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IN THE

Supreme Court of the State of Delaware

NEWARK PROPERTY ASSOCIATION; DELAWARE APARTMENT ASSOCIATION; FIRST STATE MANUFACTURED HOUSING ASSOCIATION; DELAWARE HOTEL & LODGING ASSOCIATION;

Plaintiffs-Below, Appellants,

v.

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;

Defendants-Below, Appellees.

NO. 449, 2025
On Appeal from the Court of Chancery of the State of Delaware,
C.A. No. 2025-1031-LWW

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NATURE OF PROCEEDINGS

On July 21, 2025, New Castle County ("County") issued property tax bills for the County and the six school districts within the County ("School Districts") based upon the recent countywide reassessment of real property ("Reassessment"). Due to dramatic shifts in the tax burden from non-residential to residential properties, the General Assembly passed HB242 on August 12, 2025. HB242 allows the School Districts to charge different tax rates for residential and non-residential properties, and within ten days after HB242 was signed into law (as required), the School Districts reset the tax rates for residential and non-residential properties and reported the new tax rates to the County.

Plaintiffs filed suit on September 12, 2025, seeking to invalidate HB242 and an injunction to prevent the issuance of tax bills. The Court of Chancery set an expedited schedule for a final hearing on the merits. Following discovery and full briefing, a trial on a paper record was held on October 20, 2025. On October 30, 2025, the Court of Chancery issued its Opinion, denying all of Plaintiffs' claims. A final order was entered on October 31, 2025, and Plaintiffs immediately filed an appeal and a motion for an expedited appeal.

On November 1, 2025, this Court granted Plaintiffs' motion to expedite. Argument will be held on November 10, 2025. This is Defendants'-below (Appellees') answering brief on appeal.

SUMMARY OF ARGUMENT

1. **Denied.** The Court of Chancery correctly held that HB242 does not require revenue neutrality but merely required the School Districts to set tax rates based upon the total amount of revenue "*projected* to be collected" under their original 2025-2026 tax warrants–which is exactly what occurred. The Court of Chancery's decision interpreting the plain language of HB242 should be affirmed.

2. **Denied.** The Court of Chancery properly held, based upon settled Delaware law, that the Uniformity Clause of the Delaware Constitution does not prevent the classification of real property between residential and non-residential and the imposition of different tax rates for residential and non-residential properties, as permitted by HB242.

STATEMENT OF FACTS

A. The Reassessment

In 2020, the Court of Chancery held that Delaware's three counties violated the True Value Statute and the Uniformity Clause by failing to reassess real property for decades.[1] In response, the County conducted a general reassessment of all real property countywide.[2] The Reassessment contractor issued its report for the County on April 24, 2025.[3] The assessed values developed in the Reassessment were adopted by the County for the 2025-2026 tax year ("2025 Tax Year").[4] The School Districts are required to utilize the assessed values adopted by the County to establish school property taxes.[5]

B. Property Classification and The Original 2025-2026 Tax Bills

Following the Reassessment, all taxing authorities within the County were required to reset tax rates to reflect the new assessed values of real property within that taxing district.[6] Each School District is authorized under the Delaware Code to reset its tax rates following a general reassessment at a rate that allows the School District to raise up to 10% more tax revenue than was generated prior to the

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1 *See In re Del. Pub. Sch. Litig*., 239 A.3d 451, 485-86, 496-97 (Del. Ch. 2020) ("*Public Schools*").

2 *See* B244 (¶3).

3 *See generally* A506-67; *see also* B245 (¶6); B071 (¶6).

4 B244 (¶3).

5 *See* 14 *Del. C.* § 1912.

6 *See* 9 *Del. C.* § 8002(c); 14 *Del. C.* §§ 1916(b) and 2601(c); 22 *Del. C.* § 1105(a).

reassessment, or, if a new rate of taxation has been approved in a prior referendum but no revenue has been derived from it, then up to 10% "over the revenue announced, projected or calculated to be derived by such voter approval and prior voter approvals."[7] The School Districts delivered their tax warrants to the County by the second Thursday in July.[8] The County is responsible for issuing property tax bills on behalf of the School Districts.[9]

In its Revenue Ordinance for fiscal year 2026, New Castle County Council adopted different tax rates for residential and non-residential properties and directed that the County utilize County parcel records to make that distinction.[10] The County utilized property codes within the County's Hansen system to distinguish between residential and non-residential properties.[11] The Hansen system is the County's legacy property assessment system, which has been replaced by a modern computer assisted mass appraisal ("CAMA") system containing data collected during the Reassessment.[12] The Hansen system is still used for property tax billing and the CAMA data cannot be readily incorporated into Hansen, therefore, the CAMA system data could not be used to make property classifications.[13]

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7 *See* 14 *Del. C.* §§ 1916(b) and 2601(c).
8 *Id.* §§ 1916(d) and 2602(a).
9 *Id.* § 1917(a).
10 A753 (§§10).
11 A489-90 (¶6).
12 *Id.*
13 *Id. See also* A835 (¶9).

The County initially issued post-Reassessment tax bills for both County and School District taxes during the week of July 21, 2025, with taxes due September 30, 2025.[14] Those initial property tax bills reflected tax-splitting between residential and non-residential properties for County taxes, but not for School District taxes.

C. The Shift in Tax Burden Following the Reassessment

Following the Reassessment, the relative share of the property tax base throughout the County shifted significantly from non-residential to residential property.[15] Countywide, the residential share of the tax base increased from 65.87% prior to Reassessment to 75.52% afterward.[16] Similar shifts occurred within each of the School Districts.[17] As a result of this shift in the tax base, the tax burden on residential property owners also increased in the School Districts, while the tax burden of non-residential property owners decreased.[18]

This shift in tax base from non-residential to residential properties occurred because the assessed values of residential properties increased far more than those of non-residential properties as compared with the 1983 values that the County and School Districts previously used to tax real property. Countywide, the assessed values of residential properties increased by 444.49% between 1983 and 2024, while

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14 *See* B092-097.
15 A743 (¶3).
16 A744 (Table 1).
17 A745 (Table 3).
18 A743 (¶3); *see also* B082 (¶6).

assessed values for non-residential properties increased by 240.62%.[19] As a consequence of such disproportionate changes in value, residential property owners faced substantially higher tax bills.

Some decreases in non-residential property taxes were dramatic. For example, although the assessed value of Costco in Newark increased from $7.2 million to $12.7 million, its total tax liability fell from $242,220.16 to $106,727.36.[20] The Amazon facility located on Boxwood Road in Newport increased in assessed value from $95,776,400 to $108,152,700, but its tax liability fell from approximately $3.5 million to approximately $1 million.[21]

D. The Passage of HB242

On August 12, 2025, the General Assembly passed HB242 in response to the dramatic shift in the property tax base from non-residential to residential properties. HB242 allows any school district located in the County to reset its tax rates for the 2025 Tax Year and to reissue a tax warrant using different residential and non-residential tax rates.

