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Allegheny-Pittsburgh Coal Co. v. County Commission of Webster County

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ALLEGHENY-PITTSBURGH COAL CO. v. COUNTY COMMISSION OF WEBSTER COUNTY

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I. INTRODUCTION

The United States Supreme Court in *Allegheny-Pittsburgh Coal Co. v. County Commission of Webster County*,¹ reversed the West Virginia Supreme Court, and held that the practices of the Webster County Tax Assessor in administering *ad valorem* property taxes violated the guarantees of equal protection. West Virginia, like many other states and municipalities, imposes *ad valorem* taxes on real property.² Since an *ad valorem* taxation scheme requires assessments based on the value of property,³ a state or municipality must determine the value of each parcel of property. In West Virginia, all

1. *Allegheny-Pittsburgh Coal Co. v. County Comm'n of Webster County*, West Virginia, 109 S. Ct. 633 (1989).

2. W. VA. CONST. art. X, § 1 (“[T]axation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value . . .”).

3. W. VA. CODE § 11-3-1 (Repl. Vol. 1987).

property is to be assessed at its "true and actual value," defined as current fair market value.⁴

In Webster County, the tax assessor took the legislative requirement of assessment at "true and actual value" as a directive to reassess all recently conveyed land at a percentage of the sale price stated in the deed.⁵ The West Virginia Supreme Court of Appeals found the practice of using the stated consideration in the deed to determine parcel value as not only valid, but legislatively mandated.⁶ This practice also allows West Virginia to recover greater tax revenue because assessments at purchase price will generally be higher, based on recent history of real estate appreciation, and will result in reassessments as frequently as land is bought and sold. Despite the practical merits of the reassessment system adopted in Webster County, serious legal questions arise when such a system is put into practice.

When a county assessor fails to revise assessments (or makes only token increases) of other real property comparable to recently conveyed parcels, a disparity in assessments occurs if recent sale prices differ from those on which other assessments are based. This disparity in assessments (and therefore tax burdens) takes on constitutional dimensions because the West Virginia Constitution requires that all land be assessed on an "equal and uniform" basis.⁷ Further, the United States Constitution allows no state action to deny equal protection under the laws:⁸ the practice of assessing recently conveyed property at the sale price while failing to reassess comparable

4. W. VA. CODE § 11-3-1 (Repl. Vol. 1987) ("All property shall be assessed [by the assessor] . . . at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale . . ."). See also *Killen v. Logan County Commission*, 295 S.E.2d 689 (W. Va. 1982) for a detailed discussion of the definition of "value."

5. *In Re 1975 Tax Assessments Against Oneida Coal Co.*, 360 S.E.2d 560, 562 (W. Va. 1987), cert. granted sub nom. *Allegheny-Pittsburgh Coal Co. v. County Comm'n of Webster County*, W. Va., 108 S. Ct. 1268 (1988), rev'd, 109 S. Ct. 633 (1989).

6. *Oneida Coal Co.*, 360 S.E.2d at 562 (citing *Kline v. McCloud*, 326 S.E.2d 715 (W. Va. 1984)). In interpreting the requirements of W. VA. CODE § 11-3-1 (1987 Repl. Vol.), the court held: "The price paid for property in an arm's length transaction, while not conclusive, is relevant evidence of its true and actual value. Such evidence may not be rejected in favor of a Tax Commissioner's old appraisal." 360 S.E.2d at 562.

7. W. VA. CONST. art. X, § 1 ("No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value . . .").

8. U.S. CONST. amend. XIV, § 1, cl. 4.

property takes on federal constitutional dimensions as well. A dilemma exists in attempting to comply with the legislative requirement of assessment at "true and actual value" while avoiding violation of the West Virginia and United States Constitutions.

The system of assessing recently conveyed property at its purchase price while leaving assessments of comparable unsold property essentially intact has become known as the "welcome stranger" approach.⁹ The "welcome strangers" in *Allegheny-Pittsburgh Coal Co. v. County Commission of Webster County*,¹⁰ are four coal companies who purchased property in Webster County, West Virginia.¹¹ After exhausting the legal channels available in West Virginia to have their assessments equalized to that of surrounding property, the coal companies asked the United States Supreme Court to review the decision of the West Virginia Supreme Court of Appeals.¹² The United States Supreme Court found that the actions of the Webster County Tax Assessor violated the guarantee of equal protection under the United States Constitution.¹³

