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**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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| NEWARK PROPERTY ASSOCIATION; DELAWARE APARTMENT ASSOCIATION; FIRST STATE MANUFACTURED HOUSING ASSOCIATION; DELAWARE HOTEL & LODGING ASSOCIATION;<br><br>Plaintiffs Below, Appellants<br><br>v.<br><br>STATE OF DELAWARE; MATT MEYER, Governor of the State of Delaware; MARCUS HENRY, New Castle County Executive, DAVID DEL GRANDE, Acting Chief Financial Officer of New Castle County; APPOQUINIMINK SCHOOL DISTRICT BOARD OF EDUCATION; BRANDYWINE SCHOOL DISTRICT BOARD OF EDUCATION; CHRISTINA SCHOOL DISTRICT BOARD OF EDUCATION; COLONIAL SCHOOL DISTRICT BOARD OF EDUCATION; NCC VOCATIONAL TECHNICAL SCHOOL DISTRICT BOARD OF EDUCATION; RED CLAY CONSOLIDATED SCHOOL DISTRICT BOARD OF EDUCATION;<br><br>Defendants Below, Appellees. | No. 449, 2025<br><br>Court Below: Court of Chancery of the State of Delaware<br><br>C.A. No. 2025-1031-LLW |

# PLAINTIFF-APPELLANTS' OPENING BRIEF

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## NATURE OF PROCEEDINGS

This case concerns the legality of tax bills New Castle County intends imminently to issue, pursuant to House Bill 242 (HB242), on behalf of school districts within the County. These bills will tax non-residential property at up to 200% of the rate at which residential property is taxed.

HB242 is literal midnight legislation, enacted to stem a public outcry over the County's first general reassessment of property values in 40 years. That assessment occurred because the Court of Chancery determined that the failure to periodically reassess properties led to a Uniformity Clause violation. In issuing that relief, the Court of Chancery specifically identified the political unpopularity that would result—more than half of homeowners in New Castle County would see higher property taxes. But that remedy, the Court of Chancery determined, was necessary to stop the ongoing constitutional violation. The Uniformity Clause promises uniform taxes, even when that uniformity is not politically popular.

Precisely because of the unpopularity of the general reassessment, the General Assembly adopted HB242 to reconstitute the same tax dis-uniformity that the Court of Chancery sought to correct. This law—and Defendants' implementation of it—is unlawful twice over. Defendants will squarely violate HB242's revenue-neutrality requirement. And the drastic discrimination between residential and non-residential tax rates violates the Uniformity Clause.

## SUMMARY OF ARGUMENT

**I.** Defendants' implementation of HB242 violates the law's plain-text requirement of revenue neutrality. To start, Defendants confessed an obvious uniformity violation with their initial property classifications: over 1,400 properties were classified as residential (thus taxed at a lower rate) while comparable properties were classified as non-residential (thus taxed at a higher rate), or vice versa. Seeking to remedy this blatant Uniformity Clause problem, Defendants committed to reclassifying those properties before issuing revised bills.

HB242 precludes Defendants from issuing new tax bills where the "revenue projected to be collected" "exceed[s] the total amount of revenue" each "district was projected to collect under its original 2025-2026 tax warrant." HB242 § 1(1). As Defendants' own evidence makes clear, the bills Defendants intend to issue undoubtedly "project[]" to collect more than the original tax warrants. That is, because Defendants' late-breaking reclassification of more than 1,400 properties is shifting nearly $1 billion of tax base, the new tax bills Defendants intend to issue imminently will flatly violate this core statutory limitation.

**II.** The Court of Chancery erred in holding that HB242 does not facially violate the Uniformity Clause. The provision does not permit facial subclassifications of real property because real property is a single "class of subjects" requiring "uniform" taxes. Del. Const. Art. VIII, § 1.

The constitutional text confirms that all real property is "the same class of subjects," and thus the General Assembly may not deliberately discriminate between residential and non-residential properties in taxation. The Court below disregarded the text that specifically provides two "except[ions] … otherwise permitted" where certain real property may be taxed differently. This additional text is only necessary if the general requirement considers all kinds of real property a "class of subjects" that must be taxed uniformly.

The only true on-point Delaware precedent is the Court of Chancery's *In re Delaware Public Schools Litigation* decision, which held that the Uniformity Clause requires "similar" "effective rate[s]" of taxation across all types of property, including between "residential property … [and] … commercial property." 239 A.3d 451, 487 (Del. Ch. 2020) ("*Public Schools*").

This text and precedent are consistent with a century-long line of cases from the Pennsylvania Supreme Court interpreting its identical Uniformity Clause, from which Delaware's Clause was "copied." Ex. B ("Op.") 23. Because of the historical convergence of these provisions, the Pennsylvania caselaw is especially persuasive.

Even if the Uniformity Clause leaves room for reasonable subclassifications of real property, HB242 does not make one. The deliberate discrimination between residential and non-residential properties, with taxes on non-residential properties reaching nearly 200% of those on residential properties, bears no relationship to the

tax's objective—funding public schools. Instead, HB242's plain purpose is to shift tax burden from homeowners onto non-residential property owners, recreating the uniformity violation that the reassessment was designed to cure.

## STATEMENT OF FACTS

### A. Legal background

**1.** Article VIII, Section 1 of the Delaware Constitution, the Uniformity Clause, requires that "[a]ll taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." This text was added to the state's constitution in 1897 and copied verbatim from Pennsylvania's constitution. *See In re Zoller's Estate*, 171 A.2d 375, 379 (Del. 1961); A621-622. As this Court has explained, Delaware's Uniformity Clause embodies the fundamental principle that there must be "equality of tax burden" among taxpayers (*Zoller's Estate*, 171 A.2d at 380), and this "principle … is particularly important in the field of real estate taxation" (*Bd. of Assessment Rev. for New Castle Cnty. v. Stewart*, 378 A.2d 113, 115 (Del. 1977)).

In the 1970s, the General Assembly enacted a series of amendments clarifying the scope of this principle, particularly as to real property taxes. First, it added that county councils may "exempt from county taxation" and municipalities may "exempt … from municipal property tax" "such property … as in their opinion will best promote the public welfare." Del. Const. Art. VIII, § 1; *see* 58 Del. Laws, c. 67

(1971). Second, and shortly thereafter, it added that one type of property—that which is "actively devoted to agriculture use"—is valued differently than all other types of property by using only the "value which such land has for agricultural use." 59 Del. Laws, c. 446. Third, at the same time, it added the following phrase—"except as otherwise permitted herein"—to follow the general requirement that "[a]ll taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax," but preceding the county and municipality property-exemption power and agricultural-valuation specification. *See id.*

**2.** Delaware public schools receive funding from both state appropriations and local property tax revenue. *See generally* 14 Del. C. §§ 1701, 1902. The General Assembly delegates to the Boards of Education in each school district the authority to "levy and collect additional taxes for school purposes upon the assessed value of all taxable real estate in the district," with certain exceptions. *Id.* § 1902(a).

