

FRED LOHR AND JOLENE K. FOUSE, Appellants
v.
SARATOGA PARTNERS, L.P. AND HUNTINGDON
COUNTY TAX CLAIM BUREAU, Appellees
No. 67 MAP 2019
Supreme Court of Pennsylvania
October 1, 2020

ARGUED: May 21, 2020

Appeal from the Order of the Commonwealth Court dated March 7, 2019 at No. 128 CD 2018 Affirming the Order of the Huntingdon County Court of Common Pleas, Civil Division, dated October 23, 2017 at No. CP-31-CV-1701-2016.

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

OPINION

BAER JUSTICE.

We granted discretionary review to consider whether the availability of a taxpayer remedy under the Municipal Claims and Tax Liens Act (“MCTLA”), 53 P.S. §§ 7101-7505, but not the Real Estate Tax Sale Law (“RETS”), 72 P.S. §§ 5860.101-5860.803, violates the equal protection provisions of the United States and Pennsylvania Constitutions. Relevantly, and absent exceptions described *infra*, the MCTLA permits delinquent taxpayers in the first and second class counties of Philadelphia and Allegheny to redeem property sold at an upset tax sale by paying the

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delinquent taxes and other costs within nine months of the sale, while the RETSL, which governs upset tax sales in second class A through eighth class counties, explicitly excludes post-sale redemption.^[1] After review, we conclude that the General Assembly's decision to omit the right of post-sale redemption from the RETSL is constitutional because it is rationally related to a legitimate state interest as discussed below. Accordingly, we affirm the order of the Commonwealth Court upholding the denial of the delinquent taxpay-
ers' petition to redeem in this case involving a tax sale governed by the RETSL.

Appellants, Fred L. and Jolene K. Fouse ("the Fouses") owned two parcels of land in Lincoln Township, Huntingdon County, identified by Tax Identification Numbers 24-08-02 and 24-08-01.1 ("the Property"), which they utilized as their primary residence from the time they acquired the two parcels in 1976 and 1987, respectively. Eventually, the Fouses fell behind in the payment of their taxes on the Property, owing a total of \$16, 747.50 for 2014 and 2015, according to the Huntingdon County Tax Claim Bureau ("Tax Claim Bureau").^[2] As mandated by the RETSL, the Tax Claim Bureau scheduled an upset tax sale for September

¹ An upset tax sale, generally, is the sale of property to recoup unpaid taxes at which all bids must equal or exceed a predetermined price sufficient to pay specified taxes, claims, and costs. *See, e.g.*, 72 P.S. § 5860.605 (RETSL provision entitled "Upset sale price").

² The properties had a total assessed value of \$152, 800, according to the Tax Claims Bureau. Brief in Opposition to Petition to Redeem at 2 (unnumbered).

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2016 and provided the requisite notice and publication. At the tax sale, appellees, Saratoga Partners, L.P. (“Saratoga”), submitted the highest bid of \$27, 795.45.

Three months later, in December 2016, the Fouses filed a “petition to redeem property sold at tax sale” (“Petition to Redeem”), even though Huntington County, as a sixth class county, is governed by the RETSL, which, as set forth *infra*, prohibits post-sale redemption.^[3] Instead, the Fouses asserted, *inter alia*, a right to redeem under Section 7293 of the MCTLA by paying the amount paid by Saratoga at the tax sale.^[4] The

³ Before this Court, the Fouses only assert their right to redeem the Property. Accordingly, we will not discuss the other issues raised in the Petition to Redeem.

⁴ Section 7293 of the MCTLA provides in relevant part:
§7293. Redemption

(a) The owner of any property sold under a tax or municipal claim, or his assignees, or any party whose lien or estate has been discharged thereby, may, except as provided in subsection (c) of this section, redeem the same at any time within nine months from the date of the acknowledgment of the sheriff’s deed therefor, upon payment of the amount bid at such sale; the cost of drawing, acknowledging, and recording the sheriff’s deed; the amount of all taxes and municipal claims, whether not entered as liens, if actually paid; the principal and interest of estates and encumbrances, not discharged by the sale and actually paid; the insurance upon the property, and other charges and necessary expenses of the property, actually paid, less rents or other income therefrom, and a sum equal to interest at the rate of ten per centum per annum thereon, from the time of each of such payments . . . [Addressing rights of lienholders to redeem.]

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Fouses asserted that they deposited funds in escrow to cover the relevant taxes and costs. The trial court issued a rule to show cause why the relief should not be granted, ordered briefing, and scheduled a hearing on the matter.

In their brief in support of the Petition to Redeem, the Fouses acknowledged that the MCTLA applies to first and second class counties, which include Philadelphia and Allegheny, while the RETSL generally governs all other counties, including Huntingdon.^[5] The Fouses emphasized that the MCTLA provides delinquent property owners a post-sale right of redemption if delinquent taxes and costs are paid within nine

(b) Any person entitled to redeem may present his petition to the proper court, setting forth the facts, and his readiness to pay the redemption money; whereupon the court shall grant a rule to show cause why the purchaser should not reconvey to him the premises sold; and if, upon hearing, the court shall be satisfied of the facts, it shall make the rule absolute, and upon payment being made or tendered, shall enforce it by attachment.

(c) [Addressing vacant properties] 53 P.S. § 7293.

⁵ Within Allegheny County, the City of Pittsburgh is separately governed by the Second Class City Treasurer's Sale and Collection Act, 53 P.S. §§ 27101-27605. It limits taxpayer's ability to redeem to "[w]ithin 90 days after the date of the treasurer's sale." 53 P.S. § 27304.

Moreover, the MCTLA allows tax claims bureaus of second class A to eighth class counties to adopt the procedures and remedies of the MCTLA, including the redemption provision, in addition to those provided in the RETSL, 53 P.S. § 7193.5. Huntingdon County apparently has not adopted these procedures.

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months of the upset sale, while the RETSL explicitly instructs that “[t]here shall be no redemption of any property after the actual sale thereof.” 72 P.S. § 5860.501(c).

The Fouses argued that the absence of a right of redemption provision in the RETSL, in contrast to the existence of the right in the MCTLA, results in citizens of second class A through eighth class counties being treated less favorably than citizens of first and second class counties, in violation of the equal protection provisions of the United States and Pennsylvania Constitutions.^[6] The Fouses additionally asserted that property rights are fundamental rights subject to strict scrutiny, which requires any statutory classification to be narrowly tailored to support a compelling government interest.

In addressing the state interest prong, the Fouses recognized that this Court has held that the purpose of tax sale laws is “not to strip the taxpayer of his property but to ensure the collection of taxes.” Brief in Support of Petition to Redeem at 9 (unnumbered) (quoting *Tracy v. County of Chester, Tax Claim Bureau*, 489 A.2d 1334, 1339 (Pa. 1985)). The Fouses argued that the state interest in collecting taxes is served by the redemption provision because it allows for property owners to pay the taxes and all costs incurred. They maintained that the absence of the redemption

⁶ The Equal Protection Clause of the United States Constitution’s Fourteenth Amendment and the relevant provisions of the Pennsylvania Constitution are set forth *infra* at 17-18 n.16.

