

No. _____

In The
Supreme Court of the United States

FRED LOHR FOUSE AND JOLENE K. FOUSE,

Petitioners,

v.

SARATOGA PARTNERS L.P.,
AND
HUNTINGDON COUNTY TAX CLAIMS BUREAU,

Respondents.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of Pennsylvania**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does Pennsylvania law violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution by denying homeowners in the least populous counties any right to redeem their home after a municipal tax sale to pay delinquent property taxes while allowing homeowners in the most populous counties a three month to nine month right of redemption?

PARTIES TO THE PROCEEDING

Petitioners Fred Lohr Fouse (incorrectly identified in the state courts as “Fred Lohr”) and his wife Jolene K. Fouse, were Petitioners in the Huntingdon County Court of Common Pleas, Huntingdon, Pennsylvania seeking the right to redeem their residential property which was sold at a Municipal tax sale to pay for delinquent taxes. As such the Fouses were Petitioners in the common pleas court, Appellants in the intermediate appellate court for this matter, i.e., the Pennsylvania Commonwealth Court, and Appellants in the Pennsylvania Supreme Court.

Saratoga Partners L.P., was the high bidder at the tax sale and was therefore named in the common pleas court action as a Respondent, Appellee in the Commonwealth Court, and Appellee in the Pennsylvania Supreme Court.

The Huntingdon County Tax Claims Bureau was the government entity through which the Municipal tax sale was conducted. As such, the Bureau was named as a Respondent in the common pleas court, Appellee in the Commonwealth Court, and Appellee in the Pennsylvania Supreme Court.

RELATED CASES

Fouse et al., Petitioners v. Saratoga Partners, L.P., and Huntingdon County Tax Claims Bureau, Respondents, Huntingdon County Court of Common Pleas, No. CP-31-CV-1701-2016, Order entered October 23, 2017.

Fouse et al., Appellants v. Saratoga Partners, L.P., and Huntingdon County Tax Claims Bureau, Appellees, Commonwealth Court of Pennsylvania, 204 A.3d 1028, judgment and order entered March 7, 2019.

Fouse et al., Appellants v. Saratoga Partners, L.P., and Huntingdon County Tax Claims Bureau, Appellees, Pennsylvania Supreme Court No. 67 MAP 2019 judgment and order entered October 1, 2020.

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PETITION FOR A WRIT OF CERTIORARI

Fred Lohr Fouse and Jolene K. Fouse, husband and wife, petition for a writ of certiorari to review the judgment of the Pennsylvania Supreme Court which held that denying individuals any right at all to redeem residential property in the least populous counties of Pennsylvania while allowing individuals in the most populous counties three to nine months to redeem, is permissible under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

OPINIONS BELOW

The Pennsylvania Supreme Court's opinion affirming the Pennsylvania Commonwealth Court order upholding the Huntingdon County Court of Common Pleas order denying the "Petition to Redeem Property Sold at Tax Sale" is reported at *Fred Lohr and Jolene K. Fouse v. Saratoga Partners, L.P. and Huntingdon County Tax Claim Bureau*, No. 67 MAP 2019, October 1, 2020, and reproduced at App. 1-29. The Pennsylvania Commonwealth Court opinion and order upholding the Huntingdon County Court of Common Pleas order denying the "Petition to Redeem Property Sold at Tax Sale" is reported at *Fouse v. Saratoga Partners, L.P. and Huntingdon County Tax Claim Bureau*, 204 A.3d 1028 (Pa.Cmwlth. 2019) and reproduced at App. 30-54.

JURISDICTION

This case involves the Pennsylvania Supreme Court’s interpretation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. On October 1, 2020, the Pennsylvania Supreme Court upheld a state law that prohibits homeowners in Pennsylvania’s lesser populated counties, Huntingdon County in particular, any right to redeem their home once it is sold by the municipality to collect delinquent property taxes, while a nearly identical law allows homeowners in the state’s two most populous counties a three to nine-month right of redemption. The high court concluded “the dichotomy between those landholders . . . does not violate equal protection, under either the federal or state constitution.”