Historically, general reassessments were avoided. *See Young v. Red Clay Consol. Sch. Dist.*, 159 A.3d 713, 721-723 (Del. Ch. 2017) (explaining that it had been "nearly thirty-five years" since "New Castle County's last general assessment" due to "powerful disincentive[s] for any civic-minded official to take the lead in reassessing property values"). But recent amendments to the Code now require that "[a]ll real property must be reassessed … at least once every 5 years." 9 Del. C. § 8306(b)(1).

### B. The *Public Schools* decision held that the County's assessment practices violated the Uniformity Clause.

In 2018, a coalition of non-profit organizations challenged county officials' practice of assessing property values using an "indefinite-base-year method"—that is, using valuations from the year of each county's last general assessment, more than three decades earlier. *See Public Schools*, 239 A.3d at 467. Following a bench trial, the Court of Chancery held that the counties' practice violated the True Value Statute (9 Del. C. § 8306(a)) and the Uniformity Clause (Del. Const. Art. VIII, § 1). 239 A.3d at 464.

As to the Uniformity Clause, the Court of Chancery held that "[t]he true test of uniformity is whether effective property tax rates (taxes as a percentage of market value) are reasonably uniform." *Public Schools*, 239 A.3d at 496-497. It found that "[t]he counties' outdated assessments conceal a reality of non-uniformity beneath a cloak of uniformity." *Id.* at 464. Specifically, "taxpayers of the same general class and within the territorial limits of the authority [were] not treated the same" because they experienced "quite different effective rates of taxation." *Id.* at 486.

In concluding that the counties' practice violated the Uniformity Clause, the Court of Chancery examined various measures of uniformity, including "cross-category uniformity" between "residential property" and "commercial property." *Public Schools*, 239 A.3d at 487. Because the decades-old assessments were "unacceptably non-uniform across all three dimensions of uniformity," including "cross-

category uniformity," the Court of Chancery held that "the counties violate the Uniformity Clause by persistently using valuations" from decades earlier. *Id.* at 496.

The Court of Chancery well understood the implications of its constitutional ruling: "New Castle County has estimated that after a general assessment, approximately half of property owners would have their taxes go up." *Id*. at 539.

### C. The County completed a general reassessment to resolve the Uniformity Clause violation.

New Castle County subsequently agreed to complete its first general reassessment since 1983. A201; *see* Stipulation, *In re Delaware Pub. Schs. Litig.*, C.A. No. 2018-0029-VCL, 2021 WL 274765 (Del. Ch. Jan. 26, 2021). The purpose of the reassessment was to align tax obligations with the true market value of properties to remedy non-uniformity across the tax base. A201. In particular, the appreciation of market value in Delaware homes has outpaced the market appreciation of other types of commercial property. *See* A376; A528-529. Thus, for decades, many homes had been relatively underassessed and benefited from artificially low tax bills.

The County (via a contractor) conducted a general reassessment reflecting property value appraisals as of July 1, 2024. A202. The reassessed values were effective for Fiscal Year 2026, which began on July 1, 2025. *See* A202; A569. Pursuant to 14 Del. C. § 1916, the school districts each "calculate[d] a new real estate tax rate" and delivered their warrants to New Castle County in July. New Castle County mailed tax bills for Fiscal Year 2026—the first to reflect the new appraisal values

from the general reassessment—the week of July 21. A203. Payment of these bills was initially due on September 30. A203.

### D. The General Assembly enacted House Bill 242 and the school districts reset their tax rates.

**1.** These tax bills caused an outcry from homeowners; as the Court of Chancery foretold in remedying the Uniformity Clause violation, many homeowners faced higher taxes after the reassessment. The General Assembly convened a special session on August 12, 2025. *See* A203; A572-579. It bypassed the committee process and enacted seven bills, including House Bill 242 (HB242). A203; A581-586.

HB242 authorized school boards within New Castle County to "reset the local school tax rate using a residential and a non-residential tax rate," for the 2025-2026 school year. HB242 § 1(1). The statute requires "[t]he non-residential tax rate" to be "at least equal to the residential tax rate" and not "more than 2 times the residential tax rate." *Id.* And the "total amount of revenue projected to be collected through use of the residential and non-residential tax rates may not exceed the total amount of revenue the district was projected to collect under its original 2025-2026 tax warrant." *Id.* Because the County had already issued tax bills for this year, HB242 requires the County to "supplement any tax bill already issued to taxpayers … and adjust initial billing using the new local school tax rates set by the district," extending the payment deadline to November 30. *Id.* § 1(3).

The stated purpose of HB242 was to shift tax burden from homeowners back

onto non-residential property owners. *See* A708-709 (explaining that the "reason[]" for enacting HB242 was to "address[] the effects of skyrocketing tax bills for some residents by shifting more of the tax burden off of residents and onto corporations, which generally saw large decreases in their property assessments"); A1030 ("[W]e're able to collect the same revenue, but we're able to reduce the rate for the residents versus the commercial.").

**2.** It seems the General Assembly borrowed this idea from New Castle County itself, which in June—just before initial bills were mailed—approved split residential and non-residential County property tax rates for the first time. *See* A750-755. The County ordinance provided that "the term 'residential real property' shall mean property classified as either Residential or Farmland pursuant to New Castle County parcel records as of July 1, 2025," and "the term 'non-residential real property' shall mean property classified as any classification other than Residential or Farmland pursuant to New Castle County parcel records as of July 1, 2025." A753. At the time, the County used its legacy "Hansen system" to classify properties. A488-491. Separately, the County possessed a second set of codes "that distinguish between residential and non-residential properties" from a newer system (the "CAMA system"), which was adopted "as part of the general reassessment." A489.

**3.** Following HB242's enactment, each of the six school boards in New Castle County approved new, higher non-residential tax rates and lower residential rates.

The non-residential tax rates in each district are at least 64% higher than the residential tax rate, and in two of the six districts—Appoquinimink and Christina—the non-residential rate is virtually double the residential rate (99% and 97% higher, respectively). A204-205.

In setting these rates, and to comply with HB242's mandate that the school districts not collect additional revenue in the revised bills, the school districts "follow[ed] the same course that the county followed" in adopting New Castle County's property classifications. A1030. Based on these defined residential and non-residential tax bases, the school districts set their new rates to project the same amount of total revenue as the original tax warrant, down to the penny. *See* A367-368 (Christina School District aimed to collect $201,074,377.54 through its split taxes, precisely what it was projected to collect under the original warrant).

### E. This litigation prompted disclosure of Defendants' mass-reclassification plan.

**1.** Plaintiffs are associations whose members own a diverse array of properties classified as non-residential for tax purposes. A199. These properties range from apartment buildings to hotels to parcels of land that are home to manufactured housing communities. *Id.* Many members' properties, especially apartment buildings, had already sustained significant *increases* in tax burden due to their newly assessed values *before* HB242's enactment. A107-109; A376. Plaintiffs' members faced significant potential harm from the increase in tax rate *again* following HB242's

enactment. *See* A111-117; A400.

