will not step in to save Pennsylvanians from the base-year system, the legislature must. To attain a fair and uniform assessment system, Pennsylvania should implement a three-year reassessment cycle that increases the STEB’s oversight and eliminates the right of taxing entities to appeal assessment.<sup>321</sup> Uniformity will be achieved only through the repeal and replacement of the broken base-year system.

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318. See, e.g., *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1230–1231 (Pa. 2009); see also *GM Berkshire Hills LLC*, 290 A.3d at 260 (Dougherty, J. opinion in support of reversal) (“[T]he legislature would do well to repeal [the base-year assessment method’s] indefinite use, and enact an assessment period encompassing a sound interval of years.”).

319. See *Clifton v. Allegheny Cnty.*, 969 A.2d at 1232–33 (Baer, J., concurring) (confirming the fears of Justice Baer that “the unlikely prospect of prompt legislative action . . . will result in ongoing uncertainty” and “endless litigation through the Commonwealth”).

320. *GM Berkshire Hills LLC*, 290 A.3d at 260 (Dougherty, J. opinion in support of reversal).

321. See discussion *supra* Part IV.