Because the state’s highest court has rendered a decision that determines “right, privilege, or immunity” under the federal constitution, this Court has the jurisdiction to review the decision:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or

claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S. Code § 1257(a) – State courts; certiorari.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This Petition involves the due process and equal protection clauses in the Fourteenth Amendment to the United States Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV § 1.

INTRODUCTION AND STATEMENT OF THE CASE

The Pennsylvania Supreme Court granted the Fouses discretionary review to consider whether they, as individual homeowners in the state's low population

Huntingdon County, deserve the same right to redeem their home after a tax delinquency sale as other homeowners in the state's two most populous counties, namely Philadelphia County and Allegheny County, which includes Pittsburgh.

According to the Pennsylvania Supreme Court the answer is "No". App. 2.

Pennsylvania is divided into 67 counties. The 67 counties are grouped by population into essentially eight county classes with the most populous county, Philadelphia County, classified as a county of the first class. Allegheny County, which includes Pittsburgh, is a county of the second class. App. 4. Less populous counties are grouped into successive county classes from counties of the third class down to counties of the eighth class. App. 13. Huntingdon County where the Petitioners live is a sixth-class county. App. 3.

Tax sales of real estate are governed under two state laws. Philadelphia and Allegheny County are governed under the Municipal Claims and Tax Liens Act ("MCTLA" or the "Tax Lien Act"), 53 P.S. §§ 7101-7505. App. 4. Under the Tax Lien Act and modification thereto, an individual has the right to redeem real property for at least three months and as much as nine months after a municipal tax sale of property to pay for delinquent taxes. App. 4-5. Generally, the other counties classes, including Huntingdon County, are governed by Real Estate Tax Sale Law ("RETSL" or "Tax Sale Act"), 72 P.S. §§ 5860.101-5860.803. App. 4.

The Tax Sale Act prohibits any redemption of property after a municipal tax sale. App. 1-2.

Petitioners fell behind in their residential tax payments for 2014 and 2015 owing approximately \$16,000. The property, which they owned since the late 70s and 80s, was subsequently listed and sold by the Huntingdon County Tax Bureau for approximately \$26,000. App. 2. Three months after the sale in December 2016, the Fouses filed a “petition to redeem property sold at tax sale” under MCTLA, the Tax Lien Act, 53 P.S. § 7293 in the Huntingdon County Court of Common Pleas, even though Huntington County, as a sixth-class county, is governed by the Tax Sale Act Real Estate Tax Sale Law or RETSL, 72 P.S. §§ 5860.101-5860.803 which prohibits post-sale redemption. App. 2. Still, the Fouses asserted a right to redeem under the Tax Lien Act. However, the common pleas court denied the petition. App. 55.

The Fouses appealed to the Commonwealth Court. A divided three-judge panel of the Commonwealth Court affirmed the common pleas court order denying the Fouses’ petition to redeem. *See Fouse v. Saratoga Partners, L.P. and Huntingdon County Tax Claim Bureau*, 204 A.3d 1028, 1039 (Pa.Cmwlth. 2019) McCullough, J., dissenting. App. 30-54. However, the dissent in the Commonwealth Court noted, “If the property was located in Philadelphia County or Allegheny County, counties that proceed solely and exclusively under . . . [MCTLA], the Fouses would have possessed a right to redeem their property ‘within nine months . . . upon payment of the amount bid at such

sale[.]’ However, the Fouses’ place of residence and the property is sited in Huntingdon County, a sixth-class county, and . . . [RETS] applies to this county.” App. 3.

The dissent finds the prohibition of any right to redeem for the Fouses “a violation of the principles of equal protection” noting: “Our case law indicates that there are no significant substantive or procedural differences between the RETSL and the MCTLA, except for the automatic right to redemption in the MCTLA [for the most populous counties].” *See Fouse*, 204 A.3d 1028, 1040. App. 49. The dissent concluded that the right of redemption is “a personal, individual right that provides a homeowner with an extra or final chance to reclaim property following the completion of an upset tax sale or judicial sale”. *Id.*, 204 A.3d at 1041.