Plaintiffs alleged, among other things, that HB242 is unlawful on its face and as applied for violating the Delaware Constitution's Uniformity Clause (Art. VIII, § 1). Plaintiffs also moved for a temporary restraining order and to expedite this action, seeking to temporarily enjoin Defendants from issuing revised tax bills during the pendency of this litigation. The Court of Chancery agreed to resolve the case by October 30, and Defendants agreed not to implement HB242 (or issue new tax bills) in the meantime. Op. 9.

**2.** The parties engaged in expedited discovery, during which Plaintiffs learned for the first time on October 3 that an estimated 4,241 properties were designated incorrectly in the tax billing system (the Hansen system, *see supra* page 9), resulting in 1,382 properties being taxed at the incorrect residential or non-residential rate. A497-498. This concession appeared to stem directly from Plaintiffs' identification of many similarly situated properties being taxed differently by the County—comparable multi-family unit properties, even "sister" apartments one block apart, were differently classified as residential (and thus taxed a lower rate) and non-residential (thus taxed at a higher tax rate). *See* A300-307; A486-487. Defendants admitted that "it is not uncommon for a property's use to change … without [the County] becoming aware of that change in use." A496.

Defendants disclosed that they would systematically change these property

classifications before issuing revised tax bills. A214; A497-498; A830-882.Defendants intend to change at least 966 properties from residential to non-residential, meaning they will be taxed at a higher rate. A497-498. 414 properties will change from non-residential to residential, meaning they will be taxed at a lower rate. *Id*. In identifying the properties for reclassification, Defendants rely on the CAMA system codes. *Id.* The systematic reclassification will result in a net shift in tax base from residential to non-residential property of at least $885 million ($1,001,862,300 - $116,383,300). A839. Based on the list of properties Defendants eventually identified, that corresponds to more than $4 million additional tax revenue for the school districts. A1343.

Defendants later disclosed that their "systematic review of the Property Class data in Hansen and the CAMA system" (A497) failed to capture the full scope of property classification discrepancies. Specifically, Defendants identified 28 more properties that were coded incorrectly as "residential" in *both* the Hansen and CAMA systems. A839.

**3.** Plaintiffs amended their complaint to account for this late-breaking change in Defendants' implementation of HB242. Relevant here, Plaintiffs alleged that this mass reclassification of properties would violate HB242's revenue-neutrality requirement: by reclassifying twice as many properties as non-residential (and thus taxed at the higher rate) than vice versa, the net effect was millions of dollars more

school tax revenue.

The parties filed opening and answering pre-trial briefs, and a bench trial was held on October 20, based upon a largely stipulated record, supplemented by declarations and expert reports. Op. 10.

**F. The Court of Chancery denied Plaintiffs' claims.**

The Court of Chancery issued an Opinion on October 30 denying Plaintiffs' claims. The Court rejected Plaintiffs' argument that the Defendants' last-minute reclassification of properties violates HB242's revenue-neutrality requirement. In the Court's view, the statute's use of the term "projected" allowed for some "administrative corrections." Op. 55-58. It reached this conclusion despite recognizing earlier in its opinion that "[HB242] requires revenue neutrality compared to the original 2025-2026 tax warrant." Op. 47.

As to the Uniformity Clause, the Court held that HB242 did not pose a facial constitutional problem. It concluded that the Uniformity Clause does not bar a taxing authority from sub-classifying real property and that "the General Assembly's differentiation of residential and non-residential classes" was not "unreasonable or arbitrary." Op. 19. The Court of Chancery dismissed the relevance of *Public Schools* as concerning "a different issue." Op. 22.

This appeal followed the entry of a final order and judgment on October 31.

## ARGUMENT

### I. DEFENDANTS' MASS RECLASSIFICATION OF PROPERTIES VIOLATES HB242'S REVENUE-NEUTRALITY REQUIREMENT.

#### A. Question Presented

Does a change in property classification policy that increases this year's projected school tax revenue by over $4 million violate HB242's requirement that the "total amount of revenue projected to be collected through use of the residential and non-residential tax rates may not exceed the total amount of revenue" projected to be collected under the original 2025-2026 tax warrants? This issue was raised (A307-313; A946-952) and decided below (Op. 54-58).

#### B. Scope of Review

The Court "reviews questions of statutory interpretation *de novo*." *Arnold v. State*, 49 A.3d 1180, 1183 (Del. 2012).

#### C. Merits of Argument

Defendants admit that they are reclassifying thousands of properties in a single stroke, a move that will result in more than $4 million in additional tax revenue for the school districts, due to a nearly billion-dollar net increase in the nonresidential tax base. HB242 requires revenue neutrality compared to the original 2025-2026 bills. Systematically reclassifying more than 1,400 properties in a way that will lead to millions of dollars of additional school district tax revenue for 2025-2026 violates this core limitation. Seeking to escape that straightforward conclusion, Defendants

attempt to dissect the individual government actors, contending that the revenue-neutrality requirement applies only to what the school boards projected at the time they reset the rates. That cannot be squared with the statute's text and purpose, both of which support the conclusion that HB242's revenue-neutrality provision acts on all Defendants together, to restrict what bills may be issued through their concerted action.

### *1. Defendants' property-classification pivot indisputably increases the amount of revenue projected to be collected by more than $4 million.*

Plaintiffs have contended that Defendants' implementation of HB242 violates the Uniformity Clause because of widespread disparities in their property classification system, which result in comparable properties being differently classified as residential (and thus taxed at a lower rate) and non-residential (and thus taxed at a higher rate). The quintessential principle of the Uniformity Clause is that "taxpayers within the same general class … be treated the same." *Public Schools*, 239 A.3d at 463. It goes without saying that properties of similar size and function—especially those just one block apart—must be taxed at equal rates to comply with the Uniformity Clause; it is difficult to fathom a more straightforward Uniformity Clause violation than such properties being taxed at vastly different rates.[1]

[1] The Court of Chancery suggested that the County's widespread disparate property classifications do not amount to a constitutional violation because they are "correctable" and therefore not "systemic or pervasive." Op. 25. That reasoning is

In response to Plaintiffs' interrogatories about these discrepancies, Defendants *admitted* that an estimated 4,241 properties were misclassified in their tax billing system. A497; *see supra* pages 11-12. According to Defendants, for at least 1,409 properties, that misclassification will result in the County billing the properties at the wrong tax rate. Op. 25. The upshot is thousands of properties of similar size, value, and function taxed at vastly different rates—in some instances, a 99% differential. Seeking to rectify the obvious Uniformity Clause violation that would result from applying enormously disparate tax rates to well over a thousand properties, Defendants committed to reclassifying all these properties before issuing revised bills. A498; A830-882.

Defendants have *conceded* that this reclassification will result in a nearly billion-dollar net shift in the tax base ($1,001,862,300 shifting from residential to non-residential and $116,383,300 shifting the other way). A839. Based on Defendants' admissions, this net shift to the non-residential tax base would result in more than $4 million additional revenue projected to be collected through use of the split tax rates. A1343.[2]

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incorrect. The constitutional problem is abated only because the County *is correcting* it; it would persist if the problem were correctable but went uncorrected.