This paper will discuss the opinion of the Supreme Court in *Allegheny-Pittsburgh Coal Co.*, and its ramifications for the continuing struggle in applying the legislative directive to assess property at "true and actual value." The Court, while limiting the manner in which tax assessors may act, has left open several routes by which county assessors can comply with the "true and actual" standard and thus secure greater tax revenue. As the headline of the *Charleston Gazette* read, "Supreme Court to review W. Va. property tax system,"¹⁴ the decision of the Court has determined, not only the fate

9. See, e.g., Comment, *Hellerstein v. Assessor of the Town of Islip: A Response to Inequities in Real Property Assessment in New York*, 27 SYRACUSE L. REV. 1045, 1061 (1976) ("[N]ewly-acquired parcels, although they may be equivalent in value to the long-held parcels, are assessed for a higher amount due to appreciation of land values. The 'new' owner—the 'stranger'—will pay higher taxes proportionately than the owner of a long-held parcel who 'welcomes' the fact that he consequently pays lower taxes.").

10. *Allegheny-Pittsburgh Coal Co.*, 109 S. Ct. 633.

11. The four coal companies are East Kentucky Energy Corporation, Oneida Coal Co., Inc., Shamrock Coal Co., Inc. and Allegheny-Pittsburgh Coal Co., Inc.

12. *Allegheny-Pittsburgh Coal Co.*, 108 S. Ct. 1268.

13. *Allegheny-Pittsburgh Coal Co.*, 109 S. Ct. 633.

14. The *Charleston Gazette*, March 29, 1988, at 1, col. 1-3.

of the parties involved, but poses alternatives by which *ad valorem* tax assessment may be conducted.

II. STATEMENT OF THE CASE

A. *Facts*

In 1974, Allegheny-Pittsburgh Coal Co. purchased some 7,300 acres of property in Webster County for a total of \$24,624,500.¹⁵ Prior to the sale this parcel was assessed for under \$500,000.¹⁶ In 1976, the Webster County Tax Assessor raised the assessment of the property to fifty percent¹⁷ of the 1974 purchase price, or \$12,312,290.¹⁸ Allegheny-Pittsburgh Coal Co. appealed its annual assessment to the Webster County Commission,¹⁹ but to no avail. The assessments remained at the same level until 1983.²⁰

In 1982, Allegheny-Pittsburgh Coal Co. sold its property to East Kentucky Energy Corporation for \$29,842,500.²¹ In 1984, the Assessor again raised the assessment to fifty percent of the purchase price, or \$14,921,250.²² East Kentucky Energy also attempted to have the assessments lowered by the Webster County Commission, but its efforts proved fruitless.²³ The assessment has remained the same since 1984.²⁴

15. *Oneida Coal Co.*, 360 S.E.2d at 562.

16. *Id.*

17. During the relevant time period, 1977-1982, W. VA. CODE § 18-9A-11 allowed assessments from fifty percent to one hundred percent of market value. However, in 1982 the West Virginia Supreme Court of Appeals ruled that W. VA. CODE § 18-9A-11 violated the "equal and uniform" requirement of W. Va. Const., art. X, § 1 and was thus unconstitutional. *Killen*, 295 S.E. 2d. 689. The provisions of W. VA. CONST. art. X, § 1b were added in 1983, requiring assessments at sixty percent of fair market value if and when the reappraisal statutes are implemented. *See also supra* note 2.

18. *Id.*

19. W. VA. CODE § 11-3-24 (Repl. Vol. 1987) provides that the County Commission of each county will sit as a Board of Equalization and Review, and hear appeals of individual parcel assessments.

20. *Oneida Coal Co.*, 360 S.E.2d at 563.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

In 1977, Shamrock Coal Co., Inc. purchased some 7,783 acres of coal property in Webster and surrounding counties for \$10,000,000.²⁵ The Webster County Tax Assessor assessed the property for \$2,933,800, or fifty percent of the sale price of the proportionate share of property in Webster County.²⁶ In May, 1981, Shamrock Coal Co., Inc. conveyed its land to Oneida Coal Co., Inc. without consideration as a result of corporate affiliation.²⁷ Oneida's assessment remained at \$2,933,800. Shamrock and Oneida also unsuccessfully attempted to have their assessments revised.²⁸

From 1976 until the present the Webster County Tax Assessor has levied taxes against the four companies' real estate, at a weighted rate per acre from eight to thirty-five times that of the weighted rate per acre assessment applied to comparable real estate owned by others and located adjacent to or near that of the petitioners.²⁹ The petitioners, Allegheny-Pittsburgh Coal Co., Shamrock Coal Co., Inc., East Kentucky Energy Corporation, and Oneida Coal Co., Inc., argued that such a disparity in the weighted rate per acre assessments forced them to shoulder a disproportionate share of the Webster County tax burden.³⁰