Moreover, the dissent was “unable to decipher how the exclusion of a right of redemption from the RETSL bears a reasonable relationship to a legitimate state purpose, or how the denial of this right promotes the purpose of classification based upon county size.” App. 53. According to the dissent: “It should be beyond dispute that, no matter where a homeowner resides, that homeowner shares the same interest in redemption as any other homeowner located anywhere else in the Commonwealth.” App. 52-53. Thus, with the Commonwealth Court majority upholding the prohibition against redemption, the Fouses petitioned the Pennsylvania Supreme Court for discretionary review, which was granted.

In the Pennsylvania Supreme Court, the Honorable Justice Max Baer, joined by all other justices, affirmed the Commonwealth Court judgment. App. 2. However, in its attempt to summarize the dissent in the Commonwealth Court, the supreme court completely missed the dissent's main point: that granting the right of redemption based solely on county population is arbitrary. As such, the Supreme Court failed to address the following important point made by the dissent:

Since [all] counties . . . can elect to use the additional and alternative procedure of the MCTLA, along with its right of redemption, there is no apparent basis relating specifically to differences in population that would rationalize excluding the right of redemption from the RETSL. . . . Hence, contrary to the stance of the [Commonwealth Court] Majority, the right of redemption seems to be wholly disconnected from the concept of population, some other characteristic unique to Philadelphia County or Allegheny County, or the ability or goal of collecting taxes in general.

Fouse v. Saratoga Partners, L.P. and Huntingdon County Tax Claim Bureau, 204 A.3d 1028, 1040-1041 (Pa.Cmwlth. 2019) McCullough, J., dissenting (emphasis added). App. 51.

Instead of addressing this important point, the high court avoided discussion on the irrational aspects of virtually identical state laws that allow a right of redemption in some counties but not others, and to

consider whether the right “to acquire, possess, and protect property [i]s a fundamental right” under Article I, Section 1 [of the Pennsylvania Constitution]”. *Fred Lohr and Jolene K. Fouse v. Saratoga Partners, L.P. and Huntingdon County Tax Claim Bureau*, No. 67 MAP 2019 (Pa. October 1, 2020). App. 16.

If the right to “acquire, possess, and protect property” is determined to be as fundamental a right as “reputation,” then strict scrutiny should be applied and “the differentiation between taxpayers who have access to a remedy of redemption under the MCTLA and those who do not under the RETSL must be narrowly tailored to support a compelling government interest.” App. 16 (“Fundamental rights and suspect classifications trigger strict scrutiny, whereas important rights and sensitive classifications require intermediate scrutiny. [Citations omitted]. All other legislative classifications are subject to rational basis review.”)

However, the high court disregarded the text of Pennsylvania’s Constitution which expressly declares the right of acquiring, possessing and protecting property an “inherent and indefeasible right.” App. 16. *See id.*, citing the “right to acquire, possess, and protect property,” as an “inherent and indefeasible right” under Article I, Section 1 of the Pennsylvania Constitution; *see also id.*, at footnote 16 (“Pennsylvania provides similar protection through Article I, Section 1, addressing, *inter alia*, equal rights, and Section 26, providing protection against discrimination: All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are

those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness. Pa. Const. Art. I, § 1"). App. 22.

Instead, the high court concluded that "the asserted right is not a fundamental constitutional right but, instead, a statutory remedy, provided as part of a legislative tax collection process." App. 24. The court continued that "the right of redemption within a tax collection statute is not a vested right but rather merely a right subject to the control of the Legislature." Thus, by completely disregarding the fundamental nature of property rights that are expressly identified in the Pennsylvania Constitution, the court concluded, "rational basis review applies to the equal protection challenge raised herein." App. 24-25.

In affirming the Commonwealth Court, the supreme court concluded, "the dichotomy between those landholders subject to the RETSL rather than the MCTLA does not violate equal protection, under either the federal or state constitution, because the choice is rationally related to the legislative determination of which system will maximize the collection of delinquent taxes for different types of counties. *See* Pa. Const. Art. III, § 20 (expressly granting the Legislature the "power to classify counties . . . according to population"). *Id.*, at App. 28.