[2] Most school districts have *zero* room to collect more revenue. That is because their reset tax rates aimed to collect the full amount that they sought under the original tax warrant. For example, Christina School District designed its reset tax rates to collect the same amount as the original tax warrant, *down to the very penny*:

### *2. The more than $4 million increase in projected tax revenue violates HB242.*

**a.** HB242 provides that "[t]he total amount of revenue projected to be collected through use of the residential and non-residential tax rates may not exceed the total amount of revenue the district was projected to collect under its original 2025-2026 tax warrant." HB242 § 1(1). The plain text of this provision governs *all* the Defendants' actions in sending out revised tax bills: It prohibits the collection of additional tax revenue through "use of the residential and non-residential tax rates." *Id.* The text governs the conduct of all Defendants in implementing HB242, not merely the school boards' conduct at the moment they reset rates.

The Court of Chancery brushed aside the obvious illegality resulting from Defendants' mass-reclassification by focusing on the statute's use of the term "projected." Finding this term "dispositive" (Op. 55), the court concluded that all the revenue-neutrality provision requires is equality of estimates "based on the data available when tax rates were reset within the ten-business-day window after HB242's enactment." Op. 54-55; *see id.* at 55 ("The School Boards were charged with setting a tax rate based on the official County data they possessed in the

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$201,074,377.54. A367-368. Thus, *any* net change in the classification of properties from residential to non-residential will result in an increase in projected revenue over the amount in the original warrants.

moment. Their compliance with HB242 must be judged against that specific, time-bound requirement and the then-available data.").

That reading disregards the text and reduces HB242's key limitation to a trivial formality. The statutory text ties revenue neutrality to function—what is projected from the bills that are *actually* issued: "[t]he total amount of revenue projected to be collected through *use* of the residential and non-residential tax rates." HB242 § 1(1) (emphasis added). The court's construction, by contrast, limits the revenue-neutrality requirement to a single actor (a school board) at a single moment in time (when tax rates were reset), even though the enacted text says no such thing.

Those limitations, apart from being atextual, also make no sense. If the County could, immediately after tax rates were reset by the school districts pursuant to HB242, drastically alter the tax bases for residential and non-residential properties by recategorizing thousands of properties to generate more tax revenue, that would "render [the provision] meaningless." *Magill v. N. Am. Refractories Co.*, 128 A.2d 233, 241 (Del. 1956).

The revenue-neutrality provision has a clear requirement—to ensure that the bills to be issued pursuant to HB242 do not exceed the amount that would have been issued under the "original 2025-2026 tax warrant." If Defendants are permitted to issue new bills as they seek, there is no dispute—none whatsoever—that Defendants

will issue bills in excess of the "original 2025-2026 tax warrant," thus breaching HB242's clear textual limitation.

**b.** The legislative purpose underlying HB242 reinforces the plain meaning of the revenue-neutrality limitation as applying to the projected revenue associated with the bills that are actually issued. "[E]ach part of the statute must be read in context," and in doing so, the Court must "ascertain and give effect to the intent of the legislature." *Daniels v. State*, 538 A.2d 1104, 1109-1110 (Del. 1998)). The statute's purpose is clear: it redistributes tax burden without increasing the overall revenue collected.

The General Assembly enacted HB242 to allow school districts to retroactively set split tax rates to "reset" the balance between residential and non-residential property as a percentage "of the total tax burden" as in previous years, but *without* increasing the total amount of tax raised. *See* A777 ("They can now impose different tax rates on residential and non-residential properties, *so long as … the total revenue raised does not exceed what was originally projected under the previous uniform rate*.") (emphasis added). In enacting HB242, the General Assembly intended to merely redistribute tax burden and preclude school districts from "exceed[ing] the total amount of revenue the district was projected to collect under [their] original 2025-2026 tax warrant[s]." HB242 § 1(1). The statute does not permit Defendants

to circumvent this core limitation by fundamentally changing the non-residential tax base *after* they reset rates under HB242.

**c.** To be sure, there will be subsequent changes in the tax base as a matter of course, such as successful assessment appeals, individual failures to pay tax bills, or property sales or re-developments affecting the applicable rate. That is why the statute uses the term "projected" instead of "actual" revenue. HB242 § 1(1).

But calculating the "projected" amount of total revenue entails knowing at least how the tax bases will be *defined* and *by what method they will be implemented*. To illustrate, consider how the school districts implemented the HB242 rates:

*First*, on June 10, 2025, New Castle County adopted split tax rates, for the first time distinguishing between residential and non-residential property. Notably, the ordinance ties property classifications to County data at a particular moment in time—July 1, 2025. A753.

*Second*, in mid-July, the County applied these classifications in the initial bills issued for *County* tax purposes, while those bills included a single school district tax rate for all properties. A202-203.

*Third*, after the General Assembly enacted HB242 on August 12, the school districts considered split tax rates expressly based on the tax bases dictated by the County's classifications to satisfy HB242's revenue-neutrality requirement. For example, the Chief Financial Officer of the Christina School District stated that the

adopted proposal would

> follow the *same course that the county followed*: splitting the rates into two, using residents and non-residents. The residential rate includes residents and farm. The non-residents includes commercial, utility, industry, and apartments. When we roll those numbers up, we're able to collect the same revenue, but we're able to reduce the rate for the residents versus the commercial. The commercial rate is going up 51%. The residential rate is going down 23%.

A1030 (emphasis added).

Based on the County's defined residential and non-residential tax bases, Christina School District designed its reset tax rates to project the same amount of total revenue as the original tax warrant, *down to the very penny*: $201,074,377.54. A367. As one school board member remarked, there are "a lot of digits after the decimal point" in the rates to accomplish this neutrality. A1047. Yet after Defendants reclassify more than 1,400 properties, Christina School District is projected to collect nearly a million dollars more. A1343.

Put simply, the "total amount of revenue projected to be collected" under HB242's revised rates is necessarily based upon the residential and non-residential tax bases. HB242 § 1(1). And given that the County had just defined and established those tax bases, both by law and in fact, the school districts relied upon the County's contemporaneous work in calibrating their split tax rates to achieve projected revenue neutrality. *See* 2A Sutherland Statutory Construction § 46:6 (7th ed. 2020) ("Identical words used in … a similar[] statute usually have the same meaning.").

Defendants cannot now evade HB242's revenue-neutrality mandate by substantially altering those tax bases—*after* the school districts reset rates based on them—by switching thousands of property codes in the County data when the tax bases are defined by law "as of July 1, 2025." A753.

**d.** The Court of Chancery's remaining reasons for rejecting Plaintiffs' revenue-neutrality claim are unpersuasive.

*First*, the Court reasoned that "HB242 does not bar the County's efforts to correct errors in its own tax classification records" and mischaracterized Plaintiffs' argument as "[r]equiring initial revenue projections to be accurate despite subsequent administrative actions and corrections." Op. 57.