The legislative justifications for the adoption of HB242 are straightforward. As indicated by the legislative debates, through HB242, the General Assembly ameliorated the significant hardship that the Reassessment had imposed on

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19 A744 (Table 2).
20 B098-102.
21 B103-111.

residential homeowners as a stop-gap measure for the 2025 Tax Year.[22] Through no fault of their own, residential homeowners in the School Districts saw the assessed value of their properties climb by over 400 percent, resulting in significant increases in tax liability.[23] As Representative Williams stated, "We're just looking to share the burden of the taxes that are being put upon our residents that are, they're struggling, the seniors, the disabled, the vets, you know, the families. . . . I can't go on New Castle County parcel view and find . . . families whose homes hasn't increased. . . . And so all we're attempting to do with this is to share the burden of the tax increases."[24] Similarly, Representative Wilson-Anton stated, "this bill is incredibly important."[25]

HB242 also reflected a countervailing concern that the tax liability of many commercial properties had decreased because of the Reassessment. As Representative Williams observed, "when you have Amazon paying $3.5 million in taxes and it's being reduced to [$]1.1 million, there is a problem here. These

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22 *See* B088 (¶9).

23 A746 (Table 4).

24 B159 (183:17-184:2).

25 B163-164 (201:24-202:12). The Transcript alternates between Representative Williams and Representative Wilson-Anton. This is a typographical error. The entire quote comes from Representative Wilson-Anton, and the hearing video is available at https://legis.delaware.gov/WatchAndListen?view=1&category=221.

businesses come to our communities, yes, provide jobs, but they're also supposed to be investing in our community, into our schools."[26]

Under HB242, the non-residential tax rate established by the School Districts must be at least equal to the residential tax rate and may not be more than two times the residential tax rate.[27] 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 tax warrant.[28] The School Districts had ten business days from the enactment of HB242 to reset the rates and issue a new tax warrant to the County.[29] Upon receipt of a new tax warrant, the County was required to supplement any tax bill already issued for taxpayers in that district and adjust tax bills with an extended deadline for payment of November 30, 2025.[30]

Within ten days after HB242 was enacted, all six School Districts reset the tax rates for residential and non-residential properties according to the requirements of HB242. The School Districts distinguished between residential and non-residential properties using the County data on residential and non-residential properties.

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26 B156 (171:13-19; 172:1-7) (noting a $39 million shift of tax burden from commercial to residential).

27 B091 § 1(1).

28 *Id.*

29 *Id.* § 1(2).

30 *Id.* § 1(3).

E. Limited Classification Errors

Prior to the filing of the underlying lawsuit, the County recognized that there were certain classification errors with respect to certain residential and non-residential properties.[31] County review of these properties yielded a list of approximately 1,409[32] properties with property classification errors that, when corrected, will change whether the property is taxed as residential or non-residential. These changes will convert 994 properties from residential to non-residential, increasing their taxes, and 415 properties from non-residential to residential, decreasing their taxes.[33] The County will correct these errors by running an electronic update to its Hansen property classification system.[34] There are 213,817[35] active parcels in the County, thus the 1,409 parcels with potential classification errors represent an error rate of ***0.659%*** of all properties in the County.

F. Court of Chancery Rules Against Plaintiffs on all Counts

Following trial on a paper record, the Court of Chancery rejected Plaintiffs' claim that Delaware's Uniformity Clause (Article VIII, Section 1 of the Delaware

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31 A497(¶21), 834-835; B381-384 (¶¶3-8).

32 The County initially identified approximately 1,381 properties with potential classification errors and subsequently identified an additional 28 properties with such errors. *See* A497-498 (¶22), 839.

33 *See* A497-98 (¶22), 839. These numbers have been recalculated to reflect changes that occurred as litigation progressed.

34 A837.

35 A831-832.

Constitution) ("Uniformity Clause") prohibits the General Assembly from allowing the School Districts to charge different property tax rates for residential and non-residential properties, as it did with HB242. Citing settled Delaware law,[36] and Justice Holland's treatise on the Delaware Constitution, the Court of Chancery rejected Plaintiffs' Uniformity Clause arguments. The Court correctly concluded that Plaintiffs wrongly conflated the constitutional violations in *In re Delaware Public Schools Litigation*[37] with the issue at bar and correctly held that decision "cannot fairly be read to prohibit the legislature's power to classify property for rate setting purposes once a uniform assessment methodology is in place."[38] The Court also rejected Plaintiffs' reliance on inapposite Pennsylvania law that did not exist when Delaware adopted its Uniformity Clause, remarking that "[t]he uneven evolution of jurisprudence in a sister state does not override Delaware courts' steady interpretation of our Constitution permitting reasonable classification."[39]

The Court of Chancery also rejected Plaintiffs' claim that action taken by the County to correct the misclassification of 1,409 properties, out of the 213,817 properties in the County (an error rate of 0.659%),[40] violates an alleged requirement of "revenue neutrality" in HB242. The plain language of HB242 requires the School

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36 A1284-1286.
37 239 A.3d 451 (Del. Ch. 2020).
38 A1289.
39 A1291.
40 A1292, 1323.

Districts to reset tax rates based upon the total amount of revenue "*projected* to be collected" under their original 2025-2026 tax warrants. The Court of Chancery correctly held that HB242 "requires neutrality *compared to* the original 2025-2026 tax warrant"[41]—not revenue neutrality overall. The Court went on to remark that Plaintiffs' arguments "are belied by the plain text and practical application of HB242."[42]

41 A1314 (emphasis supplied).
42 A1321-1322.

ARGUMENT

I. THE COURT OF CHANCERY'S INTERPRETATION OF HB242 REGARDING REVENUE NEUTRALITY SHOULD BE AFFIRMED.

A. Question Presented

Did the Court of Chancery correctly determine that HB242 does not require actual "revenue neutrality" when HB242 plainly states 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 the district was ***projected*** to collect under its original (July 2025) tax warrant? This argument was raised below in Defendants' pre-hearing answering brief.[43]

B. Standard and Scope of Review

The Court "review[s] issues of statutory construction and interpretation *de novo*,"[44] and issues of constitutional dimension *de novo*.[45]

C. Merits of the Argument

Plaintiffs' arguments are belied by the plain language of HB242. In applying the rules of statutory interpretation, the trial court correctly concluded "[t]he use of 'projected' is dispositive."[46] Plaintiffs now concede that the General Assembly's inclusion of the word "projected" in HB242 was intended to allow for ***some*** change

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43 A1094-1098.

44 *CML V, LLC v. Bax*, 28 A.3d 1037, 1040 (Del. 2011) (citation omitted).

45 *Id.*

46 A1322.

in the amount of revenue to be collected, just not the correction of errors as implemented by Defendants.[47] Plaintiffs' accusation that the Defendants are "circumvent[ing]" HB242 while at the same time acknowledging scenarios in which the amount of revenue can change is illogical and should be rejected.[48]

Plaintiffs' argument that Defendants' correction of roughly 1,400 property classifications constitutes a "policy choice to change the dataset the County will rely on to issue tax bills" is not true.[49] As the trial court correctly concluded, "HB242 does not bar the County's efforts to correct errors in its own tax classification records."[50] To hold otherwise would produce an absurd result, requiring the perpetuation of known errors. The trial court correctly decided Plaintiffs' arguments "are belied by the plain text and practical application of HB242."[51]

1. The Plain Language of HB242 Supports the Court of Chancery's Decision

Plaintiffs' interpretation of HB242 fails due to the plain language of HB242 and standard rules of statutory construction. Plaintiffs errantly argue that the reclassification breaches HB242 because changing property classifications—particularly from residential to the higher taxed non-residential—after fixing rates

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47 Op.Br. 20.
48 *Id.* 19-20.
49 *Id.* 22.
50 A1324; s*ee also* 9 *Del. C.* §§ 1371E, 1371F(a), and 8302(b) (County may correct errors in assessment lists).
51 A1321.

will cause total projected revenue to exceed the School Districts' original projections.[52]

"The rules of statutory construction are well settled."[53] If a statute "is unambiguous, then [courts] give the words in the statute their plain meaning."[54] That is precisely what the trial court did when it read "projected" to mean "projected." Interpreting "projected revenue" as a limitation on the actual revenue collected, as Plaintiffs argue,[55] would produce an absurd result and cripple the County's ability to effectively and fairly collect tax revenue, which necessarily includes the ability to correct errors.