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provision does not advance the purpose of tax collection but instead divests the property owner of their rights, such that it is not narrowly tailored to tax collection, as required for strict scrutiny.^[7]

The Tax Claim Bureau responded, emphasizing that both the MCTLA and the RETSL contain provisions that allow delinquent taxpayers to remedy an upset tax sale. The MCTLA, as stated, allows property owners to redeem the property within nine months of a tax sale, upon payment of the taxes and costs. The RETSL, however, provides a pre-sale remedy by which property owners can stay the sale of their property by paying twenty-five percent of the delinquent taxes prior to the date set for the upset sale and agreeing to an installment plan to pay the remaining taxes within the next twelve months. Brief in Opposition to Petition to Redeem at 4 (unnumbered) (referencing 72 P.S. § 5860.603 of the RETSL).^[8] Thus, they emphasized

⁷ The Fouses also originally asserted their claims under the Uniformity Clause of Article VIII, Section 1, but it appears that they abandoned that claim before this Court, presumably because Article III, Section 20 of the Pennsylvania Constitution expressly allows the legislature to treat counties differently based on population, see *infra* at 7 n.9.

They additionally raised a substantive due process claim in their Petition to Redeem. While they abandoned that argument by failing to raise it in their Pa.R.A.P. 1925(a) Statement of Matters Complained of on Appeal, many of the arguments in support of that proposition overlap with their ongoing equal protection claims. Accordingly, they have been included herein where relevant.

⁸ Section 5860.603 of the RETSL provides as follows:

§ 5860.603. Removal from sale; agreements to stay sale

Any owner or lien creditor of the owner may, at the option of the bureau, prior to the actual sale, (1) cause the

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property to be removed from the sale by payment in full of taxes which have become absolute and of all charges and interest due on these taxes to the time of payment, or (2) enter into an agreement, in writing, with the bureau to stay the sale of the property upon the payment of twenty-five per centum (25%) of the amount due on all tax claims and tax judgments filed or entered against such property and the interest and costs on the taxes returned to date, as provided by this act, and agreeing therein to pay the balance of said claims and judgments and the interest and costs thereon in not more than three (3) instalments all within one (1) year of the date of said agreement, the agreement to specify the dates on or before which each instalment shall be paid, and the amount of each instalment. So long as said agreement is being fully complied with by the taxpayer, the sale of the property covered by the agreement shall be stayed. But in case of default in such agreement by the owner or lien creditor, the bureau, after written notice of such default given by United States mail, postage prepaid, to the owner or lien creditor at the address stated in the agreement, shall apply all payments made against the oldest delinquent taxes and costs, then against the more recent. If sufficient payment has been made to discharge all the taxes and claims which would have caused the property to be put up for sale, the property may not be sold. If sufficient payment has not been received to discharge these taxes and claims, the bureau shall proceed with the sale of such property in the manner herein provided either at the next scheduled upset sale or at a special upset sale, either of which is to be held at least ninety (90) days after such default. If a party to an instalment agreement defaults on the agreement, the bureau shall not enter into a new instalment agreement with that person within three (3) years of the default.

72 P.S. § 5860.603.

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that both acts allow for taxpayers to regain their property by paying the delinquent taxes within a year of the scheduled tax sale.

Saratoga additionally filed a brief in the trial court in support of denying the Fouses' Petition to Redeem. It rejected the Fouses claim to a right of redemption, as it viewed redemption to be merely "an equity" provided by the statute. Saratoga Brief in Opposition to Petition to Redeem at 6-7 n.3. Thus, it argued that, in the absence of the derogation of a fundamental right, rational basis, rather than strict scrutiny, should be applied to the Fouses' equal protection challenge.

Saratoga emphasized that the Pennsylvania Constitution explicitly allows for classifications based on county size in Article III, Section 20.^[9] Saratoga highlighted that this Court has found variations in taxation between territorial divisions, such as between Pittsburgh and Philadelphia, to be constitutional under the Uniformity Clause, so long as there is uniformity within the territorial division, citing *Moore v. School Dist. of Pittsburgh*, 13 A.2d 29, 32 (Pa. 1940).

⁹ Section 20 provides in full as follows:

The Legislature shall have power to classify counties, cities, boroughs, school districts, and townships according to population, and all laws passed relating to each class, and all laws passed relating to, and regulating procedure and proceedings in court with reference to, any class, shall be deemed general legislation within the meaning of this Constitution.

Pa. Const. art. III, § 20.

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In October 2017, the trial court denied the Petition to Redeem. After the Fouses filed a notice of appeal, the court authored an opinion in support of its order.^[10] The trial court recognized that the distinction between the MCTLA and the RETSL resulted in property owners in some areas, including Philadelphia, having a right to redeem their properties within nine months of an upset tax sale, while those in less populated counties, such as the Fouses in Huntingdon County, do not have that opportunity. The court, however, concluded that the distinction withstood constitutional scrutiny.

In so doing, the court applied the rational basis test, which requires that the statute promote a legitimate state interest and that the classification be “reasonably related to accomplishing that articulated state interest.” Tr. Ct. Op. at 5 (citing *Curtis v. Kline*, 666 A.2d 265, 269 (Pa. 1995)). The trial court looked first to the state’s interest in enacting the RETSL without a redemption provision. It recognized the “dominant purposes of the [RETSL] were to provide speedier and more efficient procedures for enforcing tax liens and to improve the quality of titles obtained at a tax sale,” which, in turn, promoted the state’s interest in tax

¹⁰ The Fouses originally filed their appeal in Superior Court, and the case was later transferred to the Commonwealth Court in January 2018.

In the Fouses’ Pa.R.A.P. 1925(b) Statement of Matters Complained of on Appeal, they asserted the following single issue: “The failure of the Real Estate Tax Law of 1947 to provide taxpayers with a redemption period violates both the Equal Protection Clause of the United State Constitution and Article III of the Constitution of the Commonwealth of Pennsylvania.”

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collection. Tr. Ct. Op. at 5 (quoting *Povlow v. Brown*, 315 A.2d 375, 377 (Pa. Cmwlth. 1974)).

Agreeing with the court in *Povlow*, the trial court observed that “redemption would have the effect of making titles less attractive” and likely result in lower bids, which might be insufficient to satisfy the taxes due. *Id.* at 6 (quoting *Povlow*, 315 A.2d at 377 n.4) (alterations in original removed). The court additionally opined that the classification of taxpayers subject to the MCTLA rather than the RETSL was “addressed by Article III, Section 20, of the Pennsylvania Constitution[,] which specifically permits classification by population.” *Id.* Given the presumption in favor of constitutionality, the trial court concluded that the lack of a redemption provision in the RETSL did not violate taxpayers’ right to equal protection under the federal or state constitutions.

On appeal to the Commonwealth Court, the Fouses asserted that the trial court erred in applying rational basis scrutiny to their constitutional challenge. In a published decision of a divided three-judge panel, the Commonwealth Court affirmed the trial court’s order denying the Fouses’ Petition to Redeem. *Fouse v. Saratoga Partners, L.P.*, 204 A.3d 1028 (Pa. Cmwlth. 2019). The court viewed the Fouses’ claim as focused on their equal protection rights secured by the Pennsylvania Constitution, n specifically Article I, Sections 1 and 26,^[11] rather than the federal Equal

¹¹ Section 1 and Section 26 are set forth *infra* 17-18 n.16.