But Defendants' own explanation of their mass-reclassification shows that it is not a mere one-off administrative correction, but rather a policy choice to change the dataset the County will rely on to issue tax bills. According to Defendants, the "Hansen" system was used to classify properties as "residential" or "non-residential" for purposes of County taxes issued in July and the school districts' calculations of split tax rates pursuant to HB242. A489-490. In the Hansen system, properties are designated as the "Property Class" that applied when they were first assessed, and that designation only changes when the County's Assessment Division becomes aware of a change in the property's use. A213; A488-490. Thus, many of these

"Property Class" codes have been stale "[f]or at least the last 20 years, if not longer." A488.

Defendants now choose to rely on the CAMA system's property classification codes—"by cross-checking the Property Codes in Hansen with the property classification codes assigned to each property in the CAMA system" (A837)—to reclassify over 1,400 properties because the County "believes" the "data in the CAMA system are more recent" and there was a "property inspection process undertaken during the general reassessment." A497. But Defendants originally decided *not* to rely on the data in the CAMA system when setting the revised tax rates under HB242—even though the County admittedly possessed that data—because, for multiple reasons, "the property class codes in the CAMA system could not be used to distinguish between residential and non-residential properties for purposes of property taxation." A489-490.

*Second*, the Court dismissed the "full scale of the errors discovered" as "relatively small," based on a comparison between the approximate number of affected properties (1,409) and the total number of properties in the County. Op. 56. The "error rate," of course, is irrelevant to the statutory analysis. It is also the wrong way to frame the problem. To put the $4 million in additional revenue in perspective, the *total shift in tax burden* from residential to non-residential property in one school district (Brandywine) from the split tax rates is approximately $12 million. *See*

A600; A604. A policy change resulting in additional tax burden of a third of that total—even spread across the County—cannot be dismissed as *de minimis*.

*Finally*, the Court's description of HB242 as lacking a "knowledge" requirement is inapposite. Op. 55-56. Plaintiffs are not arguing that HB242 required Defendants to have perfect knowledge of every property's tax classification. What HB242 *does* require, however, is that the total revenue projected to be collected through implementation of split tax rates match the total amount projected under the original tax warrants. Defendants' mass-reclassification of properties from residential to non-residential *will* result in the school districts collecting significantly more tax revenue—millions of dollars more—than originally projected. This violates that revenue-neutrality requirement. *See supra* pages 16-19.

* * *

If Defendants issue new tax bills pursuant to HB 242, they will be projected to collect more tax revenue than was projected under the original 2025-2026 tax warrants. This squarely violates the key statutory limitation in HB242. This Court should reverse the Court of Chancery's contrary holding.

## II. HB242 IS FACIALLY UNCONSTITUTIONAL.

### A. Question Presented

Does HB242's discrimination between residential and non-residential property violate the Uniformity Clause of the Delaware Constitution (Article VIII, Section 1)? This issue was raised (A318-335; 965-983) and decided below (Op. 15-24).

### B. Scope of Review

The Court "review[s] questions of law and constitutional claims *de novo*." *Capriglione v. State ex rel. Jennings*, 279 A.3d 803, 806 (Del. 2021).

### C. Merits of Argument

The Uniformity Clause requires that "[a]ll taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." Del. Const. Art. VIII, § 1. The Court has explained that this constitutional provision "should be construed in the light of the fundamental principle which it embodies," that there must be "uniform and equal distribution of the tax burden among the taxpayers upon whom the tax is imposed." *Zoller's Estate*, 171 A.2d at 379-380.

HB242 violates this constitutional requirement under any analysis. The Uniformity Clause prohibits HB242's express discrimination between residential and non-residential properties because real property is a single "class of subjects" requiring "uniform" taxes. In any event, HB242's classification here—and the School Boards' vastly different tax rates—is irrational and thus unconstitutional because the

differential treatment bears no relationship to the users and beneficiaries of the tax's objective, public schools.

HB242 and its implementation are thus impermissible under the Uniformity Clause.

### *1. The Uniformity Clause does not permit discrimination between residential and non-residential properties at all.*

Article VIII, Section 1 of the Delaware Constitution does not permit deliberate discrimination between residential and non-residential properties in taxation. Indeed, this Court has expressly noted that the Uniformity Clause "is particularly important in the field of real estate taxation" (*Bd. of Assessment Review*, 378 A.2d at 115), and it has distinguished between a "property tax" and a "graduated" income or "estate tax" for uniformity purposes (*Zoller's Estate*, 171 A.2d at 378-379).

*First*, the text of the constitutional provision resolves this question: The multiple express exceptions to the Uniformity Clause make sense only if property is a single "class of subjects." *Second*, the most relevant Delaware precedent—the Court of Chancery's decision in *Public Schools*—squarely concluded that the Uniformity Clause requires taxing residential and non-residential properties alike. *Third*, this result accords with a century-long line of cases from the Pennsylvania Supreme Court interpreting that state's identical Uniformity Clause, from which Delaware's Clause was "copied." Op. 23. In all, the Uniformity Clause does not permit taxing authorities to "systematically treat[] commercial properties differently from other

types of parcels," such as "single-family homes." *Valley Forge Towers Apartments N, LP v. Upper Marion Area Sch. Dist.*, 163 A.3d 962, 975 (Pa. 2017).

**a.** The text of Article VIII, Section 1 resolves this question: real property is a "class of subjects" that must ordinarily be taxed uniformly. "Any analysis of a Delaware Constitutional provision begins with that provision's language itself." *In re Request of Governor for Advisory Op.*, 950 A.2d 651, 653 (Del. 2008). The text shows that, as to property taxes specifically, systematically distinguishing between different types of real property is prohibited. Indeed, Article VIII, Section 1 of the Delaware Constitution was amended twice in the 1970s to clarify just this point. *See* 59 Del. Laws, c. 446; 58 Del. Laws, c. 67 (1971); A449.

*First*, the text sets the general rule that "[a]ll taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, *except as otherwise permitted herein.*" Del. Const. Art. VIII, § 1 (emphasis added). That final exception phrase was added by amendment, clarifying that the remaining text limits the scope of permissible non-uniformity. 59 Del. Laws, c. 446.

*Second*, Article VIII, Section 1 goes on to authorize county councils to "exempt from county taxation" and municipalities to "exempt … from municipal property tax" "such property … as in their opinion will best promote the public welfare." Del. Const. Art. VIII, § 1; *see* 58 Del. Laws, c. 67 (1971). New Castle County has exercised this authority and offers various partial tax exemptions for certain

properties, including properties owned by those who are disabled (New Castle Cnty. Code § 14.06.303), over the age of 65 (*id.* § 14.06.302), or who are disabled veterans (*id.* § 14.06.304). In allowing wholesale *exemptions* from tax, this provision certainly does not allow substantially *differentiated rates* of tax on real property.

*Third*, another 1970s amendment added a provision expressly treating one type of real property—that which is "actively devoted to agricultural use"—differently than all other types of real property by valuing it only at the "value which such land has for agricultural use." 59 Del. Laws, c. 446.