As the trial court correctly held, HB242 did not require School Districts to establish split tax rates that ensured with absolute certainty that ***actual*** revenue would not deviate from projected revenue.[56] If it was the General Assembly's intent to confine the School Districts to this measure, HB242 would have stated "actual revenue," as 14 *Del. C.* § 1916(b) does.[57] Instead, as held by the trial court, HB242

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52 Op.Br. 18-19, 24.

53 *See Taylor v. Diamond State Port Corp.*, 14 A.3d 536, 538 (Del. 2011).

54 *Id*.

55 Op.Br. 18-19.

56 A1322.

57 14 *Del. C.* § 1916(b) limits the School District's to realizing "no more than 10% increase in actual revenue" when calculating a new tax rate after a reassessment.

requires the formation of "a projection—an estimate—using the County's property classification data as it then existed."[58]

As the trial court noted, "[Plaintiffs'] reading of HB242 ignores the practical realities of tax administration. Tax rolls are dynamic. Classifications can change, new properties are added, values are adjusted through appeals, and supplemental assessments occur."[59] The General Assembly's inclusion of the word "projected" accounts for this reality. In fact, Plaintiffs concede HB242 "uses the term 'projected' instead of 'actual' revenue" to account for the imminent "subsequent changes in the tax base as matter of course, such as successful assessment appeals, individual failures to pay tax bills, or property sales or re-developments affecting the applicable rate."[60] Yet, Plaintiffs incorrectly assert that correction of classification errors does not fall within the group of "subsequent changes."[61] Plaintiffs' interpretation creates an absurd result by effectively (and improperly) freezing the tax rolls and "forcing the County to perpetuate known errors."[62]

The unambiguous language of HB242 allowed School Districts to set new tax rates based on projected revenue, not actual revenue. As the trial court correctly held,

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58 A1322.

59 A1324. *See also* 9 *Del. C.* §§ 8338-40 (quarterly supplements to tax rolls) and 8335(d) (farmland roll-back taxes); New Castle Cnty. Code § 14.06.305 (termination of exemptions and pro-rated taxation).

60 Op.Br. 20.

61 *Id.* 19-20.

62 A1324.

"HB242 did not, and realistically could not, require perpetual alignment between the initial projection and the final, actual revenue collected after later data refinements or corrections."[63] Plaintiffs' interpretation of HB242 ignores its plain text and would produce an absurd result inconsistent with the General Assembly's clear intent. Therefore, the Court of Chancery's Opinion rejecting Plaintiffs' contrary arguments should be affirmed.

2. The County Did Not Make a "Policy Change" by Correcting Classification Errors.

Plaintiffs claim that fixing classification errors is a "policy change" rather than a measure taken to correct administrative mistakes. There has been no "policy choice to change the dataset the County will rely on to issue tax bills."[64] The County relied upon the property classifications in the Hansen system to distinguish between residential and non-residential properties when the County split tax rates for County property taxes in July 2025.[65] The same Hansen data will be used to distinguish between residential and non-residential properties for school tax purposes.[66] The County has used CAMA system data to identify errors ***in the Hansen data***, but it is updating ***the Hansen data*** to correct errors, not replacing the Hansen data with

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63 A1322.

64 Op.Br. 22.

65 A488-491 (¶¶3-9). Plaintiffs have misleadingly insisted that the data in Hansen have not been updated for 20 years. Op.Br. 22-23; A306, 958. That is not so. A488 (¶4), 496 (¶20), 833.

66 A500-501.

CAMA data.[67] As the County explained, it could not simply merge the CAMA data into Hansen.[68] Further, the property classification codes in the CAMA system are more complex than those in Hansen and cannot simply replace those in Hansen.[69]

There has been no "policy change" and the facts are not as Plaintiffs mischaracterize them.[70] The County is merely correcting errors regarding certain misclassifications of a limited number of properties. It is correcting the misclassification of approximately 1,409 properties, out of the 213,817 properties in the County, an error rate of 0.659%.[71]

Because Plaintiffs' arguments are belied by the plain language of HB242, the decision of the Court of Chancery should be affirmed.

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67 A497-498 (¶¶22-23), 832-833 (¶5), 835 (¶ 9), 837 (¶12).

68 A489-490 (¶6).

69 *Id*.

70 Plaintiffs contend that the proper "perspective" on the "full scale" of the impact on school district revenue from the County's correction of property classification errors is to compare Plaintiffs' total additional revenue calculation of $4 million to the shift in the tax burden from residential to non-residential for a single school district, Brandywine, of $12 million. Op.Br. 23-24. That comparison is inapt because Plaintiffs are comparing the total revenue change for six school districts to a shift in revenue for just one school district. In fact, Brandywine's additional revenue, per Plaintiffs, of $155,517.70 (A1343) is just ***0.149%*** of Brandywine's projected FY2026 revenue of $104,225,830 (B366 (¶9)). That is the true scale of the impact on school district revenue upon which Plaintiffs' argument relies.

71 A1292, 1323.

II. THE UNIFORMITY CLAUSE PERMITS THE ADOPTION OF SEPARATE TAX RATES.

A. Question Presented

Did the Court of Chancery correctly hold that the Uniformity Clause permits the adoption of separate tax rates for residential and non-residential properties, as permitted by HB242? This argument was raised below in Defendants' pre-hearing opening brief.[72]

B. Standard and Scope of Review

The Supreme Court "reviews *de novo* claims of violations of the United States or Delaware constitutions."[73] And the Court reviews "a trial judge's factual findings made following a bench trial to determine whether they are supported by credible and sufficient evidence in the record."[74]

C. Merits of the Argument

The fundamental legal question is whether the Uniformity Clause requires all property to be taxed as a single class. At least three Delaware courts have interpreted the Uniformity Clause to allow property to be taxed as different classes: the Court of Chancery in 1948 (*Philadelphia B&W R. Co. v. Mayor & Council of*

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72 A686-712.

73 *Hall v. State*, 788 A.2d 118, 123 (Del. 2001).

74 *Miller v. PennyMac Corp.*, 77 A.3d 272 (Table), 2013 WL 5234437, at *1 (Del. Sept. 16, 2013) (citations omitted).