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Protection Clause. It opined, however, that the provisions were coextensive.^[12] *Id.* at 1033 n.9.

The Commonwealth Court first considered the applicable level of constitutional scrutiny. The court viewed “the Fouses’ asserted right to post-tax-sale redemption” as subsumed within the broader “right to ‘freely hold and dispose of’ one’s property,” which the court previously deemed subject to rational basis review because it did not involve a fundamental right. *Fouse*, 204 A.3d at 1036 (quoting *McSwain v. Commonwealth*, 520 A.2d 527, 530 (Pa. Cmwlth. 1987)). The court also reasoned that rational basis review was appropriate because the applicability of the MCTLA rather than the RETSL derived from the population size of the county. It emphasized that this criteria “implicate[d] neither a suspect class nor a sensitive classification,” which would have triggered a higher level of scrutiny. *Id.* at 1036 n.11 (citing *Small v. Horn*, 722 A.2d 664, 672 n.14 & 15 (Pa. 1998)).

As did the trial court, the Commonwealth Court looked to this Court’s decision in *Curtis* for application of the rational basis test to an equal protection challenge. It recognized that the rational basis test generally requires courts to “determine whether the challenged statute seeks to promote any legitimate state interest or public value” and then to “determine whether the classification adopted in the legislation is

¹² The Commonwealth Court indicated that the Tax Claim Bureau failed to file a brief and was precluded from participating in the appeal. *Id.* at 1033 n.8.

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reasonably related to accomplishing that articulated state interest or interests.” *Id.* at 1036 (quoting *Curtis*, 666 A.2d at 269). It recognized that “[t]he prohibition against treating people differently under the law does not preclude the Commonwealth from resorting to legislative classifications, provided that those classifications are reasonable rather than arbitrary” and “rest upon some ground of difference which justifies the classification and has a fair and substantial relationship to the object of the legislation.” *Id.* at 1037 (quoting *Curtis*, 666 A.2d at 267-68 (citations omitted)). The court further observed that “[a] classification, though discriminatory, is not arbitrary or in violation of the equal protection clause if any state of facts reasonably can be conceived to sustain that classification.” *Id.* (quoting *Curtis*, 666 A.2d at 268 (citations omitted)). It opined that the rationale does not need to be set forth in the legislation or asserted by the Commonwealth, but instead recognized that courts may hypothesize justifications supporting the classification. *Id.* at 1037-1038 (citing *Pa. Liquor Control Bd.*, 485 A.2d 732, 735 (Pa. 1984); *Curtis*, 666 A.2d at 268)).

Applying these principles, the Commonwealth Court first looked to whether the legislature had a legitimate state interest in excluding redemption from the RETSL. Echoing the trial court’s reliance on *Powlow*, the court concluded that the RETSL promoted the legitimate government interest in “speedier and more efficient procedures for enforcing tax liens and [improving] the quality of the title” sold at tax sales. *Id.*

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(quoting *Pacella v. Washington Cty. Tax Claim Bureau*, 10 A.3d 422, 428 (Pa. Cmwlth. 2010)).

The Commonwealth Court next considered whether the legislative classification between more populated counties, with the right of redemption under the MCTLA, and less populated counties, without the remedy under the RETSL, was rationally related to the legitimate legislative purpose of a more efficient tax collection process. The court found the test satisfied based upon the following analysis, which is central to the instant appeal:

[W]e posit that Pennsylvania's first and second class counties have larger pools of prospective buyers at tax sales. These larger pools of prospective buyers make it more likely that a property will be sold at a tax sale. Under these circumstances, the need for owner protection is greater, and that need is met by the equity of redemption in the more populous counties. Further, as these counties have a higher population and, therefore, a larger taxable base from which to derive revenue, 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. at 1038. Given that the court could “conceive of plausible reasons for the statute, and the legislative classification does not rest on grounds wholly irrelevant to the achievement of the state’s purpose,” it concluded “that RETSL’s lack of a post-tax-sale right of

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redemption provision satisfies rational basis review.” *Id.* Accordingly, the court affirmed the trial court’s order denying the Fouses’ Petition to Redeem.

Judge McCullough dissented. Emphasizing the similarities between the two statutes, the dissent opined 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.” *Id.* at 1040 (McCullough, J., dissenting). With the asserted similarity as backdrop, the dissent rejected the rationale conceived by the majority to support the legislative classification, which was based on the distinction between large and small counties. The dissent opined that it found this rationale unpersuasive because Section 7193.5 of the MCTLA provided tax claims bureaus in the counties with smaller populations with the ability to adopt aspects of the MCTLA. Thus, the dissent argued, the MCTLA allowed citizens of some less populated counties to utilize the redemption provisions, despite the size of their populations. *Id.* (citing 53 P.S. § 7193.5. (“The 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 [RETSL].”)). The dissent opined that there was “no apparent basis relating specifically to differences in population that would rationalize excluding the right of redemption from the RETSL.” *Id.* at 1040-41.

The dissent “view[ed] the right of redemption as a personal, individual right that provides a homeowner with an extra or final chance to reclaim property

following” a tax sale. *Id.* at 1041. It continued, opining that regardless of the population of the county in which “a homeowner resides, that homeowner shares the same interest in redemption as any other homeowner located anywhere else in the Commonwealth.” *Id.* Accordingly, the dissent concluded that classification violated the equal protection provisions of the federal and Pennsylvania Constitutions. The dissent would instead “enjoin enforcement of the RETSL and enter an order requiring all the counties in the Commonwealth to utilize the MCTLA (which they are already authorized to do) as the sole procedure through which to conduct tax sales,” thus ensuring that all taxpayers have the equal option to redeem. *Id.* at 1042 (footnote omitted).

The Fouses sought allowance of appeal, which this Court granted, to address the following issue: “Whether the lack of a right to redemption under the Real Estate Tax Sale Law (RETSL) 72 P.S. § 5860.101 *et seq.*, violates the Equal Protection Clause of the United States Constitution and Article III of the Pennsylvania Constitution.” *[Fouse] v. Saratoga Partners, L.P.*, 217 A.3d 794 (Pa. 2019). In this Court, the Fouses reassert the arguments they raised in the lower tribunals.^[13]

¹³ Although the Fouses’ question asserts a right of equal protection under Article III of the Pennsylvania Constitution, their argument relies primarily upon the equal protection provision of Article I, Section 1 of the Commonwealth’s charter, as it has throughout the course of this litigation.

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They frame the right involved as the “right to acquire, possess, and protect property,” which they emphasize is an “inherent and indefeasible right” under Article I, Section 1 of the Pennsylvania Constitution. Fouses’ Brief at 9-10 (quoting Pa. Const. Art. I, § 1). They recognize that, while this Court has not specifically identified the right to acquire, possess, and protect property as a fundamental right, we have deemed other rights in Article 1, Section 1 to be fundamental, including the right to reputation. *Id.* at 10.