B. *Procedural History*

Allegheny-Pittsburgh Coal Co., East Kentucky Energy Corporation, Oneida Coal Co., Inc., and Shamrock Coal Co., Inc., appealed to the Circuit Court of Webster County,³¹ contending that the Tax Assessor failed to raise the assessments on comparable property within Webster County that had not been sold for many years.³²

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Allegheny-Pittsburgh Coal Co.*, 109 S. Ct. at 637.

30. Brief for Petitioners, *Allegheny-Pittsburgh Coal Co.*, 109 S. Ct. 633.

31. W. VA. CODE § 11-2-24 (Repl. Vol. 1987) provides that the Circuit Court of the county in which an assessment is disputed shall hear the primary appeal of the assessment.

32. *In Re Allegheny-Pittsburgh Coal Co.*, No. 85-2532, slip op. (Cir. Ct. Webster Co., W. Va. Nov. 22, 1985) and *In Re 1975 Tax Assessments Against Oneida Coal Co.*, 360 S.E.2d 560 (W. Va. 1987), *cert. granted sub nom.* *Allegheny-Pittsburgh Coal Co. v. County Comm'n of Webster County*, W. Va., 108 S. Ct. 1268 (1988), *rev'd*, 109 S. Ct. 633 (1989).

The petitioners argued that such failure violated the West Virginia constitutional requirement of equal taxation and the United States Constitution's Equal Protection Clause. The Webster County Commission countered that comparable properties within Webster County had received three separate ten percent assessment increases during the period covered by petitioners' complaint. The coal companies put on evidence that only a small percentage of comparable properties had received such increases and argued further that the actual increases were insignificant compared to the disparity between per acre assessment of their land and that of similarly situated land.³³

The Circuit Court held as follows:

[t]he evidence clearly demonstrates, and this Court finds, that though the assessor and Board of Equalization and Review were lawfully entitled to consider the consideration declared in petitioners' deeds, in determining their respective assessments, by failing to either equalize assessments by increasing the assessed value of substantially similar property . . . or . . . lower[ing] petitioners' assessments . . . the assessor and Board of Equalization and Review violated the Equal and Uniform clause of Section 1, Article X of the West Virginia Constitution and the Equal Protection clause of the Fourteenth Amendment of the United States Constitution.³⁴

The Circuit Court also decided that, having the ability either to raise the assessment of comparable land to that of petitioners' or alternatively, to lower petitioners' assessments to that of comparable land, it would lower the petitioners' assessments on public policy considerations.³⁵ The Webster County Commission appealed the decision of the Webster County Circuit Court to the Supreme Court of Appeals of West Virginia.

The West Virginia Supreme Court of Appeals, in a three-two decision, accepted the factual findings of the Webster County Circuit Court.³⁶ The Supreme Court of Appeals found that "it was the policy of the assessor's office during the relevant time period to

33. *Id.*

34. *Id.*

35. *Id.* The court held that had it not decided to lower petitioners' assessments, "it seems probable that individual ownership of real estate of the nature owned by petitioners would shortly disappear except for those of great wealth."

36. *Oneida Coal Co.*, 360 S.E.2d at 563.

assess all recently transferred property on the basis of the declaration of consideration of value.”³⁷ However, the Supreme Court of Appeals, in reversing the lower court’s decision, held that the record did not support the Circuit Court’s determination that the practice in Webster County constituted intentional and systematic discrimination.³⁸ The appellate court reasoned that “[t]he uniform use of recent deed values as the basis for appraising property subject to *ad valorem* taxation does not violate W. Va. Const., art X, sec. 1. Any dispute the appellees have with assessments of other landowners in Webster County may be presented to the board of review.”³⁹

Further, the remedy available to an aggrieved taxpayer whose property is assessed at market value, while others’ property is not, is to seek increased assessment of real property comparable to the property assessed at market value.⁴⁰ The court, quoting *Killen v. Logan County Commission*,⁴¹ decided that: “[i]n the future, taxpayers who claim that they are being overassessed in relation to other taxpayers may not have their assessments reduced as long as their property is valued at market value. Instead they should seek to have the assessments of other taxpayers raised to market value.”⁴² The court did not address the alleged violation of the Equal Protection clause of the United States Constitution. From this decision, the four companies petitioned the United States Supreme Court for a writ of certiorari, which was subsequently granted. The coal companies asked the Court to review the practice in Webster County, alleging that such taxing practice violated the United States Constitution’s guarantee of equal protection.