Wilmington),[75] the Superior Court in 1995 (*Green v. Sussex County*),[76] and this Court when it affirmed the *Green* Court's decision that same year.[77]

The *Green* decision, which was summarily affirmed by this Court "for the reasons stated by the Superior Court in its well-reasoned decision,"[78] provided, "[t]he law in Delaware has been clearly established and it is that governments may classify persons **and property** differently for taxation so long as the classification is reasonable."[79] Notably, the three Justice panel considering the *Green* appeal included Justice Randy J. Holland, a preeminent authority on Delaware's Constitution.[80] It is therefore no surprise that Justice Holland later observed in his 2017 treatise that Delaware's Uniformity clause allows different classes of real property for purposes of taxation, noting "inherent differences in the nature, character, or use of real property within the same territorial limits may result in different tax classifications."[81]

Plaintiffs ask this Court to ignore Justice Holland's observation, this Court's affirmance of the *Green* decision, and other Delaware case law supporting different tax classifications for property in favor of adopting an interpretation from

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75 57 A.2d 759 (Del. Ch. 1948).
76 668 A.2d 770 (Del. Super. Ct. 1995).
77 667 A.2d 1319 (Table), 1995 WL 466586 (Del. Aug. 2, 1995).
78 *Id*.
79 668 A.2d at 776 (emphasis supplied).
80 667 A.2d 1319.
81 B702-704.

Pennsylvania that uniquely interprets its uniformity clause to require all property to be taxed as a single class (i.e., absolute uniformity).[82]

Plaintiffs also seek Delaware precedent where there is none to be found from the Court of Chancery's decision in the *Public Schools* case. The *Public Schools* Court was never asked to decide whether different tax classifications for property are permissible, and thus never addressed this issue.[83] The Court should reject Plaintiffs' attempt to expand the *Public Schools* decision beyond its purview.[84]

Simply, Plaintiffs' attempt to overturn "clearly established"[85] Delaware precedent in favor of a minority interpretation from Pennsylvania lacks merit. As the trial court correctly held, Delaware's Uniformity Clause "does not forbid classification; it presumes it."[86] Because Delaware's Constitution allows different tax classifications for property, and because HB242 was a rational exercise of the General Assembly's lawful discretion in establishing reasonable classes, the Court of Chancery's well-developed decision should be upheld.

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82 B199, 201-202, 211.
83 Op.Br. 26, 31-32.
84 *See id.* 31-32.
85 *Green*, 668 A.2d at 770.
86 A1284.

1. The Plain Language of Delaware's Uniformity Clause Allows Different Tax Classifications.

When interpreting the Delaware Constitution, the Court begins with an analysis of the provision's language itself.[87] The "task is to ascertain both the intent of the delegates to the Constitutional Convention of 1897 and the original public meaning of the language at issue."[88] Where the historical understanding is not dispositive, the Court will "consider decisions of this Court and any well-developed decisional law of our State's lower courts."[89] In the absence of a "historical convergence" between the constitutional provision being interpreted and a similar constitutional provision from other states, the Court should decline to follow the lead of another state, particularly where there are conflicting interpretations within that state.[90] Plaintiffs bear the heavy burden of establishing that HB242 "cannot be valid under any set of circumstances."[91]

The presumption of constitutionality is "strong"; it can be overcome only by "clear and convincing evidence of unconstitutionality"; and it "requires deference to legislative judgment in matters 'fairly debatable.'"[92]

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87 *Capriglione v. State ex rel. Jennings*, 279 A.3d 803, 806 (Del. 2021).
88 *Id.* (citation omitted).
89 *Id.* (citations omitted).
90 *See id.* at 808, 810 (citations omitted).
91 *Republic State Comm. of Del. v. Dep't of Elections*, 250 A.3d 911, 916 (Del. Ch. 2020) (quotations omitted).
92 *Higgin v. Albence*, 2022 WL 4239590, at *15 (Del. Ch. Sept. 14, 2022); *Helman v. State*, 784 A.2d 1058, 1068 (Del. 2001).

Delaware's Uniformity Clause provides, in relevant part, that, "[a]ll taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax . . . ."[93] In interpreting this clause, the trial court cited this Court's prior observation that the purpose of the Uniformity Clause is to ensure precisely what the plain language provides: to maintain uniformity within "the same class of subjects within the territorial limits of the authority levying the tax."[94] Again, this language "does not forbid classification; it presumes it."[95] And as noted above, in Delaware, this interpretation applies equally to persons and property—there is no special rule in Delaware requiring a single tax classification for all real property.[96]

In addition to *Green*, different tax classifications for real property were also previously upheld by the Court of Chancery in *Philadelphia, B&W R. Co. v. Mayor and Council of Wilmington*.[97] In *Philadelphia B&W R. Co.*, the Court addressed a challenge under the Uniformity Clause to the taxation at different rates of "rural or suburban" within the City of Wilmington as contrasted with property within the

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93 Del. Const. art. VIII, § 1.

94 A1283 (citing *Brennan v. Black*, 104 A.2d 777, 784 (Del. 1954)).

95 A1284.

96 *See Green*, 668 A.2d at 776.

97 57 A.2d 759 (Del. Ch. 1948). Plaintiffs wave off *Green* and *Philadelphia B&W R. Co.* because neither addressed distinguishing between residential and non-residential properties. Op.Br. 33. Plaintiffs miss the point. Both held that the Uniformity Clause permits the classification of real property.

"built up" portion of the City of Wilmington. The Court held that this classification did not violate Delaware's Constitution, noting that "where real property within the same territorial limits is classified for tax purposes, inherent differences in its nature or character, and even in its use, may be sufficient" to justify separate classification.[98]

The Court explained that "[u]niformity on the same class of subjects only requires that all property, similarly situated, in the territorial limits of the authority levying the tax shall be treated alike."[99] The Court rejected "cases hold[ing] that lands used for agricultural purposes cannot be taxed at a lower rate than other property within the municipality," concluding that, under Delaware's Uniformity Clause, "a more liberal rule is justified."[100] The Delaware Supreme Court has deferred to the General Assembly in other classification cases as well.[101]

In addition to Justice Holland's treatise, Professor Wade Newhouse—a well-respected and oft-cited authority on uniformity clause interpretation nationwide—completed a comprehensive analysis of every state's constitutional uniformity

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98 *Id.* at 765 (citations omitted).

99 *Id.* at 766 (citations omitted).

100 *Id.*

101 *Aetna Cas. & Sur. Co. v. Smith*, 131 A.2d 168, 177-78 (Del. 1957) (deeming classification reasonable); *Wilmington Med. Ctr. v. Bradford,* 382 A.2d 1138, 1344-45 (Del. 1978) (upholding a reasonable classification to distinguish from healthcare facilities not covered).

provisions in 1984.[102] Newhouse observed that Delaware's Uniformity Clause does not require that all real property be taxed as a single class at the same effective rate.[103] After reviewing Delaware's Uniformity Clause and the Delaware case law interpreting the provision, Newhouse agreed with the *Philadelphia B&W R. Co.* Court that Delaware's Uniformity Clause is among the states with the "most permissive effective uniformity limitation" where "property may be classified for application of different effect[ive] rates."[104]

2. Pennsylvania's Stricter Interpretation is Inapposite

Lacking authority from the Delaware courts, Plaintiffs turn to the Pennsylvania Supreme Court's restrictive reading of the Commonwealth's uniformity clause[105] and suggest that Delaware should adopt that interpretation of the Uniformity Clause.[106] Importantly, the Pennsylvania Supreme Court has

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102 Wade J. Newhouse, *Constitutional Uniformity and Equality in State Taxation* (1st ed. 1959), B333-343; Wade J. Newhouse, *Constitutional Uniformity and Equality in State Taxation* (2d ed. 1984), B176-218, 344-360. Newhouse has been cited with approval by several state supreme courts and state supreme court justices. *See Downingtown Area Sch. Dist. v. Chester Cnty. Bd. of Assessment Appeals*, 913 A.2d 194, 200 (Pa. 2006); *In re Nestle USA, Inc.*, 387 S.W.3d 610, 618 n.80-81 (Tex. 2012); *Jarvill v. City of Eugene*, 613 P.2d 1, 17 n.2 (Or. 1980) (Peterson, J. dissenting).