This text makes clear that the general requirement that taxes be "uniform upon the same class of subjects" (Del. Const. Art. VIII, § 1) prohibits setting different tax rates for residential and non-residential properties. It delineates the only circumstances in which different types of real property may be taxed differently: agricultural property may be taxed differently based on its use, and taxing authorities may exempt from taxation entirely other properties that "in their opinion will best promote the public welfare." Del. Const. Art. VIII, § 1. Those are the only two "except[ions] … otherwise permitted herein" to the general rule of "uniform [taxes] upon the same class of subjects." *Id.* Because the Uniformity Clause "affirmatively sets forth" these particular "circumstances where" properties may be treated differently for tax purposes, this "expression of one thing is the exclusion of another." *Brown v. State*, 36 A.3d 321, 325 (Del. 2012). In other words, "the clear implication

is that local governments *may not* otherwise draw distinctions among property." A448.

That the General Assemblies amending the Constitution considered it necessary to add the exception phrase dispels any ambiguity about whether all real property is the same "class" for purposes of taxation. If the general requirement that taxes be "uniform upon the same class of subjects" permitted treating subclassifications of real property as distinct "class[es]," then there would be no need at all for the provision to specifically delineate two "except[ions]" to that general rule. Notably, the only textual exceptions to the general rule concern real property, showing that "[t]he principle of uniformity … is *particularly important* in the field of real estate taxation." *Bd. of Assessment Review*, 378 A.2d at 115 (emphasis added); *see* A447.

Defendants previously tried to minimize the relevance of this text by imagining a distinction between property assessment and tax rates. In their view, Article VIII, Section 1's express differential treatment of land used for agricultural purposes only provides that farmland may be *assessed* differently. But the reason the Uniformity Clause requires properties to be assessed uniformly is precisely to ensure uniform effective tax rates. *See Public Schools*, 239 A.3d at 464 ("[O]utdated valuations mean that owners of the same general class of property pay effective rates that are quite different. … The counties' outdated assessments conceal a reality of non-uniformity beneath a cloak of uniformity."). Article VIII, Section 1's allowance for

agricultural land to be treated differently for assessment functions as an exception for such land to have a different effective tax rate. Indeed, it would otherwise be a peculiar exception to the rule that "[a]ll taxes shall be uniform upon the same class of subjects." Del. Const. Art. VIII, § 1.

The Court of Chancery did not engage with this most probative aspect of Article VIII, Section 1's text. After acknowledging that Plaintiffs "focus[ed]" on the amendments that specify exactly two instances "otherwise permitted herein" where real property may be taxed non-uniformly, the Court simply reverted to the text of the general prohibition and reasoned that the phrase "upon the same class of subjects" "presumes … classification." Op. 16-17. That may be true, but this logic circumvents the critical question, which is whether the text of the general prohibition is best understood to treat all real property as "the same class of subjects." Del. Const. Art. VIII, § 1. It is. As we have explained, it would otherwise be unnecessary for the constitutional text to expressly clarify instances where it is permissible to treat certain types of real property differently. The Court of Chancery did not grapple with this critical textual point at all.[3]

**b.** Precedent is consistent with this result. To start, this Court has twice noted

[3] Instead, it relied upon Justice Holland's book for the proposition that "inherent differences in the nature, character, or use of real property within the same territorial limits may result in different tax classifications." Op. 18 (citing Randy J. Holland, *The Delaware State Constitution* 233 (2d ed. 2017)). But this assertion was unsupported by any citation or authority.

that the Uniformity Clause may have distinct application in the context of real property. In *Zoller's Estate*, the Court distinguished between a "property tax" and the "graduated" "estate tax" at issue; because the latter was "not a property tax" it did "not violate the constitutional requirement of uniformity" despite its "graduated" nature. 171 A.2d at 378-379. And the Court later noted that uniformity "is particularly important in the field of real estate taxation." *Bd. of Assessment Review*, 378 A.2d at 115 (explaining that "in the taxation of real property [uniformity] cannot be achieved without a uniform system of assessment").

The most probative authority is the Court of Chancery's decision in *Public Schools*. That decision—which instigated the reassessment here after holding that the counties' method of assessment was unconstitutionally dis-uniform—adopted the same understanding of the Uniformity Clause that Plaintiffs set forth here.

*Public Schools* addressed a Uniformity Clause challenge to the Delaware counties' failure to update the assessed values of properties for decades. 239 A.3d at 495-496. The Court recognized that one "dimension of uniformity" in real property taxation is that there be "similar" "effective rate[s]" of taxation between "one category (such as residential property) … [and] another category (such as commercial property)." 239 A.3d at 487. When one "category of property … pay[s] a higher effective rate and bear[s] a relatively greater share of the tax burden," it is "a non-uniform system." *Id.* The Court found that, among other "dimensions," there was

"cross-category" non-uniformity "between commercial and residential property," leading to its conclusion that "the counties' systems of tax assessment" were "unconstitutional" under the Uniformity Clause (*id.* at 496-497), which "requires all taxpayers within the same general class to be treated the same" (*id.* at 463).

The court below mistakenly suggested that *Public Schools* solely addressed "disparate valuations." Op. 21-22. *Public Schools* focused on that issue because "[t]he fact that property owners pay the same nominal rates creates a mirage of uniformity." 239 A.2d at 486. The north star of the decision, however, was the "effective tax rate" (*e.g.*, *id*. at 487, 497).

That is, *Public Schools* held that, for purposes of the Uniformity Clause, "[t]he true test of uniformity is whether effective property tax rates (taxes as a percentage of market value) are reasonably uniform." *Id.* at 496-497. And effective property tax rates, as Defendants' own expert has confirmed (A889), is simply the product of valuation times the nominal tax rate. In other words, the counties' non-uniform valuation methodology was only a Uniformity Clause violation because it led to "taxes" that were not "uniform upon the same class of subjects" within the taxing district. Del. Const. Art. VIII, § 1.

HB242 thus writes into law the dis-uniformity that was previously hidden behind a "mirage." *Public Schools*, 239 A.2d at 486. The court below failed to recognize this constitutionally fatal result.

In the end, no Delaware court has ever upheld differential tax rates between residential and non-residential properties. Defendants previously relied upon two non-binding lower court cases that taxed property differently based upon their location and whether they would benefit from the object of the tax, but these cases are readily distinguishable for that reason—they draw classifications based on location to *avoid* inequities in tax burden, not to create them, as HB242 does. *See infra* page 41; *Clearfield Bituminous Coal Corp. v. Thomas*, 9 A.2d 727, 731 (Pa. 1939) ("[T]he right of classification is allowed in order to avoid or correct inequalities, never to create them.").[4] The most relevant Delaware precedent is thus *Public Schools*.

**c.** In construing the Uniformity Clause, the Court has previously relied on Pennsylvania precedent, given that state's "identical" clause, which Delaware explicitly "borrowed." *Zoller's Estate*, 171 A.2d at 379; *see also* A621-622.