However, the Fouses do not challenge the government's right to tax or take property, just the lack of rationality in arbitrarily treating some homeowners

differently than others, as was the case here, where the government grants some homeowners a right of redemption but not others. Moreover, even if the right to own and protect property is not a fundamental right under the state constitution, this gift or right of redemption allowed some individuals but not other similarly situated individuals, must be, but is certainly not “reasonably related to accomplishing th[e] articulated state interest or interests.”

REASONS FOR GRANTING THE WRIT

I. There is No Rational Basis to Support the Laws that Grant Homeowners in the Most Populous Counties Three Months to Nine Months to Redeem their Home after a Municipal Tax Sale but Deny Homeowners in the Least Populous Counties Any Right of Redemption Whatsoever

The Equal Protection Clause of the Fourteenth Amendment forbids the states to “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV. Where a plaintiff with an equal protection claim does not allege that distinctions were made on the basis of a suspect classification such as race, nationality, gender or religion, the claim arises under the “class of one” theory. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). To prevail on such a claim, the plaintiff must demonstrate: 1) the defendant treated him differently than others similarly situated; 2) the defendant did so intentionally; and 3)

there was no rational basis for the difference in treatment. *Hill v. Borough of Kutztown*, 455 F.3d 225, 239 (3d Cir. 2006). As explained above, the rational basis test is forgiving, but not without limits. Distinctions cannot be arbitrary or irrational and pass scrutiny. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446 (1985) (“The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.”)

Substantive due process challenges to a legislative act are reviewed under the rational basis test. *Am. Exp. Travel Related Serv’s., Inc. v. Sidamon-Eristoff*, 669 F.3d 359, 366 (3d Cir. 2012). The Supreme Court of the United States has recognized that the “core of the concept” of substantive due process is the protection against arbitrary government action. *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998) (citing *Hurtaido v. California*, 110 U.S. 516, 527 (1884)) (“[T]he touchstone of due process is protection of the individual against arbitrary actions of government”).

Rational basis review is a forgiving standard for government acts, but it “is not a toothless one[.]” *Mathews v. Lucas*, 427 U.S. 495, 510 (1976). As a general matter, the rational basis test requires only that the governmental action “bear[] a rational relationship to some legitimate end.” *Romer v. Evans*, 517 U.S. 620, 631 (1996). Conversely, actions which are irrational, arbitrary or capricious do not bear a rational relationship to any end. *Cty. Concrete Corp. v. Town of Roxbury*, 442 F.3d 159, 169 (3d Cir. 2006) (quoting

Pace Resources, Inc., v. Shrewsbury Twp., 808 F.2d 1023, 1035 (3d Cir. 1987)). Accordingly, for the Petitioners to successfully challenge an ordinance, “they must ‘allege facts that would support a finding of arbitrary or irrational legislative action by the Township.’”

In Pennsylvania, two state laws, similar in virtually every aspect save one (i.e., a right of redemption) govern the sale of residential homes sold by the municipality for non-payment of delinquent property taxes. App. ___. One law provides a right of redemption while the other prohibits redemption. *See generally Fouse v. Saratoga Partners, L.P. and Huntingdon County Tax Claim Bureau*, 204 A.3d 1028, 1039 (Pa.Cmwlth. 2019) McCullough, J., dissenting. App. 48-54.

The law that grants a right of redemption is said to be limited to counties of the first and second class; i.e., the most populous counties in Pennsylvania, which includes Philadelphia County in the east, and Allegheny County in the west, which includes Pittsburgh. App. 50. All other county classes, third through eighth class counties, have no right of redemption. Thus, Petitioners who are residents of Huntingdon County, a sixth-class county in Pennsylvania, had no right to redeem their property after a tax sale. App. 48.

Unequal treatment of state citizens similarly situated is by definition a violation of the “equal protection” clause of the Fourteenth Amendment. Thus, the tax law here is a blatant violation of the right to equal protection certainly under a strict scrutiny analysis but also under the rational basis test. *Cf., Fred Lohr*

and Jolene K. Fouse v. Saratoga Partners, L.P. and Huntingdon County Tax Claim Bureau, No. 67 MAP 2019 (Pa. October 1, 2020) (“[T]he dichotomy between those landholders subject to the RETSL [the Tax Sale Act] rather than the MCTLA [Tax Lien Act] does not violate equal protection, under either the federal or state constitution, because the choice is rationally related to the legislative determination of which system will maximize the collection of delinquent taxes for different types of counties.”). App. 28.