Arguing that strict scrutiny should be applied to this fundamental right, they contend that 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. They assert that “[t]he classification of citizens based upon the population of the municipality in which they live does not serve a compelling government interest.” *Id.* at 7.

Assuming *arguendo* that this Court deems the right subject to rational basis review, the Fouses alternatively argue that the classification fails to meet that lower standard as well. They assert that the redemption provision protects the government interest in the collection of taxes. The Fouses contend that “neither the government nor the land speculator are deprived of anything” through the use of a redemption remedy because the “government’s tax interest is paid and the speculator’s bid is returned, along with any actual costs.” *Id.* at 14. They acknowledge, however, that the

speculator “must wait to see if his speculation will bear fruit” during the redemption period. *Id.*

In contrast, they argue that the lack of a redemption remedy merely serves “to divest owners of their property, even when the owner comes forth with all monies owed, in hand.” *Id.* at 12. They emphasize that this Court in *Tracey*, 489 A.2d at 1339, held that the purpose of tax sale laws is “not to strip the taxpayer of his property but to ensure the collection of taxes.” *Id.* at 14.

The Fouses reject the trial court and the Commonwealth Court’s justifications for the classifications of citizens subject to the MCTLA and the RETSL based upon the population size of their counties. In this regard, the Fouses relied upon the reasoning of the dissent in the Commonwealth Court, which emphasized that the tax bureaus in the less populous counties have the ability to opt into the procedures of the MCTLA, 53 P.S. § 7193.5, and, accordingly, “there is no apparent basis relating specifically to differences in population that would rationalize excluding the right of redemption from the RETSL.” Fouses’ Brief at 14 (quoting *Fouse*, 204 A.3d at 1040-41 (McCullough, J., dissenting)).^[14]

Saratoga responds by arguing that the relevant right is not the right to acquire, possess, or protect property but rather a claimed right to redeem property, which it contends is not a right encompassed by Article

¹⁴ The Community Justice Project submits an *amicus curiae* brief in support of the Fouses.

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1, Section 1. Saratoga avers that this Court has previously addressed the lack of a right to redeem under the RETSL in *Bernitsky v. Schuylkill County*, 112 A.2d 120, 130 (Pa. 1955), discussed *infra*, which addressed the elimination of a redemption provision when the RETSL was enacted in 1947. The Court in *Bernitsky* opined that the redemption right included in a prior statute could be eliminated by the Legislature through the RETSL as it was not a vested right.

Saratoga argues that the Legislature's decision to include post-sale redemption in the MCTLA but not the RETSL should be subject to the rational basis test, requiring the distinction to be rationally related to a legitimate state interest. It emphasizes that this Court has long found the collection of taxes to be a legitimate state interest given that "taxes are the life-blood of government, and their prompt and certain availability an imperious need." Saratoga's Brief at 14-15 (quoting *Cedarbrook Realty Inc. v. Nahill*, 399 A.2d 374, 378 (Pa. 1979)).

Saratoga next considers whether the distinction between the MCTLA and RETSL regarding the right of redemption is rationally related to the state's interest in collecting delinquent taxes. In contrast to the Commonwealth Court dissent's conclusion that the redemption provision was the primary difference between the MCTLA and the RETSL, Saratoga highlights a number of distinctions between the statutes, which provide context for the inclusion or exclusion of the redemption provision. Specifically, it highlights that the RETSL provides greater pre-sale protections

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through stricter and more extensive notice requirements, including specific procedures to locate the property owner and others, not applicable to the MCTLA.^[15] Saratoga’s Brief at 17 (comparing Pa.R.C.P. 3129.2(b) (governing the posting of notice via handbills applicable to the MCTLA) with 72 P.S. § 5860.102 (defining “posting” by setting forth detailed criteria to provide conspicuous notice to both the owner and the public for sales pursuant to the RETSL)); *id.* at 18 (comparing Pa.R.C.P. 3129.1 and 3129.2(c) (addressing service of written notice applicable to the MCTLA) with the enhanced provisions of the RETSL, under 72 P.S. § 5860.607a(a) (requiring “additional notification efforts” to locate and provide notice to various persons or entities “likely to be significantly affected” by the tax sale, including documentation of such efforts)). Saratoga also highlights more exacting requirements for service on the owner under the RETSL. *Id.* at 19-20 (contrasting service of notice upon the owner pursuant to Pa.R.C.P. 402(a) and 403 (applicable to the MCTLA as incorporated by Pa.R.C.P. 3129.2(c)(1)(i)) with 72

¹⁵ Saratoga observes that the Pennsylvania Rules of Civil Procedure govern the relevant notice requirements for the MCTLA. Specifically, Pa.R.C.P. 3190 instructs that “[a] judgment *in rem* in an action or proceeding upon a . . . municipal claim [or] tax claim . . . shall be enforced against the real property subject to the lien [or] claim . . . in accordance with Rules 3180 to 3183 governing the enforcement of judgments in mortgage foreclosure.” Pa.R.C.P. 3181(a)(6), in turn, instructs that notice should be given in accordance with Pa.R.C.P. 3129.1 through 3129.3. The RETSL is specifically exempted from this mandate, such that the RETSL’s notice procedures are still applicable. Pa.R.C.P. 3191(a)(2)(viii).

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P.S. § 5860.601(a)(3) applicable to the RETSL, providing specific notice for owner-occupied properties).

Critically, Saratoga emphasizes the differences between the RETSL and the MCTLA relating to an owner's ability to retain or regain title to her property. While the MCTLA provides a post-sale remedy of redemption, the RETSL provides pre-sale protection by allowing an owner to stay the tax sale by paying twenty-five percent of the delinquent taxes prior to the scheduled sale and agreeing to an installment plan to pay the remainder within one year, pursuant to 72 P.S. § 5860.603, set forth *supra* at 6 n.8.

In light of these differences, Saratoga surmises that it is "reasonable to hypothesize that the inclusion of a redemption provision in MCTLA – and the omission of one from RETSL – was crafted to account for the fact that it is much more likely that the owner of a property will appear after an MCTLA upset sale having not had notice of the sale or an opportunity to gather the necessary funds to satisfy the tax lien and remove the property from sale." Saratoga's Brief at 22. Moreover, it suggests that RETSL's pre-sale ability to stay the tax sale and the MCTLA's post-sale right of redemption serve similar purposes in providing "breathing room" to the property owner. *Id.* at 23.

Saratoga argues that there are also differences regarding the finality of the tax sales and the delivery of the deed to the purchaser. Under the MCTLA, the deed is delivered upon the sale, and the prior owner cannot challenge the judgement underlying the sale.

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Saratoga’s Brief at 23-24 (citing 53 P.S. §§ 7293, 7281). In such cases, Saratoga contends, the redemption provision “serves as an effective means to reverse” an upset tax sale. *Id.* at 24. In contrast, under the RETSL, the deed is issued only after a court confirms the sale, prior to which the owner can challenge aspects of the sale. *Id.* at 23 (citing 72 P.S. § 5860.608); see also 72 P.S. § 5860.607(d).