This Court, in holding that "[u]niformity of taxation means equality of tax burden," thus explicitly looked to a line of cases from the Pennsylvania Supreme

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[4] *Green v. Sussex County*, 668 A.2d 770, 772, 777 (Del. Super. Ct. 1995) (holding that it was constitutionally permissible to "allocate the costs of sewage facilities to those who benefit from them"); *Philadelphia, B. & W. R. Co. v. Mayor and Council of Wilmington*, 57 A.2d 759, 765 (Del. Ch. 1948) (holding that it was constitutionally permissible to treat "rural property" differently than "urban" property because rural property "ordinarily derives little or no benefit from being included in the city limits"). Although the Court affirmed *Green* in an unpublished decision pursuant to the Appellees' motions to affirm under Rule 25(a), *Green* did not concern classifications of different types of property unmoored from the benefit derived from the tax. 667 A.2d 1319 (Table).

Court. *Zoller's Estate*, 171 A.2d at 379-381 (citing *Moore v. Sch. Dist. of Pittsburgh*, 13 A.2d 29 (Pa. 1940); *Commonwealth v. White*, 19 A. 350 (Pa. 1890); *Kelley v. Kalodner*, 181 A. 598 (Pa. 1935)). And this Court has elsewhere adopted reasoning of Pennsylvania constitutional case law "based upon [the Delaware provision's] historical convergence … with the same provision in the Pennsylvania Constitution." *Jones v. State*, 745 A.2d 856, 865-866 (Del. 1999) (analyzing "search and seizure provision" in the Delaware Constitution, which was "based upon a similar provision in the Pennsylvania Declaration of Rights").

The Pennsylvania Supreme Court has held—in many cases for more than a century—that "all property in a taxing district is a single class, and, as a consequence, the Uniformity Clause does not permit the government, including taxing authorities, to treat different property sub-classifications in a disparate manner." *Valley Forge*, 163 A.3d at 975. The cases are too many to count on one hand:

- "[A]ll properties in the relevant taxing district are comparable properties … as all real estate is a class which is entitled to uniform treatment." *Downingtown Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 913 A.2d 194, 199 (Pa. 2006).
- "With property taxation, real property *is* the classification." *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1212 (Pa. 2009).
- "[A]ll real estate is a constitutionally designated class entitled to uniform

treatment." *Westinghouse Elec. Corp. v. Bd. of Prop. Assessment, Appeals & Rev. of Allegheny Cnty.*, 652 A.2d 1306, 1314 (Pa. 1995).

- "[A]ll properties are comparable in constructing the appropriate ratio of assessed value to market value." *Deitch Co. v. Bd. of Prop. Assessment, Appeals & Rev. of Allegheny Cnty.*, 209 A.2d 397, 402 (Pa. 1965).
- "In applying this provision of our Constitution to the taxation of the real estate, it is clear that *all* real estate is the class entitled to uniform treatment and that the ratio of assessed value to market value adopted by the taxing authority—be it 20%, 60% or 100%—must be applied equally and uniformly to all real estate within the jurisdiction of such authority." *McKnight Shopping Ctr., Inc. v. Bd. of Prop. Assessment, Appeals & Rev. of Allegheny Cnty.*, 209 A.2d 389, 392 (Pa. 1965).

For over a century, the Pennsylvania Supreme Court has held that it violates the Uniformity Clause to subject different types of real property within a jurisdiction—including residential and non-residential property—to unequal tax burden. In 1909, that court held that "the rule of uniformity must be applied to all kinds of real estate as a class," and so "[i]t will not do to assess farm lands at one-fifth their actual value, dwelling houses at one-third, manufacturing establishments at one-half, and coal lands at full value." *Del., L. & W. R. Co.'s Tax Assessment*, 73 A. 429, 432 (Pa. 1909). The court thus rejected efforts to shift real estate taxes to manufacturing and

coal: "The Constitution says the valuation must be uniform on the same class of taxable subjects, and real estate is a taxable subject of a particular class, and coal lands are real estate." *Id*.

The Pennsylvania Supreme Court later addressed the exact type of classification here and held that it violates the Uniformity Clause to "systematically treat[] commercial properties differently from other types of parcels, most notably single-family homes." *Valley Forge*, 163 A.3d at 975. This holding was unsurprising; it necessarily follows from the well-established principle that the Uniformity Clause requires "equalization across all potential sub-classifications of real property (for example, residential versus commercial)." *Clifton*, 969 A.2d at 1212 n.21.

In *Valley Forge*, the school district concentrated its assessment appeals "solely on commercial properties, including apartment complexes … because these properties' values were generally higher than those of single-family homes, and hence, raising their assessments would result in a greater tax-revenue increase than doing the same with under-assessed single-family homes," and because "it would be politically unpopular to appeal" the assessments of homeowners "who vote in local elections." 163 A.3d at 966. This "strategy results in a higher effective tax rate for apartment complexes than for single-family homes." *Id.* at 976. The Pennsylvania Supreme Court held that such a "sub-classification … drawn according to property type" was prohibited by the Uniformity Clause. *Id.* at 978. The school district's

"intentional, systemic disparate treatment of" commercial properties from residential homes was thus constitutionally impermissible. *Id.* at 977.

The Court of Chancery dismissed this persuasive, consistent caselaw because it mistakenly understood it to be a recent innovation. But Pennsylvania's precedent is not "uneven" on this point. Op. 24. It is not just "modern Pennsylvania precedent viewing real property as a single class" (Op. 23)—the Pennsylvania Supreme Court has consistently held for more than a century, dating back almost to the time that Delaware borrowed that state's Uniformity Clause, that "the rule of uniformity must be applied to all kinds of real estate as a class," and thus there cannot be distinctions between "farm lands," "dwelling houses," "manufacturing establishments," and "coal lands." *Del., L. & W. R. Co.'s Tax Assessment*, 73 A. at 432. Pennsylvania thus did not "shift[] to [a] stricter interpretation of the Uniformity Clause decades after Delaware's adoption." Op. 24. It has held that interpretation since close in time to when Delaware adopted its Uniformity Clause.[5]

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[5] Defendants previously argued that "[i]t was only in the 1960s that the Pennsylvania Supreme Court abandoned its own precedent and interpreted the Commonwealth's uniformity clause as prohibiting property classification for taxation." A1071-1072. Not so. Pennsylvania has held so consistently since at least 1909. *See In re Lower Merion Tp.*, 233 A.2d 273, 276 (Pa. 1967) (discussing *Del., L & W. R. Co.'s Tax Assessment* and explaining that its holding has "remained unchallenged since 1909 [and] has been but[t]ressed three times by this Court in the last five years"). Earlier caselaw merely permitted "real property [to be] classified for the purposes of municipal taxation into urban, rural, and marsh lands" when it had been classified by a law enacted before the Uniformity Clause was added to Pennsylvania's constitution. *Kitty Roup's Case*, 1874 WL 13257, *3-4 (Pa. 1874). And none

**d.** Recognizing that all real property is the same "class" for tax purposes accords with the purpose of the Uniformity Clause, to "sweep away forever the power of the legislature to impose unequal burdens upon the people under the form of taxation." *Fox's Appeal*, 4 A. 149, 153 (Pa. 1886). At the time Pennsylvania, Delaware, and other states adopted their Uniformity Clauses, "[t]he burden of maintaining the state had been, in repeated instances, lifted from the shoulders of favored classes, and thrown upon the remainder of the community … by means of favoritism and class legislation." *Id.*; *see also, e.g.*, *Clearfield*, 9 A.2d at 731 ("It is constantly to be borne in mind that the right of classification is allowed in order to avoid or correct inequalities, never to create them."). Allowing legislative subclassification of real property would give the government nearly unlimited power to force politically disfavored property owners to bear wholly disproportionate tax burdens, with factions "each seeking to shift to the other the burdens and duties which should be carried by their united strength." *Clearfield*, 9 A.2d at 731.