37. *Id.*

38. *Id.* at 564.

39. *Id.*

40. *Id.* at 565.

41. *Killen*, 295 S.E.2d. at 709. The *Killen* decision was based on the West Virginia Supreme Court of Appeals decision in *Tug Valley Recovery Center, Inc. v. Mingo County Comm’n*, 164 W. Va. 94, 111, 261 S.E.2d 165, 173 (1979), in which Justice McGraw, writing for the majority, said that aggrieved taxpayers could either seek to have neighbors’ assessments raised or apply for a writ of mandamus.

42. *Onelda Coal Co.*, 360 S.E.2d at 565.

III. PRIOR UNITED STATES SUPREME COURT RULINGS

The Court, in analyzing equal protection challenges to states' real property tax schemes, has adopted two very different standards of review. The standard used in a particular case depends upon the method of taxation that the state implements. The Court has viewed state tax schemes that treat all taxpayers as one class differently from those schemes that separate classes of taxpayers. In discussing the prior rulings of the Supreme Court, special emphasis will be given to the circumstances pertinent to determining which standard to apply and the remedy available to an aggrieved taxpayer.

A. *State Tax Classification Schemes*

The Equal Protection Clause of the fourteenth amendment requires that "all persons similarly circumstanced be treated alike."⁴³ In *Plyler v. Doe*,⁴⁴ the Court stated that "[t]he initial discretion to determine what is 'different' and what is 'the same' resides in the legislatures of the states."⁴⁵ A classification scheme is a system in which a legislature treats certain individuals differently than others for some limited purpose. In most cases the legislatively adopted classification will receive a low level standard of review, requiring only that the "classification at issue bear some fair relationship to a legitimate public purpose."⁴⁶ Although the Supreme Court normally applies a deferential standard in reviewing legislative classification schemes, the deference is even greater when applied to classifications made by state legislatures in taxation schemes.⁴⁷ Legislatively adopted tax classification schemes will pass equal protection analysis so long as they are not "invidious" or "palpably arbitrary."⁴⁸

In *Allied Stores of Ohio v. Bowers*, the Court held:

43. *F. S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).

44. *Plyler v. Doe*, 457 U.S. 202 (1982).

45. *Id.* at 216.

46. *Id.*

47. *See, e.g., Madden v. Kentucky*, 309 U.S. 83, 88 (1940) ("[I]n taxation, even more than other fields, legislatures possess the greatest freedom in classification.").

48. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 530 (1959).

The States have a very wide discretion in the laying of their taxes when dealing with their proper domestic concerns and not trenching upon the prerogatives of the National Government or violating the guarantees of the Federal Constitution, the States have the attribute or sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the states, in the exercise of their taxing power, are subject to the requirement of the Equal Protection Clause Of the Fourteenth Amendment. *But the clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of taxation.*⁴⁹

Furthermore, the Court “has repeatedly held that the inequalities which result from a singling out of one particular class for taxation or exemption infringes no Constitutional limitation.”⁵⁰ In applying this highly deferential standard, the Court has approved state classification of land uses and special and varied tax rates based upon such classifications. Tax schemes which differ with respect to corporations and individuals have passed equal protection analysis.⁵¹ State tax structures which apply only to specific industries have also withstood constitutional attack. For example, the Supreme Court has upheld *ad valorem* tax schemes which apply only to railroads⁵² or exclusively to public service companies,⁵³ or utilities.⁵⁴ The Court, while permitting classifications based on land usage, has also upheld classification systems based, not on the use of the land, but on administrative convenience and expense in the measurement of a tax.⁵⁵ In *Aero Transit Co. v. Georgia Public Service Commission*,⁵⁶ the Court allowed different treatment of small income or small taxpayers from that of wealthier taxpayers.⁵⁷

49. *Id.* (emphasis added).

50. *Carmichael v. Southern Coal Co.*, 301 U.S. 495, 509 (1937) (citing *Mangoun v. Illinois Trust and Savings Bank*, 170 U.S. 283, 293 (1898); *American Sugar Refining Co. v. Louisiana*, 179 U.S. 89, 94 (1900); *Armour Packing Co. v. Lacy*, 200 U.S. 226, 235 (1906); *Armour & Co. v. Virginia*, 246 U.S. 1, 6 (1918); *Alaska Fish Co. v. Smith*, 255 U.S. 44, 48 (1920); *State Board of Tax Commissioners v. Jackson*, 283 U.S. 527, 537 (1931); *Broad River Power Co. v. Query*, 288 U.S. 178, 180 (1933); *Fox v. Standard Oil Co.*, 294 U.S. 87, 97 (1935)).

51. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973).

52. *See, e.g.*, *Columbus & Greenville Ry. Co. v. Miller*, 283 U.S. 96 (1931).

53. *See, e.g.*, *Atlantic Coastline R.R. Co. v. Daughton*, 262 U.S. 413, 421 (1923).

54. *See, e.g.*, *Rapid Transit Corp. v. New York*, 303 U.S. 573 (1938).

55. *Carmichael*, 301 U.S. at 511 (citing *Citizens Tel. Co. v. Fuller*, 229 U.S. 322, 332 (1913); *Hatch v. Reardon*, 204 U.S. 152, 159 (1903); *New York v. Latrobe*, 279 U.S. 421, 428 (1929), *Aero Transit Co. v. Georgia Pub. Serv. Comm'n*, 295 U.S. 285, 289 (1935)).

56. 295 U.S. 285.

57. *Id.* at 289.

Thus, when the United States Supreme Court is confronted with an Equal Protection objection to a scheme of taxation in which a *class* is singled out and forced to pay a higher tax, it will review the classification in a highly deferential manner, upholding all such classifications unless they appear “palpably arbitrary” or “invidious.” But how does one determine whether a state has adopted a classification scheme?

B. *Determining the Existence of a Classification System*

If a state has adopted a classification scheme either in its constitution or by statute, a classification scheme will be deemed to exist.⁵⁸ However, the Supreme Court has been willing to view a taxation scheme as a classification system even where the explicit classification language is absent or where statutory language prohibits classification.⁵⁹

Provisions of the West Virginia Constitution article X, sec. 1 prohibits the establishment of separate classes of taxpayers. The West Virginia Constitution is categorical in its prohibition where it provides that “no one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value”⁶⁰ However, the United States Supreme Court found constitutionally valid at least one classification system that flew in the face of a state constitution’s tax uniformity clause. The Court, in *Nashville, Chattanooga and St. Louis Railway v. Browning*,⁶¹ upheld a Tennessee state practice of taxing railroad land differently from other land despite a Tennessee constitutional tax uniformity clause similar to that of West Virginia Constitution article X, sec. 1. Furthermore, the Tennessee Supreme Court failed to construe the Tennessee constitutional requirement of uniformity as permitting this type of differentiation of taxpayers. Rather the state court merely concluded that the public service company which appealed the case failed to overcome the presumption that the as-

58. See *supra* notes 46-55 and accompanying text.

59. *Nashville, Chattanooga and St. Louis Ry. v. Browning*, 310 U.S. 362 (1940).

60. W. VA. CONST. art. X, § 1.

61. 310 U.S. 362.

sessors acted within the bounds of the state constitution.⁶² Thus the United States Supreme Court was acting without any state directive (either statutory or judicial) in finding the existence of a classification scheme.

The Court in *Nashville* held, in part, that “[D]eeply embedded traditional ways of carrying out state policy . . . are often tougher and truer law than that of the dead words of the written text.”⁶³ The Court was willing to find a classification system because the practice of taxing utility and railroad property at full value while other property was taxed at less than full value was state-wide, had been in place for over forty years and was a rather conventional system.⁶⁴ The Court held that “if the state supreme court chooses to cover up under a formal veneer of uniformity the established system of differentiation between two classes of property, an exposure of the fiction is not enough to establish its unconstitutionality.”⁶⁵

Thus, the Supreme Court has acknowledged the existence of a *de facto* state tax classification system despite explicit state constitutional and judicial language to the contrary. Further the Court has found such *de facto* classification schemes constitutionally permissible. Therefore, when the Court examines a state taxation scheme, it can be expected to determine whether such scheme can be characterized as a classification system, depending on the duration of such a system and its conventionality. If it is ruled a classification system, it will most likely be upheld as constitutional as long as the classifications made by the state are not “palpably arbitrary” or “invidious.”

C. *Characterizing Taxpayers as One Class*

A separate doctrine emerges when discrimination is claimed not *between* classes, but *within* a single class. The second series of cases

62. *Id.* at 367.

63. *Id.* at 369.