In summary, Saratoga asserts that “the inclusion of enhanced procedures to guarantee notice, an opportunity to stay the sale by making installment payments on the tax debt, and the right to attack the procedural integrity of the sale before a sheriff’s deed is issued” provides a rational basis for the Legislature to remove what Saratoga argues would result in “a largely redundant means for an owner to prevent or undo the effect of an upset sale.” Saratoga Brief at 26.

In addressing the Fouses’ constitutional challenge, we initially recognize that the Fouses “carry a heavy burden” challenging the constitutional validity of the RETSL’s prohibition against post-sale redemption. *Sands Bethworks Gaming, LLC v. Pennsylvania Dep’t of Revenue*, 207 A.3d 315, 319 (Pa. 2019). We reiterate that law duly enacted legislation enjoys a strong presumption of validity, and will only be declared void if it violates the Constitution clearly, palpably and plainly.” *Id.* (internal citations and quotation marks omitted).

The Fouses challenge the RETSL’s redemption prohibition under the equal protection provisions of

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the federal and state constitutions.^[16] In its most simplistic formulation, equal protection “demands that uniform treatment be given to similarly situated parties.” *Zauflik v. Pennsbury School Dist.*, 104 A.3d 1096, 1117 (Pa. 2014) (citation omitted). Our constitutions have long been interpreted, nevertheless, to permit the

¹⁶ The Fouses, however, do not argue that the equal protection analysis differs under the two charters. Accordingly, we will not address any potential distinctions other than to acknowledge that this Court has previously recognized the difference in language utilized in the charters but proceeded to apply the same analytical tests to both texts. *See Zauflik v. Pennsbury School Dist.*, 104 A.3d 1096, 1117 n.10 (Pa. 2014).

In relevant part, the Fourteenth Amendment to the United States Constitution provides,

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. 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.

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

Id. § 26.

legislative branches to draw classifications so long as they are properly justified. *Id.* The required justification depends “upon which of three types a classification belongs to, what the governmental interest is in promulgating the classification, and the relationship of that interest to the classification itself.” *Id.* at 1117-18. Fundamental rights and suspect classifications trigger strict scrutiny, whereas important rights and sensitive classifications require intermediate scrutiny. *Id.* at 1118. All other legislative classifications are subject to rational basis review. *Id.*

The Fouses initially argue for the application of strict scrutiny claiming that the lack of a redemption provision violated their property rights, which they view to be fundamental rights. They rely in support on Pennsylvania’s inclusion of the right “of acquiring, possessing and protecting property” as an “inherent and indefeasible right” in Article I, Section 1, and they assert that this encompasses their asserted “right to reclaim their property upon payment of all costs.” Fouses’ Brief at 9.

After consideration, we conclude that the asserted right is not a fundamental constitutional right but, instead, a statutory remedy, provided as part of a legislative tax collection process. In so doing, we emphasize that the 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.” *Cedarbrook Realty, Inc.*, 399 A.2d at 377. Indeed, we have opined that statutes “authorizing the assessment of municipal taxes,

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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.” *Bernitsky*, 112 A.2d at 122 (quoting *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.”¹⁷ *Id.* at 123. In the shadow of the clear legislative authority to structure the tax collection process, the Fouses provide no textual or historical argument supporting a constitutionally-enshrined right to redeem their property by paying delinquent taxes and costs after an upset sale. Absent the identification of a constitutionally-protected right triggering an increased level of scrutiny, we conclude that rational basis review applies to the equal protection challenge raised herein.

As we have often recounted, “rational-basis review in equal protection analysis is not a license for courts

¹⁷ In *Bernitsky*, this Court addressed a claim by property owners who had purchased a tract of land only to later discover that it had been subject to a tax sale years prior. The property owners attempted to assert a vested right to utilize a redemption provision that existed under the tax collection statute in effect at the time of the tax sale, despite the subsequent enactment of the RETSL, which prohibited redemption. They claimed that it would violate the constitution to divest them of their “right to redemption.” The Court opined that the “right of redemption was not a vested right.” *Bemitsky*, 112 A.2d at 123. It further observed that the “Right of redemption did not exist at common law [but] was created by statute.” *Id.*

to judge the wisdom, fairness, or logic of legislative choices.” *Shoul v. Commonwealth, Dep’t of Transp. Bureau of Driver Licensing*, 173 A.3d 669, 677 (Pa. 2017) (quoting *Heller v. Doe*, 509 U.S. 312, 319 (1993)). Instead, the rational basis test affords substantial deference to legislative policy making. The review includes two steps: “First we must determine whether the challenged statute seeks to promote any legitimate state interest or public value. If so, we must next determine whether the classification adopted in the legislation is reasonably related to accomplishing that articulated state interest or interests.” *Curtis*, 666 A.2d at 269.

Under rational basis review, the relationship between the classification and the legitimate state interest need not be set forth expressly by the Legislature. *Shoul*, 173 A.3d at 677 (quoting *Heller*, 509 U.S. at 320-21). 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.” *Id.* at 321. Indeed, given the complexity of taxation policy, “legislatures have especially broad latitude in creating classifications and distinctions in tax statutes.” *Armour v. City of Indianapolis*, 566 U.S. 673, 680 (2012).

Applying these precepts to the question before the Court, we first consider whether the Legislature had a legitimate interest in enacting the RETSL’s prohibition against redemption. 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”)); *Bernitsky*, 112 A.2d at 122 (recognizing that “[s]tates and cities cannot exist without taxation”). 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.” *Bernitsky*, 112 A.2d at 122. We have little hesitation in concluding that these are legitimate state interests.

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 and Saratoga 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, which all agree is a legitimate state interest. The rationality of these explanations are not undermined, as suggested by the Fouses and the dissent in the Commonwealth Court, 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.

We again emphasize that “[t]he time, the mode, and the measure of taxation, are committed altogether and exclusively to the legislative discretion.” *Bernitsky*, 112 A.2d at 122 (quoting *In re Gault*, 33 Pa. at 100). We conclude that 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. Ill, § 20 (expressly granting the Legislature the “power to classify counties . . . according to population . . .”).

As we conclude that the Fouses failed to demonstrate that the RETSL’s prohibition against post-sale redemption clearly, plainly, and palpably violates the equal protection provisions of the United States or Pennsylvania Constitutions, we affirm the Commonwealth

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Court's order approving the trial court's denial of the Fouses' Petition to Redeem.

Chief Justice Saylor and Justices Todd, Donohue, Dougherty, Wecht and Mundy join the opinion.

204 A.3d 1028 (Pa.Cmwth. 2019)

Fred Lohr and Jolene K. FOUSE, Appellants

v.

**SARATOGA PARTNERS, L.P. and
Huntingdon County Tax Claim Bureau**

No. 128 C.D. 2018

Commonwealth Court of Pennsylvania

March 7, 2019

Argued December 11, 2018

Appealed from No. CP-31-CV-1701-2016, Common
Pleas Court of the County of Huntingdon, Kurtz, Sen-
ior Judge.

Gregory A. Jackson, Huntingdon, for appellants.

Justin K. Houser, Lock Haven, for appellee Saratoga
Partners, L.P.