103 *See* B186.

104 B353; *see also* A1284.

105 *See* B193 ("[T]he Pennsylvania clause, the oldest of these potentially liberal uniformity clauses, has been the source of repeated confusion and contradictions which, for real property, have ultimately resulted in one of the stricter effective uniformity limitations among the states.").

106 Op.Br. 33-38.

acknowledged that its more restrictive reading of the Commonwealth's uniformity clause is a result of judicial interpretation, ***not the words in the clause itself***.[107] Restated, Plaintiffs urge this Court to set aside clearly established Delaware precedent and adopt a requirement that all property be taxed as a single class—not because it is required under the plain language of the Uniformity Clause—but because the Pennsylvania courts have interpreted that to be the rule in Pennsylvania, despite the plain language of their own uniformity clause.

Not only has Delaware's judicial interpretation of its Uniformity Clause differed objectively from Pennsylvania's, especially after 1967, but Plaintiffs also overstate the significance, and thus relevance, of Pennsylvania's uniformity clause in framing Delaware's Uniformity Clause. At the time of Delaware's Constitutional Convention in 1897, Pennsylvania's Uniformity Clause provided:

> All taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; **but the general assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity**.[108]

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107 *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1212 (Pa. 2009) ("Although there is no express constitutional requirement that real property be treated as a single class, this Court has consistently interpreted the uniformity requirement of the Pennsylvania Constitution as requiring all real estate to be treated as a single class entitled to uniform treatment.") (citations omitted).

108 Pa. Const. art. IX, § 1 (1874) (emphasis supplied).

While the Delaware delegates may have utilized Pennsylvania's uniformity clause as a starting point for their discussion,[109] a divergence of views soon developed between the framers of Pennsylvania's and Delaware's constitutions.

The debate among Delaware's delegates focused on two key themes. First, while the delegates knew that the Delaware Constitution serves to limit the authority of the General Assembly,[110] they were careful not to be overly prescriptive such that they would unnecessarily constrain the General Assembly.[111] Second, the delegates emphasized the importance that any tax relief not be granted by way of a "special exemption" to one business or institution and not to another similarly situated.[112] Delegate Martin described the intent behind this section:

> 'All men are created equal', and have the same rights. Then it is not right to discriminate against one man and in favor of another. If I am in a certain line of business and my neighbor is in a like business, it is not right to exempt my property, for my benefit, to the detriment of my neighbor. It is not right to exempt one school and tax another. It is not right to exempt any business and tax a like business. It is un-American; it is contrary to, and in violation of the principles of our institutions. If you are going to exempt one you are bound to exempt all of that class.[113]

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109 *See In re Zoller's Estate*, 171 A.2d 375, 379-80 (Del. 1961); B234; *see also* A1290-1291.

110 Charles G. Guyer & Edmond C. Hardesty, *Debates and Proceedings of the Constitutional Convention of the State of Delaware* (1958), B235 ("This is to be organic, basic law. This is not statute law. It goes to the bottom. You want that restriction on the Legislature to be of sufficient scope and power to enable them to act effectively in the matter.").

111 B235.

112 B238.

113 *Id*.

Notably, the delegates were focused on protecting the principle that like property be treated in a like manner and taxation be imposed by general laws and not special laws or selective exemptions.[114] Nowhere in the debates do the delegates seek to prohibit, or otherwise express concern regarding, the classification of different types of property or taxation based on such classification. Indeed, nothing in the plain language of the Uniformity Clause or the debates suggest an intention that real property be taxed as a single class.

Also, the Delaware delegates rejected Pennsylvania's more restrictive approach of enumerating exemptions specifically permitted—thus implying other exemptions not enumerated were not permitted—in favor of providing greater deference to the General Assembly.[115] Justifying this deviation from Pennsylvania's approach, Delegate Cooper noted, "I think in a Constitutional provision we ought not to restrict this matter so absolutely as that the Legislature cannot do those things that are oft times necessary for the public good."[116]

Thus, following debate, the Delaware delegates revised the Uniformity Clause to provide:

> All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, **but the General Assembly may, by**

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114 *Id.*
115 B222-240.
116 B235.

> **general law, exempt from taxation such property as, in the opinion of the General Assembly will best promote the public interests**.[117]

From the beginning, Delaware has deviated from Pennsylvania's more restrictive approach in favor of an approach providing greater deference to the General Assembly. Delaware's Uniformity Clause is not, and has never been, "identical" to Pennsylvania's.[118]

Along with this initial divergence in uniformity clause approach, Plaintiffs overlook the fact that the Pennsylvania courts did not coalesce around the current interpretation of Pennsylvania's uniformity clause requiring a single tax classification for real property until around 1967—approximately 70 years after Delaware adopted its Uniformity Clause.[119] Indeed, as of 1897, Pennsylvania courts interpreted their uniformity clause ***to allow*** different tax rates for different classes of property.[120]

Less than a year after Pennsylvania adopted its uniformity clause in its 1874 Constitution, the Pennsylvania Supreme Court upheld a classification of "rural" land for tax purposes.[121] The Court "agree[d] that the power to classify the subjects of

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117 B240, 242 (emphasis supplied).
118 *See contra* Op.Br. 3 and 26.
119 *See Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist.*, 163 A.3d 962, 973-975 (Pa. 2017).
120 B202-204.
121 *Kitty Roup's Case*, 1874 WL 13257 (Pa. 1874).

taxation is not taken away by the new constitution."[122] Pennsylvania courts continued to issue rulings supporting this position well into the 1900s.[123]

It was only in the 1960s that the Pennsylvania Supreme Court interpreted the Commonwealth's uniformity clause as prohibiting property classification for taxation.[124] Plaintiffs cite to a Pennsylvania case from 1909, *Del., L&W R. Co.'s Tax Assessment,*[125] to suggest that Pennsylvania has struck down different tax classifications for real property "[f]or over a century."[126] *First*, as Newhouse articulates, the *Tax Assessment* Court's decision was based on a ***statutorily*** established minimum class and, "[the Court] was not restrictively reading the uniformity clause so as to translate 'subjects' into a constitutional minimum class of real property."[127] *Second*, it was not until 60 years later, in *Madway,*[128] that the

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122 *Id.* at *3, 5; *see also* B212 (Observing that "[i]n the Pennsylvania study we saw that from the beginning there was no determination that all property constituted a minimum class.")