64. *Id.*

65. *Id.*

arises under the federal Equal Protection Clause when a state is accused of "discrimination invidious to a particular taxpayer."⁶⁶ The Supreme Court recognizes that "the equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class."⁶⁷ Thus, a right of action is available to individuals who claim that a state's taxation policy violates their right of equal protection. In determining what state taxation acts violate the guarantees of equal protection, the Court has ruled that "intentional systematic undervaluation by state officials of other taxable property contravenes the constitutional right of one taxed at full value."⁶⁸ In other words, the Court has found that if a taxing authority intentionally and systematically assesses property at less than full value while assessing others within the same class at full value, that taxing authority violates the federal Equal Protection Clause.

In *Cumberland Coal Co. v. Board of Revision*,⁶⁹ Pennsylvania assessed all coal property at \$260 per acre despite great differences in actual value.⁷⁰ The Supreme Court found the assessment constitutionally repugnant as an intentional and systematic undervaluation by state officials of some property.⁷¹ "[T]he fact that a uniform percentage of assigned value is used, cannot be regarded as important if, in assigning the values to which the percentage is applied, a *system is deliberately adopted* which ignores differences in actual value"⁷² A system which is not deliberately adopted, but results from "mere errors in judgments" would not by itself violate the Constitution.⁷³ A deliberately adopted system can result in intentional systematic discrimination despite a state's belief in the validity of the system.⁷⁴

66. *Id.* at 368.

67. *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946).

68. *See, e.g., Sioux City Bridge v. Dakota County*, 260 U.S. 441, 445, 446 (1923).

69. *Cumberland Coal Co.*, 284 U.S. 23 (1931).

70. *Id.* at 27.

71. *Id.* at 28.

72. *Id.* at 29 (emphasis added).

73. *Id.* at 25 (citing *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352 (1918); *Southern Ry. Co. v. Watts*, 260 U.S. 519, 526 (1923)).

74. *Id.* (citing *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 35, 37 (1907); *Sioux City Bridge*, 260 U.S. 441, 445.

In *Sioux City Bridge v. Dakota County*,⁷⁵ an assessor in Nebraska assessed a bridge at one-hundred per cent of its market value while assessing all other property and improvements at fifty-five per cent of their value.⁷⁶ Justice Taft, writing for the Court, said that “intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property.”⁷⁷ The rule set out in *Sioux City Bridge* stands despite state constitutional or legislative requirements of assessment at full value.

The question which next arises is whether the taxpayer suffering from discrimination may have the assessment lowered to the level of comparable property or must seek to have the other taxpayers’ assessments raised. The Supreme Court is well settled on this issue. Justice Taft, in *Sioux City Bridge*, stated:

This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute.⁷⁸

The view that a taxpayer discriminated against may have his or her assessment lowered to that on comparable property rather than seek upward revision of neighbors’ assessments was restated in *Cumberland Coal Co.* Justice Hughes quoted from *Sioux City Bridge* “where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.”⁷⁹ In *Township of Hillsborough v. Cromwell*,⁸⁰ the Court ruled similarly, holding that forcing aggrieved taxpayers to seek upward revision of other taxpayers’ assessments is not adequate to protect respondents’ rights under the federal Constitution.⁸¹

75. 260 U.S. 441.

76. *Id.* at 444, 445.

77. *Id.* at 445 (quoting *Sunday Lake Iron Co.*, 247 U.S. at 353). The treatment by the assessor in this case allegedly violated the Equal Protection Clause despite a Nebraska statute requiring assessment at market value.

78. *Id.* at 446.

79. *Cumberland Coal Co.*, 284 U.S. at 29 (quoting *Sioux City Bridge*, 260 U.S. at 446).

80. 326 U.S. 620 (1946).

81. *Id.* at 623.

In summary, if a state or local property tax assessment is attacked on grounds that it discriminates against a taxpayer within a class, the Court will look to see if the discrimination results from an adopted system of assessment rather than from mere random errors in judgment by the assessor. If the Court finds that disparate treatment of taxpayers within a class results from a deliberately adopted system, the Court will conclude that discrimination exists and order the assessment of the aggrieved taxpayer lowered to that of comparable property.