BEFORE: HONORABLE ROBERT SIMPSON,
Judge, HONORABLE PATRICIA A. McCULLOUGH,
Judge, HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION

FIZZANO CANNON, JUDGE

Fred Lohr and Jolene K. Fouse (together, the
Fouses)^[1] appeal the October 23, 2017 order of the

¹ Saratoga Partners, L.P. (Bidder) notes that “[a]lthough [the Fouses] are consistently captioned as ‘Fred Lohr & Jolene K.

Court of Common Pleas of Huntingdon County (trial court) denying the Fouses' petition to redeem property sold at an upset tax sale (Petition to Redeem) and holding that the Pennsylvania Real Estate Tax Sale Law's^[2] (RETS) lack of a post-tax-sale right of redemption does not violate either the Equal Protection Clause of the United States Constitution or Article III of the Pennsylvania Constitution. Upon review, we affirm.

The Fouses are record owners^[3] of two parcels of real property (the Property) located in Lincoln Township within Huntingdon County, a sixth class Pennsylvania county.^[4] Petition to Redeem at 2; Trial Court Memorandum, 1/5/18 at 2. On or about September 26, 2016, the Huntingdon County Tax Claim Bureau (Tax Claim Bureau) conducted an upset tax sale of the Property pursuant to RETS. Petition to Redeem at 2. Saratoga Partners, L.P. (Bidder) was the highest bidder

Fouse' throughout this appeal, it is [Bidder's] understanding that their names are Fred Lohr Fouse and Jolene K. Fouse." Bidder's Brief at 1 n.1 (emphasis in original). Further, we note that appellants identified themselves as "Fred Lohr Fouse and Jolene K. Fouse" before the trial court in their Brief in Support of their Petition to Redeem. *See* Petition to Redeem at 1.

² Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §§ 5860.101-5860.803.

³ As of December 1, 2016, the Fouses averred that "Wo date, the sale conducted by the Huntingdon County Tax Claim Bureau has not been confirmed and Saratoga Partners has not been issued a deed for the Property." Petition to Redeem at 2.

⁴ *See* AOPC: *County Classes*, available at http://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/resources/WebHelp/General_Information/County_Class.htm (last visited Jan. 9, 2019).

at the sale and paid the Tax Claim Bureau a sum of \$ 27,795.45 for the Property. *Id.* Despite the Property being sold pursuant to RETSL, on December 1, 2016, the Fouses filed their Petition to Redeem with the trial court, attempting to avail themselves of the post-tax-sale right of redemption contained in the Municipal Claims and Tax Liens Act (MCTLA).^[5] Petition to Redeem at 1; Bidder's Brief at 1. In their Petition to Redeem, the Fouses claimed that, as "owner[s] of the Property," they "have the right to redeem [it] pursuant to [53 P.S. § 7293], and [to] extinguish any right, claim, or title held by Saratoga Partners upon payment of any actual costs incurred in connection to the sale." Petition to Redeem at 2. The Fouses also asked the trial court to "issue a [r]ule upon Respondent, Saratoga Partners to show cause why the relief requested . . . should not be granted and to issue an [o]rder to . . . the Tax Claim Bureau, to withhold any deed it intends to issue to Saratoga Partners until such time as the [r]ule [is] satisfied." *Id.* at 3. The Fouses filed a Brief in

⁵ Act of May 16, 1923, P.L. 207, *as amended*, 53 P.S. §§ 7101-7505. Section 32 of the MCTLA provides as follows:

The owner of any property sold under a tax or municipal claim, or his assignees, or any party whose lien or estate has been discharged thereby, may, except as provided in subsection (c) of this section, redeem the same at any time within nine months from the date of the acknowledgment of the sheriff's deed therefor, upon payment of the amount bid at such sale[.]

53 P.S. § 7293(a). However, RETSL, which governed the upset tax sale, provides that "[t]here shall be no redemption of any property after the actual sale thereof." Section 501(c) of the RETSL, 72 P.S. § 5860.501(c).

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Support of their Petition to Redeem, arguing that RETSL's lack of a post-tax-sale right of redemption impinges on due process and equal protection rights under the United States Constitution and the Pennsylvania Constitution, in addition to violating the Uniformity Clause of the Pennsylvania Constitution. Brief in Support at 5. On October 23, 2017, the trial court issued an order denying the Fouses' Petition to Redeem, due to its finding that RETSL's lack of a post-tax-sale right of redemption does not violate either the Equal Protection Clause of the United States Constitution or Article III of the Pennsylvania Constitution.^[6] Trial Court Order, 10/23/17.

The Fouses timely appealed^[7] and filed a Statement of Errors Complained of on Appeal, alleging that “[t]he failure of [RETSL] to provide taxpayers with a redemption period violates both the Equal Protection Clause of the United State Constitution and Article III of the Constitution of the Commonwealth of Pennsylvania.” Huntingdon County Prothonotary Docket

⁶ The Fouses did not provide a verbatim transcript of the proceedings giving rise to the appeal and claim one does not exist. Bidder contends that “some or all of [the Fouses’] appellate arguments are arguably waived.” Bidder’s Brief at 2 n.3 (citing *Smith v. Smith*, 431 Pa.Super. 588, 637 A.2d 622, 623-24 (1993) (where appellant’s failure to secure certified transcript of proceedings precludes meaningful appellate review of issue, issue is deemed waived)). However, this Court does not find that a verbatim transcript is necessary in the case *sub judice* for meaningful appellate review.

⁷ The Fouses initially appealed to the Superior Court, which transferred the matter to this Court.

Entries at 3; Statement of Errors Complained of on Appeal, 12/18/17.

On January 5, 2018, the trial court issued a memorandum stating the reasons for its October 23, 2017 order. Trial Court Memorandum, 1/5/18 at 1. The trial court held that the Fouses' equal protection challenge warranted rational basis review. *Id.* at 5 (citing *Curtis v. Kline*, 542 Pa. 249, 666 A.2d 265, 267-68 (1995)). The trial court also found that "the dominant purposes of [RETS]L [are] to provide speedier and more efficient procedures for enforcing tax liens and to improve the quality of titles obtained at a tax sale." *Id.* (quoting *Povlow v. Brown*, 12 Pa.Cmwlth. 303, 315 A.2d 375, 377 (1974)). The trial court noted its opinion that the desired post-tax-sale "equity of redemption . . . would . . . have the effect of making tax titles less attractive than they now are[,] . . . thus increasing the chance that the amounts bid at tax sales will be inadequate." *Id.* at 6 (quoting *Povlow*, 315 A.2d at 377 n.4). The trial court further opined that "[a] speedier, more efficient procedure that enhance[s] the quality of titles proffered at sale certainly promotes the [S]tate's interest in tax collection." *Id.* The trial court noted that Article III, Section 20 of the Pennsylvania Constitution "specifically permits classification by population." *Id.* Thus, the trial court held that the Fouses failed to establish that RETSL's lack of a post-tax-sale right of redemption contravenes the right to equal protection under the law. *Id.* at 6-7 (citing Pa. Liquor Control Bd. v. The Spa Athletic Club, 506 Pa. 364, 485 A.2d 732, 735 (1984)).