123 *See Kittaning Coal Co. v. Commw.*, 1875 WL 12929 (Pa. 1875); *City of Williamsport v. Brown*, 1877 WL 13285 (Pa. 1877); *Commw. v. Del. Div. Canal Co.*, 16 A. 584, 588-89 (Pa. 1889); *Jermyn v. City of Scranton*, 62 A. 29 (Pa. 1905); *see also Jones & Laughlin Tax Assessment Case*, 175 A.2d 856, 863 (Pa. 1961).

124 *See Madway v. Bd. for the Assessment and Revision of Taxes,* 233 A.2d 273, 276 (Pa. 1967) (acknowledging that Pennsylvania's uniformity clause had been interpreted as allowing classification in *Kitty Roup's* and resolving split in Pennsylvania authority to prohibit classification). In 1959, Newhouse noted that Pennsylvania's uniformity clause and Pennsylvania precedent interpreting it allowed classification. *See* B343.

125 73 A. 429 (Pa. 1909).

126 Op.Br. 35.

127 B194-198.

128 233 A.2d 273 (Pa. 1967).

Pennsylvania Supreme Court resolved the split in authority regarding the Commonwealth's uniformity clause in favor of the restrictive interpretation.[129]

In *Madway*, the Pennsylvania Court acknowledged that "the uniformity clause of the Pennsylvania Constitution has followed a path through our courts that is easily as unpredictable and winding as Alice's road through Wonderland."[130] As Newhouse observed, post-*Madway*: "[t]hat zigzagging which preced[ed] *Madway* did not end, unfortunately, when Justice Roberts 'put to rest some of this confusion'[;] [s]ince 1874, and the inclusion of the uniformity clause in the [Pennsylvania] constitution of that year, we have seen the court move back and forth between opinions of opposite tenor and substance which could easily lead to opposite results."[131]

The fact that the Pennsylvania Supreme Court did not resolve the split in Pennsylvania authority regarding its own uniformity clause until 1967 makes clear that the Delaware Supreme Court did not adopt Pennsylvania's stricter interpretation of the Uniformity Clause in *In re Zoller's Estate*,[132] decided in 1961. As the trial court correctly held, "[t]he uneven evolution of jurisprudence in a sister state does

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129 B198.
130 B202; *Madway*, 233 A.2d at 276.
131 B202.
132 171 A.2d at 379; *contra* Op.Br. 33.

not override Delaware courts' steady interpretation of our Constitution as permitting reasonable classification."[133]

These historical observations highlight the dangers in drawing broad conclusions based upon uniformity clause structure and language among the fifty states. As Newhouse cautioned, such comparisons, "can be terribly misleading unless we are reminded of the frequent existence of a gap between structure and effective uniformity limitation in a given state."[134] Indeed, consider the decisional law from Minnesota. In 1906, Minnesota amended its constitution to remove constraints on taxation by incorporating phraseology like Delaware's Uniformity Clause. This language, which is similar to both Delaware's and Pennsylvania's uniformity provisions,[135] has been interpreted by the Minnesota courts to grant wide discretion to the legislature to classify property for purposes of taxation.[136]

Ultimately, in the case of uniformity clause jurisprudence, Pennsylvania's decisional law is relevant only to Pennsylvania's uniformity clause. It does not account for Delaware's historically more liberal application of its Uniformity

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133 A1291.

134 B211.

135 *See* Minn. Const. art. X, § 1 (providing in relevant part: "Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes . . . ").

136 *See Carlos v. Herbst*, 278 N.W.2d 732, 740 (Minn. 1979); *see also* B189.

Clause, as informed by, for example, Delaware's divergent views on deference to the General Assembly from the very beginning in 1897.

3. The 1976 Amendment Did Not Render the Uniformity Clause More Restrictive.

Plaintiffs' reading of the 1976 amendment to Delaware's Uniformity Clause[137] (the "1976 Amendment") is also mistaken.[138] The 1976 Amendment, by its plain terms, requires the use of a different valuation process, for assessment purposes, of agricultural land as compared to all other real property.[139] The phrase "except as otherwise permitted herein" was added to Delaware's Uniformity Clause in 1976 to specifically carve out the new valuation methodology for farmland from the general requirement that all real property be assessed for property taxation at the same standard of value.[140] The language added in 1976 had nothing to do with General Assembly's ability to establish different tax classifications.[141]

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137 60 *Del. Laws*, c. 438.

138 Op.Br. 29.

139 Del. Const. art. VIII, § 1 (discussing land actively devoted to agriculture use); *see also*, B187 (Newhouse) (observing that, "the several paragraphs added to Article 8, section 1 in 1977 by amendment now require differential treatment of land 'actively devoted to agricultural use'") (emphasis in original).

140 *See Brennan*, 104 A.2d at 797; *Bd. of Assessment Rev. for New Castle Cnty. v. Stewart*, 378 A.2d 113, 116 (Del. 1977).

141 Nor did it have anything to do with exemptions, which are separate and were the subject of the 1970 amendment. B184; Op.Br. 27-28; *see* 58 *Del. Laws*, c. 67.

Principles governing uniformity in the assessment process are separate and distinct from tax policy affecting different classes of real property.[142] Specifically, "uniformity in assessment process" concerns the method of determining assessed value and ensuring that it is administered in accordance with accepted assessment principles.[143] As Newhouse observed, "[t]he developments with respect to uniformity in the assessment process ***do not hinge on whether or not property can be constitutionally classified***."[144] To the contrary, "[u]niformity and equality in taxation" concerns the policy considerations behind the classification of property.[145] Newhouse cautions against conflating these concepts, as Plaintiffs have done: "[A]s important as uniformity in the assessment process is in its own right, it is a subject separate from the question of uniformity and equality in taxation."[146] The 1976 Amendment did not concern uniformity in taxation.

Nothing in the 1976 Amendment prohibits use of different tax rates for different classes of property or otherwise rejects Delaware's "clearly established," more liberal, interpretation of uniformity.[147] At no point did the General Assembly

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142 *See* B352; *see also* A886-87. These distinctions within the concept of uniformity were explored further in Defendants' trial demonstrative (B465-471) and in argument at trial (B567-576).

143 *See* B348-351.

144 B351 (emphasis added).

145 B352.

146 *Id*.

147 Op.Br. 28-29.

express an intent to overturn the prevailing interpretation in Delaware of the original, core provision of the Uniformity Clause: "All taxes shall be uniform upon the same class of subjects."[148] Nor do the debates suggest that the General Assembly intended to "delineate the only circumstances in which different types of real property may be taxed differently," as Plaintiffs speculate.[149] There is simply no evidence in the debates that this restrictive intent was ever at play.[150] Indeed, the discussion concerning Senate Bill 60 (first leg) and Senate Bills 5 and 745[151] (second leg) shows that the General Assembly approved the 1976 Amendment to protect farmland by ensuring that it is assessed at its agricultural value rather than fair market value.[152]

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148 Delaware has plenty of company in interpreting its uniformity clause language to allow different tax rates for different classes of property. *See e.g.,* B353-357, 359, 360 (observing at the time that Delaware was among the "16 states in Group A, i.e., those states having the most permissive effective uniformity clause limitation.").

149 *See* Op.Br. 28.

150 *See Andreason v. Royal Pest Control,* 72 A.3d 115, 124 (Del. 2013).

151 Senate Bill 5 was originally adopted as the second leg of the 1976 Amendment, but because Senate Bill 5 did not include an enactment clause, Senate Bill 745 was adopted in the same General Assembly as the official second leg of the 1976 Amendment.