Despite the Pennsylvania Supreme Court’s decision in this case, in Pennsylvania, a Commonwealth whose Constitution was framed and written by some of the same men who framed and wrote the federal constitution, the right “of acquiring, possessing and protecting property” is an “inherent and indefeasible right”. *See* Pa. Const., Article I, Section 1. Property rights defined as “inherent and indefeasible” constitutional rights had a self-evident meaning when used by the 18th century authors of the Pennsylvania and federal constitutions. To the 21st century stewards of the state constitution “inherent and indefeasible” constitutional rights suffer declining importance and meaning. Hence, rights described as “inherent and indefeasible” give no more than a momentary pause in a 21st century supreme court. *See id.* Legislative greed for taxes renders the carefully chosen words of our earliest and actual patriots infirmed. Now, “inherent and indefeasible” constitutional rights are trumped by “the classification adopted in the legislation when reasonably

related to accomplishing [an] articulated state interest." *See id.*

The articulated state interest and rationalization provided by the Pennsylvania Supreme Court fails to satisfy any practical consideration of the rational basis standard. *See Shapiro v. Thompson*, 394 U.S. 618, 639, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) (rejecting proffered justification for a statute where the justification was "completely refuted by the legislative history"); and see *United States v. Carolene Products Co.*, 304 U.S. 144, 152, 58 S.Ct. 778, 82 L.Ed. 1234 (1938) (stating that "the existence of facts supporting the legislative judgment is to be presumed . . . unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption"); see also, *Fouse*, 204 A.3d 1028, 1040-1041 (Pa.Cmwlth. 2019) McCullough, J., dissenting:

Since [all] counties . . . can elect to use the additional and alternative procedure of the MCTLA, along with its right of redemption, ***there is no apparent basis relating specifically to differences in population that would rationalize excluding the right of redemption from the RETSL.*** . . . Hence, contrary to the stance of the [Commonwealth Court] Majority, ***the right of redemption seems to be wholly disconnected from the concept of population, some other characteristic unique to Philadelphia County or Allegheny County, or the ability or goal of collecting taxes in general.***

Fouse, 204 A.3d 1028, 1040-1041, McCullough, J., dissenting (emphasis added).

Try as it might, the state supreme court could not rationalize discrimination against homeowners by denying them a right of redemption based on their residence in lower class counties, while allowing the same right to those in the higher class counties that include Pittsburgh and Philadelphia. Indeed, the high court's reasoning (quoted below) defies logic, while bending over backwards to find against the Fouses. Thus, if the high court's explanation somehow satisfies the "rational basis" test, then any explanation is rational and there is no practical standard available to protect rights which our framers originally declared "inherent and indefeasible":

[T]he legislative branch has broad discretion in regard to tax collection, based in part on the "importance of the tax collection process to the perpetuation and continuing vitality of government." [Citations omitted.] Indeed, we have opined that statutes "authorizing the assessment of municipal taxes, the creation of liens therefor, the sale of lands to satisfy the liens, and the time of redemption given to owners, constitute together [a] system of remedies for enforcing the taxing power – [of] which there is no clearer power in the constitution." . . . *Appeal of Gault*, 33 Pa. 94, 100 (Pa. 1859). This Court has additionally opined that the right of redemption within a tax collection statute is not a vested right but rather merely a "right subject to the control of the