Before this Court,^[8] the Fouses argue that the trial court should have applied strict judicial scrutiny, rather than rational basis review, to determine whether RETSL's lack of a post-tax-sale redemption provision violates the Fouses' rights to due process and equal protection under the law.^[9] Fouses' Brief at 7-8. The Fouses further contend that RETSL's lack of such a provision does not withstand even rational basis review. *Id.* at 6 & 11.

As a preliminary matter, we note that the Fouses have waived their due process argument for failure to raise it in their statement of errors complained of on appeal. Pursuant to Pennsylvania Rule of Appellate

⁸ In tax sale cases, our review is limited to determining whether the trial court abused its discretion, rendered a decision with a lack of supporting evidence, or clearly erred as a matter of law. *Murphy v. Monroe Cty. Tax Claim Bureau*, 784 A.2d 878, 880 n.2 (Pa.Cmwlth. 2001). The Tax Claim Bureau failed to file a brief as ordered by this Court and, therefore, was precluded from participating on appeal. See Commonwealth Court Order, 9/17/18.

⁹ In their Rule 1925(b) statement, the Fouses specified that they are pursuing an equal protection challenge under the United States Constitution. However, before this Court, the Fouses appear to argue their equal protection claim under the Pennsylvania Constitution. This discrepancy is immaterial, as “[t]he equal protection provisions of the Pennsylvania Constitution are analyzed under the same standards used by the United States Supreme Court when reviewing equal protection claims under the Fourteenth Amendment.” *Jackson v. Commonwealth*, 143 A.3d 468, 476 n.12 (Pa.Cmwlth. 2016) (quoting *Love v. Borough of Stroudsburg*, 528 Pa. 320, 597 A.2d 1137, 1139 (1991)); see also *Republican Party of Pa. v. Cortes*, 218 F.Supp.3d 396, 417 (E.D. Pa. 2016) (stating, “Pennsylvania’s equal protection and due process provisions are coextensive with the corresponding provisions of the United States Constitution”).

Procedure 1925(b)(4)(vii), “[i]ssues not included in the [s]tatement [of errors complained of on appeal] and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.” Pa. R.A.P. 1925(b)(4)(vii); *see City of Philadelphia v. Lerner*, 637 Pa. 605, 151 A.3d 1020, 1024 (2016) (reaffirming the “well-settled, bright-line rule” that “issues not raised in a Rule 1925(b) statement will be deemed waived” and holding that “[b]y failing to comply with Rule 1925(b), [the appellant] waived the issue that he . . . request[ed] [the] Court to address”). Accordingly, we will not address the Fouses’ due process argument.

With respect to the Fouses’ equal protection argument, we are mindful that “[a] statute duly enacted by the General Assembly is presumed valid[.]” *W. Mifflin Area Sch. Dist. v. Zahorchak*, 607 Pa. 153, 4 A.3d 1042, 1048 (2010). “The party seeking to overcome the presumption of validity must meet a formidable burden.” *Commonwealth v. Means*, 565 Pa. 309, 773 A.2d 143, 147 (2001). “Legislation will not be invalidated unless it clearly, palpably and plainly violates the constitution and any doubts are to be resolved in favor of a finding of constitutionality.” *Appeal of McNelly*, 122 Pa.Cmwlth. 601, 553 A.2d 472, 476-77 (1989) (citing *Pa. Liquor Control Bd.*, 485 A.2d at 732).

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, in relevant part: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1. The corresponding

portions of the Pennsylvania Constitution provide as follows:

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.

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right. PA. CONST. art. I, § 26. “In analyzing [an] equal protection challenge to [a statute], we must first determine the appropriate level of judicial scrutiny to be applied.” *Zauflik v. Pennsburry Sch. Dist.*, 72 A.3d 773, 790 (Pa.Cmwlth. 2013), *aff’d*, 629 Pa. 1, 104 A.3d 1096 (2014) (citing *Smith v. City of Philadelphia*, 512 Pa. 129, 516 A.2d 306, 311 (1986)). “Strict scrutiny of a legislative classification applies only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class.” *Zauflik*, 72 A.3d at 790 (quoting *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976)) (internal quotation marks omitted). To survive strict scrutiny, a classification “must be justified by a compelling government interest and . . . must be strictly construed.” *Id.* at 790-91 (citing *Smith*, 516 A.2d at 311). “If the classification involves an important government interest,” then intermediate

judicial scrutiny is applied to determine whether the classification “serve[s] important governmental objectives” and is “substantially related to the achievement of those objectives.” *Id.* (quoting *Craig v. Boren*, 429 U.S. 190, 197, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976)) (brackets omitted). “Finally, if the classification does not involve either fundamental rights, suspect classes, or sensitive or important government interests, it will be upheld if there is any rational basis for the classification.” *Id.* (quoting *Smith*, 516 A.2d at 311) (internal quotation marks omitted).

The Fouses argue that the trial court erred in applying the rational basis level of scrutiny to determine whether RETSL’s lack of a post-tax-sale redemption right violates their equal protection rights. Fouses’ Brief at 7. The Fouses contend that RETSL’s failure to provide residents of third^[10] to eighth class counties with the opportunity to redeem property following a tax sale “infringes upon a ‘fundamental right,’” such that “a reviewing court must apply the strict scrutiny test.” Fouses’ Brief at 8. The Fouses maintain that “[t]he Pennsylvania Constitution classifies the acquisition and possession of property as a fundamental right” implicating a strict scrutiny standard and assert that “[t]he classification of citizens based upon the

¹⁰ The Fouses misstate the applicability of RETSL, which applies to counties of the second A to eighth class. *See* Section 102 of RETSL, 72 P.S. § 5860.102 (defining “County” as “a county of the second A, third, fourth, fifth, sixth, seventh or eighth class, including counties of these classes which have adopted or may adopt home rule charters under . . . the ‘Home Rule Charter and Optional Plans Law[, 53 Pa.C.S. §§ 2901-2984]’”).

population of the municipality in which they live does not serve a compelling governmental interest.” *Id.* at 6. Specifically, the Fouses, citing *R. v. Department of Public Welfare*, 535 Pa. 440, 636 A.2d 142, 149 (1994), reason that “reputational rights, which are mentioned in the same part of Article I, Section 1 . . . as property rights, are currently deemed ‘fundamental’ by our [S]tate’s Supreme Court” and, therefore, property rights share equal stature. Fouses’ Brief at 9. Further, the Fouses maintain that “if the right to be secure in one’s home is a sacrosanct, inviolate, and fundamental right, so, then, is the right to acquire, possess, and protect the property on which the home is situated.” *Id.* The Fouses also claim that the lack of a post-tax-sale right of redemption under RETSL “does nothing to advance the government’s compelling interest in collecting taxes, and . . . is certainly not narrowly tailored to that end,” such that “Pennsylvania’s tax sale scheme cannot withstand strict scrutiny review.” *Id.* at 11.