152 B291-332. Audio files of the debates were provided to Defendants' counsel by the Delaware Public Archives and the attached transcripts were prepared by a court reporter service. The audio files are available upon the Court's request. *See also* B323-324 (4:22-5:5). Even if the 1976 Amendment could be read as Plaintiffs suggest—and it cannot—under Delaware law, actual legislative intent must prevail "even if preserving legislative intent results in 'an interpretation not consistent with the strict letter of the [clause]." *Pizzadili Partners, LLC v. Kent Cnty. Bd. of Adjustment*, 2016 WL 4502005, at *4 (Del. Super. Ct. Aug. 16, 2016), *aff'd*, 157 A.3d 757 (Del. 2017) (Table).

The 1976 Amendment is particularly instructive in the wake of the Court of Chancery's 1948 decision in *Philadelphia, B&W R. Co.*, addressed above.[153] Had the General Assembly concluded that *Philadelphia B&W R. Co.* was wrongly decided, it could have amended the Uniformity Clause to require that all real property must be taxed at the same rate in 1971 or 1976.[154] It declined to do so. And following the 1976 amendment, Delaware courts have continued to interpret the Uniformity Clause in the same way (e.g., *Green*).[155]

Plaintiffs wrongly assume that by requiring consistency in valuation and assessment, the Uniformity Clause must also require equality in tax rates.[156] Nothing in the 1976 Amendment, its legislative history, or the cases following the 1976 Amendment, suggest that the General Assembly intended to change how Delaware's Uniformity Clause was interpreted, such that the historically liberal interpretation would pivot to a more restrictive interpretation in the wake of the 1976 Amendment. The 1976 Amendment merely confirmed that agricultural property must be valued and assessed differently. It did nothing more.

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153 57 A.2d 759 (Del. Ch. 1948).

154 The General Assembly is presumed to have had knowledge of the *Philadelphia B&W R. Co.* decision when it amended the Uniformity Clause. *See Makin v. Mack*, 336 A.2d 230, 234 (Del. Ch. 1975).

155 *See id.* at 234.

156 Op.Br. 30; *see Stewart*, 378 A.2d at 116.

4. Plaintiffs' Reliance on *Public Schools* is Misplaced.

Plaintiffs perpetuate their flawed assumption that authority addressing consistency in valuation and assessment must also require equality in tax rates in their misreading of the *Public Schools* decision.[157] The trial court correctly observed that *Public Schools* addressed an entirely different issue than the issue before this Court.[158] Specifically, "*Public Schools* addressed the unconstitutionality of using stale property assessments (valuations) that failed to uniformly reflect fair market value."[159] *Public Schools* did not address whether the General Assembly "can constitutionally classify real property and apply different nominal tax rates to those classes."[160] "*Public Schools*, which focused on achieving uniformity through accurate assessments under a single rate structure, cannot fairly be read to prohibit the legislature's power to classify property for rate-setting purposes once a uniform methodology is in place."[161]

The plaintiffs in *Public Schools* challenged the County's "assessment rolls," not nominal tax rates.[162] When the *Public Schools* Court introduced the issue of uniformity, it made clear that the matter before the Court was uniformity of

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157 Op.Br. 30-33.
158 A1288.
159 *Id.*
160 A1289.
161 *Id.*
162 239 A.3d at 463.

assessment, stating "[t]he Uniformity Clause requires a uniform ***method of assessment*** because 'in the taxation of real property uniformity cannot be achieved without a ***uniform system of assessment***."[163] At issue was whether the County's use of a base year system without conducting reassessment violated the Uniformity Clause.[164] Thus, the *Public Schools* case concerned uniformity in the assessment process, not uniformity in nominal tax rates.

That the *Public Schools* court was concerned exclusively with uniformity of assessment is confirmed by the fact that the court used a ratio study to determine that the counties were violating the Uniformity Clause.[165] Ratio studies are not intended to address, nor should they be applied to draw inferences about, uniformity of tax rates.[166] The Court's finding regarding the Delaware Uniformity Clause—"that the [County] violate[d] the Uniformity Clause by persistently using ***valuations*** from . . . 1983 "— was limited to assessment[167] and had nothing to do with tax rates.

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163 *Id.* at 486 (emphasis supplied) (quoting *Stewart*, 378 A.2d at 115).

164 *Id.* ("the counties are using indefinite-base-year methods that do not generate anything approaching acceptable levels of uniformity").

165 *See generally id.* at 486-91 (applying results of ratio study); *see also id.* at 487 ("Expert assessors study sales ratios to evaluate the relative levels at which properties are ***assessed***, thereby exposing how a property tax system allocates the real burden of taxation, as opposed to the nominal burden of taxation.") (emphasis supplied).

166 A887.

167 *Public Schools*, 239 A.3d at 496 (emphasis supplied).

The Court in *Public Schools* discussed the impact of disparities in assessed values on effective tax rates to illustrate the harm to taxpayers caused by a system of assessment that relies upon assessed values that are outdated and unrelated to current fair market value.[168] Plaintiffs tautologically observe that effective tax rates are the product of nominal tax rates and assessed values and then claim that when the *Public Schools* Court addresses the impact of disparities in assessed values on effective tax rates it must have been ruling that nominal tax rates can never be different.[169] But *Public Schools* did not pass judgment on the constitutionality of applying different nominal tax rates to different classes of property. Plaintiffs are erroneously attempting to turn observations about the impact of unconstitutional assessed values on effective tax rates into a decision about nominal tax rates.

Additionally, the lack of any reference within the *Public Schools* decision to existing Delaware precedent addressing the constitutionality of different tax

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168 *See Public Schools*, 239 A.3d at 464, 486-487, 497.

169 Op.Br. 32. Plaintiffs also discuss cross-category uniformity but do not understand it. *Id.* at 31. Cross-category uniformity compares the ratio of assessed value to fair market value for a category of property (e.g., residential or commercial) against the ratio of assessed value for ***all*** properties. A887-88. It is a measure of the level of assessed value of a category to the whole, not one class to another. A888. Thus, when the *Public Schools* Court discussed cross-category uniformity and effective tax rates, it was not pronouncing that all classes of properties must be subject to the same nominal tax rate, but that disparities in assessed values between a category of properties and all properties lead to disparities in effective tax rates. 239 A.3d at 487, 490-91.

classifications under Delaware's Uniformity Clause—such as *Aetna*,[170] *Conard*,[171] *Green*,[172] and *Phila. B&W R. Co.*[173]—is instructive. The *Public Schools* Court was not looking to ignore or overturn existing Delaware precedent that the Uniformity Clause allows classifications of real property. Instead, it was merely articulating how the stale assessed values caused similarly situated properties to experience different effective rates of taxation.[174]

5. Plaintiffs' Reliance on *Zoller* is Also Misplaced.[175]

Zoller is inapplicable because it primarily concerned another separate and distinct topic under the Uniformity Clause: so-called "territorial uniformity."[176] Indeed, the quote Plaintiffs present to open their brief refers to uniformity among taxpayers within the same territory, not an expectation that all property be taxed as a single class.[177]

Territorial uniformity evaluates uniformity "within the territorial limits of the authority levying the tax."[178] In *Zoller*, the key issue was whether a fee, which was