HB242's facial classification—and extraordinarily different treatment—of residential and non-residential properties proves the point. Its express purpose is to "directly impose[] unequal burdens among similarly situated taxpayers" by "shift[ing] burdens from one category of taxpayers—residential property owners—

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of the cases Defendants cite from before Delaware adopted its Uniformity Clause concern classification of property as residential or nonresidential.

to another—non-residential property owners." A452. These are not minor resulting differences in "effective tax rate" (*Valley Forge*, 163 A.3d at 976); rather, HB242 cements into law "intentional, systemic disparate treatment of" residential and non-residential properties (*id.* at 977), to the tune of nearly 100% difference in tax rate. This is precisely the type of "deliberate discrimination" that cannot be squared with the Uniformity Clause. *Brennan v. Black*, 104 A.2d 777, 797 (Del. 1954).

### *2. Even if the General Assembly could authorize differential property tax rates, the classification here is unlawful.*

**a.** The Uniformity Clause analysis "depends upon its own circumstances." *Aetna Cas. & Sur. Co. v. Smith*, 131 A.2d 168, 177 (1957). It must "be construed in the light of the fundamental principle which it embodies"—that "equal distribution of the tax burden" is required. *Zoller's Estate*, 171 A.2d at 379. Whether a government's classification for purposes of taxation is permissible under the Uniformity Clause thus depends on whether the classification is "reasonable" under the circumstances. *Betts v. Zeller*, 263 A.2d 290, 293-295 (Del. 1970). A reasonable classification for purposes of taxation is one which does so "in respects germane to … [the] object of the particular legislation" (*Gottlieb v. City of Milwaukee*, 147 N.W.2d 633, 643-644 (Wis. 1967)) "in order to avoid or correct inequalities, never to create them" (*Clearfield*, 9 A.2d at 731).

**b.** There is no logical reason to subclassify properties as residential versus non-residential and tax them differently to fund public schools—and certainly not in

a way where non-residential properties can only be taxed *higher* than residential properties.

Higher tax rates for non-residential properties cannot be justified because of greater usage or benefit from public schools. To the contrary, it is primarily residential properties that derive property value from being located within a certain public school district, as residents often exert school choice by deciding which school district to live in. A632 (homes "near the top-rated high school in Wilmington" have "a 157% premium" in value). By contrast, there are far fewer school-age children per unit in apartments than in single-family homes. A645 (reporting analysis showing that the average single-family home generated 0.64 school children, while the average apartment generated 0.16); A400 ("71.8% of Delaware children under the age of 18 live in owner-occupied housing, with 28.2% in renter-occupied housing."). HB242 "cannot, therefore, be upheld on the theory that" amplifying tax rates for only non-residential properties "is germane to some general and public purpose or object of the particular legislation." *Gottlieb*, 147 N.W.2d at 643-644. There is no record evidence that rebuts this point.

These circumstances are nothing like those in the only two lower court cases that have upheld ordinances treating properties differently for taxation. Those cases permitted property distinctions either because only certain properties would benefit from upgrades to a new sewage system (*Green*, 668 A.2d at 776) or because "rural

property … ordinarily derives little or no benefit from being included in the city limits" (*Philadelphia, B. & W. R. Co.*, 57 A.2d at 765). These distinctions "allocat[ed] costs to benefits" (*Green*, 668 A.2d at 777), thus the "classification[s]" were drawn "to avoid or correct inequalities," not "to create them" (*Clearfield*, 9 A.2d at 731). HB242, however, arbitrarily "creates inequalities of tax burdens." *Id.* Its classification of residential and non-residential property is therefore unreasonable.[6]

Even if *truly* non-residential property could be taxed differently than residential property, Defendants' classifications here treat property that could only be understood as residential in the ordinary sense of the term—multi-family apartment buildings and land where residents live in manufactured homes—as "non-residential" for purposes of taxation. Defendants' implementation of HB242, therefore, does not reasonably define "non-residential" properties. It is arbitrary to treat properties which are primarily used for residential purposes—such as apartment buildings and land parcels rented to residents living in manufactured homes—differently than single-family homes: all of these properties are used primarily for residential purposes, and most sustained relatively higher increases in assessed value compared to truly non-residential properties, such as retail, office, and industrial space. A376-

[6] Of note, the school-tax splits (up to 99% difference) (A797) are far more extreme than the County-tax split (51% difference) (A751).

377. By treating this "same general class" of properties used for residential purposes differently, HB242 violates the Uniformity Clause. *Public Schools*, 239 A.3d at 463.

As the Pennsylvania Supreme Court recognized in an analogous context, such policy "is regressive because at least part of the increased tax burden is passed on to renters, who are generally poorer than single-family homeowners." *Valley Forge*, 163 A.3d at 976; *see* A400 ("The new property tax rates set pursuant to HB242 are highly regressive and inequitable in that renter household incomes are significantly lower than owner occupied households."). Because apartment buildings run on thin margins, the increased tax burden shifted by HB242 will necessarily be passed on to tenants through higher rent rates. A400. Yet renters have a median income that is roughly *half* the median income for homeowners and are disproportionately burdened by housing costs. A386. And nearly 50% of Delaware renters—compared to 21% of Delaware homeowners—pay more than 30% of their household gross income on housing. A386-388, 659.

Deliberately shifting taxing burden by law to these individuals—and away from homeowners—is particularly irrational here because many of the homeowners least able to absorb an unexpected tax bill increase, such as seniors and disabled veterans, are already entitled to a special school tax credit and County property tax exemption. *See supra* pages 27-28.

**c.** Against all this, Defendants articulate just one supposedly rational reason

for the distinctions drawn in HB242: to ensure that most homeowners' tax bills were "either at or below their bill from last year." A1029; *see also* A709. But this purpose cannot be legitimate here, where the reassessment was conducted precisely to more closely align effective tax rates across all properties. Defendants cannot claim the classification to be reasonable to withstand constitutional scrutiny when its express purpose is to recreate the constitutional violation previously found by the Court of Chancery. *See Public Schools*, 239 A.3d at 464, 486, 539 (recognizing that half of New Castle County homeowners would pay more in property tax to remediate the existing constitutional violation).

HB242's classification of residential and non-residential properties is arbitrary and unreasonable. It does not withstand constitutional scrutiny.

## CONCLUSION

The judgment below should be reversed.

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