Legislature.” . . . Under rational basis review, the relationship between the classification and the legitimate state interest need not be set forth expressly by the Legislature. [Citations omitted.] Moreover, courts have recognized that legislative classifications are enacted to address complex issues that may not have clear cut solutions. Accordingly, courts have opined that “[a] classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality.” [Citations omitted.] . . . As noted above, we recognize that tax collection statutes serve the legitimate and, indeed, critical purpose of funding government by providing “prompt and certain availability” of assessed taxes. *Cedarbrook Realty, Inc.*, 399 A.2d at 377 (quoting *Bull v. United States*, 295 U.S. 247, 259-60 (1935) (observing that “taxes are the life-blood of government, and their prompt and certain availability an imperious need”)[.] In regard to the RETSL specifically, this Court has opined that the purpose of the RETSL is “to expedite the collection of delinquent real estate taxes, to retain the productivity of the real estate, and to maintain economic value.” [Citations omitted.] . . . We next consider whether the legislative decision to include a redemption remedy in the MCTLA but exclude it from the RETSL is rationally related to the legitimate government purpose of expediting the collection of delinquent real estate taxes. **We agree with the courts below . . . that the lack of a redemption provision in**

the RETSL promotes the legislative interest in facilitating the collection of delinquent taxes by ensuring certainty and finality for tax sales, which, in turn, likely encourages higher bids based on the greater security provided to the purchaser. We additionally reject the implicit suggestion that the MCTLA provides greater protection to delinquent taxpayers than the RETSL. Rather than looking myopically at the inclusion or exclusion of a redemption remedy, a broader consideration shows that both statutes offer protections to the delinquent taxpayer, with the RETSL utilizing greater pre-sale protections, whereas the MCTLA focuses on post-sale remedies. Most significantly, while the MCTLA allows delinquent taxpayers nine months to pay their taxes to regain ownership of their properties, the RETSL grants delinquent taxpayers twelve months to pay their taxes to prevent the loss of ownership, so long as they pay twenty-five percent of the taxes prior to the date of sale. Compare 53 P.S. § 7293 (MCTLA redemption provision) with 72 P.S. § 5860.603 (RETSL removal from sale provision). These provisions contain trade-offs for all stakeholders. For the delinquent taxpayer, one system provides twelve rather than nine months from the scheduled sale to satisfy the delinquent taxes, but requires a quarter of the total to be paid prior to the scheduled sale. The purchaser takes on greater risk in buying a property under the MCTLA, given the potential post-sale redemption, but likely pays a

lower price to compensate for the higher risk. The taxing district under the RETSL must wait a year to determine if the taxpayer will meet its obligation to repay the full amount of delinquent taxes, but is provided twenty-five percent in advance and likely receives higher bids for those properties which go to sale, due to the lower risk given the prohibition on redemption in the RETSL. Moreover, various reasons have been proposed for why one system is more advantageous for rural or urban counties in maximizing the collection of delinquent taxes[.] . . . The rationality of these explanations are not undermined . . . by the statutory provision allowing tax bureaus in the less populated counties to opt into the MCTLA. That an individual county deems one of the systems more advantageous to that county's specific situation does not undermine the legislative determination that, generally, the RETSL system is better suited for more rural counties.

See Fred Lohr and Jolene K. Fouse v. Saratoga Partners, L.P. and Huntingdon County Tax Claim Bureau, No. 67 MAP 2019 (Pa. Oct. 1, 2020) (emphasis added). App. 27-28.

As residents of Huntingdon County and holders of “inherent and indefeasible [Constitutional] rights,” Petitioners are nevertheless victims of irrational and unequal treatment which prohibits them the same right to redemption as residents of Philadelphia and Pittsburgh. As the dissent in the Commonwealth Court aptly pointed out:

[T]here are no significant substantive or procedural differences between the RETSL and the MCTLA, except for the automatic right to redemption in the MCTLA. . . . Additionally, “[w]hether the judicial sale is effected under the MCTLA or the RETSL the intent of the legislature is the same: to return real property to productive use under new ownership.” [citation omitted]. Against this background, the Majority discerns a rational basis for the General Assembly’s differential classification of the RETSL and MCTLA by focusing on the fact that Pennsylvania’s first and second class counties, Philadelphia County and Allegheny County, have greater populations than the other counties. From this, the Majority posits that Philadelphia County and Allegheny County “have larger pools of prospective buyers at tax sales,” which “make it more likely that a property will be sold at a tax sale.” Maj. op. at 1038. Therefore, according to the Majority, “the need for owner protection is greater” and this “need is met” with the right of redemption found in the MCTLA. Maj. op. at 1038. The Majority also asserts that, by virtue of having comparatively higher population figures, Philadelphia County and Allegheny County contain “a larger taxable base from which to derive revenue” and, as such, “the General Assembly could have reasoned that these counties can afford a less efficient process for collecting delinquent taxes by providing a post-tax-sale right of redemption.” Id. ***However, the justifications conceived by the Majority are refuted and rendered***