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170 131 A.2d 168 (Del. 1957).
171 *Conard v. State*, 16 A.2d 121 (Del. Super. 1940).
172 668 A.2d 770 (Del. Super. Ct. 1995), *aff'd*, 667 A.2d 1319 (Del. 1995).
173 57 A.2d 759 (Del. Ch. 1948).
174 *See* A1289; *see also Public Schools*, 239 A.3d at 485-86.
175 *See* Op.Br. 26, 31.
176 *Zoller*, 171 A.2d at 379-81.
177 Op.Br. 25; *but see Zoller*, 171 A.2d at 379 (noting "[i]n view that the territorial uniformity clause means equality and uniformity as respects the taxpayers upon whom and for whose benefit the tax is imposed . . . .").
178 Del. Const. Art. VIII, § 1; *Zoller*, 171 A.2d at 379.

deemed an estate tax, violated the Uniformity Clause because it differed from the estate taxes charged in Delaware's other two counties.[179] In rejecting this claim this Court acknowledged that by requiring uniformity "within the territorial limits of the authority levying the tax," the text of the Uniformity Clause indicated that "if the law-making authority [the State] imposes a tax and fixes the rate, the tax must be uniform within the limits of [the State's] authority."[180] However, the Court decided against a literal reading in favor of a reading based on the intent of the provision, that a tax be uniform among taxpayers who were subject to the tax—in that case, residents of Sussex County.[181]

Plaintiffs argue that the *Zoller* Court's distinction that the subject fee was not a property tax implies that the Court would have struck down different tax classifications of property.[182] However, the validity of different tax classifications for real property was never before the *Zoller* Court; the subject tax was an estate tax. The *Zoller* Court rendered no decision and provided no analysis on whether different tax classifications for real property would violate Delaware's Uniformity Clause at all. At best, the *Zoller* Court's remark that the subject fee did not violate the Uniformity Clause because it was not a property tax is non-binding dicta, which is

179 *Zoller*, 171 A.2d at 377-78.
180 *Id.* at 379.
181 *Id.*
182 Op.Br. 26.

especially unpersuasive given the subsequent academic observations and Delaware precedent discussed above.[183]

Indeed, in *Betts v. Zeller*,[184] the Delaware Supreme Court rejected the plaintiff's suggestion that a graduated tax violates the Uniformity Clause under *Zoller* if the subject tax were deemed to be a property tax, observing that *Zoller* ultimately had nothing to do with a property tax before concluding simply that *Zoller* was "not in point."[185] The same holds true regarding Plaintiffs' attempt here to use *Zoller* to undermine Delaware precedent on property classifications.

6. The Property Classifications in HB242 Are Not Arbitrary.

In *Betts*,[186] this Court held that claims arising under the Uniformity Clause are to be evaluated in the same manner as claims arising under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.[187] Framing the standard of review under the Equal Protection Clause as whether the tax classifications at issue were "clearly arbitrary and capricious," the *Betts* Court held that the plaintiff failed to sustain her burden "of negating every conceivable basis

183 *Zoller* at 378-79.
184 263 A.2d 290 (Del. 1970).
185 *Id.* at 296.
186 *Id.* at 292.
187 *Id.* at 295-96.

which might support the classifications as reasonable and proper 'without doing violence to common sense.'"[188]

"The rational basis review which the Court undertakes [under the Equal Protection standard] does not require (or allow) it 'to judge the wisdom, fairness, or logic of legislative choices.'"[189] Indeed, there is a "strong presumption of validity and those attacking the rationality of the legislative classification have the ***burden to negate every conceivable basis*** which might support it."[190]

Defendants established, through affidavits of legislators and statements during legislative sessions, why the General Assembly passed HB242 - to shift some of the tax burden away from residential property owners and to require owners of non-residential property to bear a greater burden.[191] While Plaintiffs disagree, their claim that the General Assembly's decision is "arbitrary" and "irrational" is without merit.[192]

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188 *Betts*, 263 A.2d at 294.

189 *Salem Church (Del.) Assocs. v. New Castle Cnty.*, 2006 WL 2873745, at *15 (Del. Ch. Oct. 6, 2006); *Port Penn Hunting Lodge Ass'n v. Meyer*, 2019 WL 2077600, at *6 (Del. Ch. May 9, 2019), *aff'd*, 222 A.3d 1044 (Table) (Del. 2019) (citation omitted).

190 *Salem Church,* 2006 WL 2873745, at *13 (emphasis supplied) (citations omitted).

191 B080-089, 112-175.

192 Op.Br. 25, 41-43.

The Reassessment was the first county-wide reassessment in over 40 years.[193] During this period, residential property values generally increased at a greater rate compared to non-residential property values.[194] Thus, the Reassessment resulted in an unanticipated drastic shift in the property tax base of the County from non-residential to residential property, with non-residential properties declining from 34.13% of the tax base to 24.48%.[195] Residential properties previously shouldered approximately 65.87% of the tax burden prior to the Reassessment; in a single year that burden increased to 75.52%.[196] HB242's short-term impact works to level the tax burden so that residential and non-residential taxpayers share the tax burden.[197]

Without the safety net provided by HB242, many residential taxpayers, including families and veterans, cannot afford their tax bill for this year. As one legislator remarked, "when you have Amazon paying $3.5 million in taxes and it's being reduced to [$]1.1 million, there is a problem here. These businesses come to our communities, yes, provide jobs, but they're also supposed to be investing in our community, into our schools."[198] It is these equitable concerns that motivated the legislature to take action.[199] Legislators made a policy decision that exposing

193 A201 (¶16).
194 A743 (¶3).
195 A1287; *see also* A744 (Table 1).
196 A744 (Table 1).
197 *See* B083 (¶9-10); *see also* B088 (¶11).
198 B156 (171:13-19).
199 *See* B087 (¶6).

individuals to the risk of losing their homes was more harmful than exposing non-residential property owners to the risk of lost profits. The General Assembly determined that commercial enterprises are better able to absorb tax increases than homeowners. As the trial court found, "[t]hese [equitable concerns] are rational reasons to distinguish between residential and non-residential properties."[200]

Plaintiffs' fairness arguments are either incorrect or at best raise precisely the kind of "fairly debatable" matters that "require[ ] deference to legislative judgment."[201] When the issue is the constitutionality of a tax structure, Delaware courts do not determine whether it "is the most fair, or the most practical, or the most wise."[202] Indeed, "'absent a constitutional inhibition, the power of the legislature as the repository of the legislative power with its broad and ample sweep, has full and unrestrained authority to exercise its discretion in any manner it sees fit in its wisdom or even folly to adopt.'"[203] The law requires Plaintiffs to take their arguments to the General Assembly, and the Court to defer to the legislative judgment of the General Assembly.

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200 A1287.

201 *Higgin*, 2022 WL 4239590, at *15.

202 *Betts*, 263 A.2d at 292.

203 *State ex rel. Craven v. Schorr*, 131 A.2d 158, 161 (Del. 1957); *Lehrman v. Cohen,* 222 A.2d 800, 807 (Del. 1966).

CONCLUSION

Appellees request that the decision of the Court of Chancery be affirmed. Because of the expedited nature of this proceeding, Defendants request, pursuant to Supreme Court Rule 18, that the mandate issue forthwith.

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