IV. ANALYSIS

A. *United States Supreme Court Ruling*

Chief Justice Rehnquist, writing for a unanimous Court in *Allegheny-Pittsburgh Coal Co.*,⁸² held that the actions of the Webster County Tax Assessor violated the guarantees of Equal Protection provided by the United States Constitution. After reciting the facts and legislative history, the Court decided that all taxpayers in West Virginia are to be treated alike and concluded that the disparate assessments in Webster County resulted from a deliberately adopted system of taxation. The Court held that the practice of the Webster County Tax Assessor did not constitute an adaptation of a state-employed classification scheme.⁸³ Chief Justice Rehnquist stated that "West Virginia has not drawn such a distinction [between newly conveyed parcels and parcels that had remained unsold]. Its Constitution and laws provide that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the state according to its estimated market value."⁸⁴ Not only did explicit state constitutional language prohibit a classification system, but no evidence existed that West Virginia "adopted a different system in practice from that specified by statute."⁸⁵ Because the actions of the Webster County Tax Assessor were not indicative of a statewide

82. *Allegheny-Pittsburgh Coal Co.*, 109 S. Ct. 633.

83. *Id.* at 638.

84. *Id.*

85. *Id.*

practice, the Court was unwilling to find that West Virginia had adopted a *de facto* classification system, separating newly conveyed lands from that land which had remained unsold for a long period of time.⁸⁶ The Court declined to express an opinion whether a legislatively adopted classification system which differentiated between new landowners and those landowners with long-held parcels could withstand an equal protection attack.

The Court refused to accept the County Commission of Webster County's argument that its assessment scheme "is rationally related to its purpose of assessing properties at true market value,"⁸⁷ holding implicitly that such argument is reserved for states employing classification systems.⁸⁸ The County Commission of Webster County seemed to confuse the distinction between differences among classes and discrimination within a class. The Court therefore dismissed the contention that the proper standard of review in *Allegheny-Pittsburgh Coal Co.* is to uphold such taxation scheme unless it proves to be "palpably arbitrary" or "invidious," because such a standard applies only to state tax classification systems.⁸⁹ The Court concluded that the assessor was acting on her own initiative in assessing newly conveyed property at a percentage of the stated consideration while failing to adequately revise assessments of comparable land that had remained unsold.⁹⁰ In following the rule enunciated in *Sunday Lake Iron Co. v. Wakefield*,⁹¹ *Sioux City Bridge*,⁹² and *Cumberland Coal Co.*,⁹³ "[w]e have no doubt that petitioners have suffered from such 'intentional systematic undervaluation by state officials' of comparable property in Webster County."⁹⁴ Chief Justice Rehnquist concluded that "[t]he relative undervaluation of comparable property in Webster County over time therefore denies petitioner the equal protection of the laws."⁹⁵ The actions of the

86. *Id.* at 639. .

87. *Id.* at 637.

88. *Id.* at 637, 638.

89. *Id.* at 638.

90. *Id.* at 639.

91. 247 U.S. at 352.

92. 260 U.S. at 445.

93. 284 U.S. at 28. *See also supra* notes 65-71 and accompanying text.

94. *Allegheny-Pittsburgh Coal Co.*, 109 S. Ct. at 639.

95. *Id.*

Webster County Tax Assessor violated the fourteenth amendment of the United States Constitution. The Court then addressed the remedy available to petitioners to alleviate such discrimination.

The only constitutionally satisfactory remedy for such discrimination is to have the assessments of petitioners' property lowered to those of comparable parcels.⁹⁶ "[a] taxpayer in this situation may not be remitted by the state to the remedy of seeking to have assessments of the undervalued property raised."⁹⁷ The Court cited its previous decisions in *Hillsborough*,⁹⁸ *Sioux City Bridge*,⁹⁹ *Iowa-Des Moines National Bank v. Bennett*,¹⁰⁰ and *Cumberland Coal Co.*¹⁰¹ in holding that "[t]he Equal Protection Clause is not satisfied if a State does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of the class."¹⁰² Thus, the Supreme Court implicitly reverses the West Virginia Supreme Court of Appeals holding in *Killen*,¹⁰³ that the remedy available to an aggrieved taxpayer is to seek upward revision of comparable land.¹⁰⁴

The Supreme Court's decision in *Allegheny-Pittsburgh Coal Co.* has ramifications on how the Court will now examine state taxation schemes. The Court, in not finding a classification system in place in West Virginia, has in effect refused to expand the legal fiction of *de facto* classification schemes, reserving it for only those situations where a state as a whole has been implicitly classifying land for a long period.¹⁰⁵ Such an expansion would have legitimized most taxation schemes, for the standard of review employed by the Court (upholding all such classifications unless "palpably arbitrary" or

96. *Id.*

97. *Id.*

98. 326 U.S. 620.

99. 260 U.S. 441.