implausible in light of section 39.5 of the MCTLA, which provides that “[t]he tax claim bureaus of the several counties may adopt and use the procedures set forth in this act in addition to the procedures set forth in the [RETS].” 53 P.S. § 7193.5. Since the counties that are covered under the RETSL, including the least populous eighth class county, can elect to use the additional and alternative procedure of the MCTLA, along with its right of redemption, there is no apparent basis relating specifically to differences in population that would rationalize excluding the right of redemption from the RETSL. . . . Hence, contrary to the stance of the Majority, the right of redemption seems to be wholly disconnected from the concept of population, some other characteristic unique to Philadelphia County or Allegheny County, or the ability or goal of collecting taxes in general. [Footnote 6] [This point is buttressed by the fact that, under the Treasurer’s Act, residents in the City of Pittsburgh, the largest municipality in Allegheny County, can only redeem property within 90 days or three months after the date of the treasurer’s sale, 53 P.S. § 27304, while residents of the smaller townships and boroughs of Allegheny County have a guaranteed right to redeem property within nine months of acknowledgement of the sheriff’s deed . . . under the MCTLA, 53 P.S. § 7293(a). [Citations omitted.] . . . *If there were a positive correlation between population size and*

the right of redemption, then, ostensibly, the residents of Pittsburgh would have at least the same amount of time to redeem property as the surrounding townships and boroughs that are located in Allegheny County.]

Fouse, 204 A.3d at 1040-1041 (Pa.Cmwlth. 2019) McCullough, J., dissenting (emphasis added). App. 49-52.

The dissent in the Commonwealth Court recognized that the rationalization makes no sense because the correlation makes no sense and is illogical reasoning. App. 52. *See id.*, at footnote 6 (“If there were a positive correlation between population size and the right of redemption, then, ostensibly, the residents of Pittsburgh would have at least the same amount of time to redeem property as the surrounding townships and boroughs that are located in Allegheny County”); *see also, United States v. Carolene Products Co.*, 304 U.S. 144, 152 (1938) (stating that “the existence of facts supporting the legislative judgment is to be presumed . . . unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption”); *Shapiro v. Thompson*, 394 U.S. 618, 639 (rejecting proffered justification for a statute where the justification was “completely refuted by the legislative history”).

As the dissent in the Commonwealth Court also explains, “the right of redemption seems to be wholly disconnected from the concept of population, some other characteristic unique to Philadelphia County or Allegheny County, or the ability or goal of collecting

taxes in general.” *Id.* (“I am simply unable to decipher how the exclusion of a right of redemption from the RETSL bears a reasonable relationship to a legitimate state purpose, or how the denial of this right promotes the purpose of classification based upon county size.”) App. 53.

Consequently, the explanation attempted by the state supreme court fails the rational basis test and as the dissent further recognizes: “All counties in the Commonwealth [should] utilize the MCTLA (which they are already authorized to do) as the sole procedure through which to conduct tax sales, thereby ensuring that all the homeowners in this Commonwealth are treated alike and are vested with the right to redeem their property.” App. 53-54. Therefore, the basis upon which Fred and Jolene Fouse of Huntingdon County Pennsylvania were denied the due process and equal protection guarantees found in the Fourteenth Amendment to the United States Constitution fails the rational basis test.

CONCLUSION

The Supreme Court should grant this petition for writ of certiorari in order to declare an individual’s right to redeem property in one county equal to an individual’s right to redeem property in another county and that favoring one over the other denies an individual the equal protection of the law under the Fourteenth Amendment to the United States Constitution.

Petition for a writ of certiorari should therefore be granted.

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