100. *Iowa-Des Moines Nat'l Bank v. Bennett*, 284 U.S. 239, 247 (1931).

101. *Cumberland Coal Co.*, 284 U.S. at 28-29. See also *supra* notes 72-75 and accompanying text.

102. *Allegheny-Pittsburgh Coal Co.*, 109 S. Ct. at 639.

103. 295 S.E.2d 689.

104. *Id.* at 709.

105. See *supra* notes 58-61 and accompanying text.

“invidious”) in such situations is so deferential as to be no review at all.

Furthermore, when a taxing practice is held to be discrimination invidious to a particular taxpayer within a class, the Court has upheld, and seemingly will continue to uphold prior rulings that the only constitutionally satisfactory relief is to have assessments lowered to match those of similar undervalued property. The result, lowering assessments to that of systematically undervalued property, prevails despite state constitutional language ordering assessments at market value.

B. *Ramifications for West Virginia ad valorem Property Tax Practices*

The Supreme Court’s ruling in *Allegheny-Pittsburgh Coal Co.* is actually very limited in scope. The Court agreed with the West Virginia Supreme Court of Appeals that using the consideration stated in a deed as a proxy for market value does not violate the federal Constitution.¹⁰⁶ A constitutional violation arises only when the tax assessor discriminates among taxpayers by assessing recently conveyed property at current value while failing to make adequate revisions, within a short period of time, in assessments of comparable land. In addition to the obvious alternative of lowering new buyers’ assessments to comparable old assessments, the Court has left open to the Webster County Tax Assessor (and other taxing authorities) the possible course of determining actual value by using the sale price stated in a deed to assess recently conveyed land, then promptly revising the assessment on all comparable land in the area to reflect the current market value.

Another alternative to avoid constitutional violations while insuring compliance with the true and actual value standard would be to employ the enacted, but yet to be implemented reappraisal statutes.¹⁰⁷ The reappraisal statutes, as written, would require that all

106. *Allegheny-Pittsburgh Coal Co.*, 109 S. Ct. at 637.

107. W. VA. CODE §§ 11-1A-1 to 11-1A-30 (Repl. Vol. 1987). The reappraisal statutes were enacted in 1983.

property be reassessed at sixty per cent of the market value¹⁰⁸ of such property in some base year. It should be mentioned that the reappraisal statutes clearly continue the prohibition of property tax classifications.¹⁰⁹ Nothing in the Supreme Court's *Allegheny-Pittsburgh Coal Co.* opinion would prohibit such a comprehensive reappraisal plan. Furthermore, such a plan would secure greater tax revenue for West Virginia because such a comprehensive reappraisal would reflect the market value of all properties,¹¹⁰ not just of those properties that have been transferred and of properties of their similarly situated neighbors.

V. CONCLUSION

In *Allegheny-Pittsburgh Coal Co.*, the United States Supreme Court held that the Webster County Tax Assessor's practice of assessing all recently conveyed property at a percentage of the stated consideration in the deed, while failing to revise adequately the assessments of comparable parcels of land, violated the Equal Protection Clause of the federal Constitution. The Court upheld a long series of Supreme Court cases holding that the guarantees of equal protection are available to taxpayers forced to shoulder a disproportionate share of the tax burden. The Court rejected the West Virginia practice of requiring taxpayers who have been discriminated against to seek to have others' taxes raised. Once a taxing authority is found guilty of discrimination invidious to a particular taxpayer, the only constitutionally satisfactory remedy is for the assessments of the aggrieved taxpayer to be lowered to that of the assessments of comparable land.

The decision does allow states to use stated consideration in a deed in determining market value of a kind of parcel so long as the determination is applied evenhandedly to all taxpayers similarly situated. The decision provides a perfect opportunity for West Virginia to apply its enacted but not yet implemented comprehensive

108. W. VA. CODE § 11-1A-3(a) (Repl. Vol. 1987) ("'Assessed Value' of any item of property is its assessed value after certification of the first statewide reappraisal and shall be sixty percent of the market value of such item of property regardless of its class or species . . .").

109. *Id.*


110. *Id.*

reappraisal plan that would require all county tax assessors to determine the market value of all parcels in West Virginia and assess them accordingly. The plan would reduce the risk of county assessors' application of their own reappraisal schemes and would prevent actions similar to that held constitutionally impermissible in *Allegheny-Pittsburgh Coal Co.* Such a comprehensive reappraisal plan would help raise some of the public funds which West Virginia so desperately needs by putting overall assessments of property more in line with their actual value.

Tarek F. Abdalla

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