On the other hand, Bidder argues that the trial court’s order should be affirmed because RETSL’s lack of a post-tax-sale “redemption provision does not violate . . . the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution [or] the [c]orresponding [p]rovisions of the Pennsylvania Constitution[.]” Bidder’s Brief at 4. Bidder asserts that the Fouses have mischaracterized the right at issue, but further contends that even if the Fouses’ characterization were correct, “precedent unequivocally holds that one’s right to hold and enjoy property is *not* a fundamental right, the derogation of which would invite

strict scrutiny.” *Id.* (emphasis in original) (citing *McSwain v. Commonwealth*, 103 Pa.Cmwlth. 326, 520 A.2d 527, 530 (1987)). Bidder thus claims that the Fouses fail to meet their “heavy burden to overcome [RETS’s] presumption of constitutionality.” *Id.* at 4 (internal citations omitted) (quoting *Appeal of McNelly*, 553 A.2d at 476).

In *McSwain*, this Court held that “the right to freely hold and dispose of one’s property” is not a fundamental right. *McSwain*, 520 A.2d at 530. We noted that “[w]hile someone deprived of property is entitled to due process, due process is not synonymous with a fundamental right.” *Id.* at 530. We concluded that the rational basis test is appropriate when addressing the right to hold and dispose of one’s property. *See id.* at 531. Admittedly, *McSwain* does not concern the right of redemption, but rather involves an equal protection challenge to a city ordinance requiring all vacant dwellings to first pass housing code inspection prior to their rental, lease or occupation. *Id.* at 528. However, whether a particular statute accords a right of redemption directly implicates a property owner’s ability to hold and use the property. Because the right to “freely hold and dispose of property subsumes the Fouses’ asserted right to post-tax-sale redemption, we find that the Fouses’ equal protection challenge warrants rational basis review.^[11]

¹¹ Although not addressed by the Fouses, we further note that the constitutional challenge *sub judice* warrants rational basis review because RETSL’s distinction on the basis of county class, which is based on population, implicates neither a suspect

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Nonetheless, the Fouses argue that Pennsylvania's tax sale scheme "does not survive even rational basis scrutiny." Fouses' Brief at 11. The Fouses contend that "to survive rational basis scrutiny under Pennsylvania law, the disallowance of redemption under [RETS], as opposed to [MCTLA] which allows redemption, must bear a substantial relation to the object of Pennsylvania's tax sale laws: the collection of delinquent taxes." *Id.* at 12. The Fouses assert that "[t]he infringement on the protected property rights of citizens living in [second A] through [e]ighth class counties does not bear any relationship to the ends of collecting delinquent taxes, let alone a substantial one[.]" *Id.* at 13. Bidder counters that "[t]he lack of a redemption provision in [RETS] bears a 'fair and substantial' relationship to the legislative interest as expressed in the statute." Bidder's Brief at 11.

In applying the rational basis test, we must first "determine whether the challenged statute seeks to promote any legitimate state interest or public value. If so, we must next determine whether the classification adopted in the legislation is reasonably related to accomplishing that articulated state interest or

class nor a sensitive classification. See *Wings Field Pres. Assocs., L.P. v. Dep't of Transp.*, 776 A.2d 311, 318-19 (Pa.Cmwlth. 2001) (evaluating an equal protection challenge to a state statute that only applied to "count[ies] of the second class A having a population in excess of 675,000 persons" under rational basis review); *see also Small v. Horn*, 554 Pa. 600, 722 A.2d 664, 672 nn.14 & 15 (1998) (citations omitted) (suspect classes include race and national origin, and quasi-suspect classes, also referred to as "sensitive classifications" in Pennsylvania, include gender and legitimacy).

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interests.” *Curtis*, 666 A.2d at 269. “Under the [E]qual [P]rotection [Clause][,] guarantees, distinctions and classifications in legislation are not prohibited, but must only bear some relationship to the ends to be achieved by the law.” *McSwain*, 520 A.2d at 530 (citing *Stottlemeyer v. Stottlemeyer*, 458 Pa. 503, 329 A.2d 892 (1974)). “[T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others.” *McGowan v. Maryland*, 366 U.S. 420, 425, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961). Further, equal protection principles “relate[] to equality between persons as such, rather than between areas and . . . territorial uniformity is not a constitutional prerequisite.” *Id.* at 427, 81 S.Ct. 1101. Thus, “[t]he prohibition against treating people differently under the law does not preclude the Commonwealth from resorting to legislative classifications, provided that those classifications are reasonable rather than arbitrary” and “rest upon some ground of difference which justifies the classification and has a fair and substantial relationship to the object of the legislation.” *Curtis*, 666 A.2d at 26768 (citations omitted). “A classification, though discriminatory, is not arbitrary or in violation of the equal protection clause if any state of facts reasonably can be conceived to sustain that classification.” *Curtis*, 666 A.2d at 268 (citations omitted). “Fair and substantial’ means that the classification must be reasonable and not arbitrary, and the classification must rest upon some ground of difference which has a fair and substantial relation to the object of the legislation, so that all persons similarly situated shall be treated alike.” *Appeal of*

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McNelly, 553 A.2d at 476 (quoting *Kroger Co. v. O'Hara Twp.*, 481 Pa. 101, 392 A.2d 266 (1978)). Thus, “a legislative classification need bear only a rational relationship to the object sought to be achieved by the law, and will be overturned only if it rests on grounds wholly irrelevant to the achievement of the state’s purpose.” *McSwain*, 520 A.2d at 530 (citing *McGowan*, 366 U.S. at 425, 81 S.Ct. 1101).

When applying “the rational basis test . . . [to an] equal protection . . . challenge[] . . . , a court must uphold a statute as rational if it can conceive of any plausible reason for the statute.” *Peake v. Commonwealth*, 132 A.3d 506, 519 n.15 (Pa.Cmwlth. 2015) (internal citation and quotation marks omitted). Thus, when considering an equal protection challenge, “the reviewing court is free to hypothesize reasons the legislature might have had for the classification[,]” and “[i]f the court determines that the classifications are genuine, it cannot declare the classification void even if it might question the soundness or wisdom of the distinction.” *Curtis*, 666 A.2d at 268. As we have held previously,

[t]he problems of government are practical ones and may justify, if they do not require, rough accommodations[]—illogical, it may be, and unscientific. . . . We do not wish to inhibit state experimental classifications in . . . practical and troublesome area[s], but inquire only whether the challenged distinction rationally furthers some legitimate, articulated state purpose.

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Strong v. County of Erie, 122 Pa.Cmwlth. 461, 552 A.2d 350, 353-54 (1989) (quoting *Metropolis Theater Co. v. City of Chicago*, 228 U.S. 61, 69-70, 33 S.Ct. 441, 57 L.Ed. 730 (1913)). Moreover,

[i]t is not necessary that the rational basis for a classification be set forth in the statute or in the legislative history. Nor is it necessarily incumbent upon the government agency to advance the reasons for the act in defending the classification. The burden must remain upon the person challenging the constitutionality of the legislation to demonstrate that it does not have a rational basis. Should the reviewing court detect such a basis, from whatever source, the legislation must be upheld.

Pa. Liquor Control Bd., 485 A.2d at 735.

The question of whether RETSL's lack of a post-tax-sale redemption provision contravenes equal protection guarantees has not yet been squarely addressed by a Pennsylvania court.^[12] Nevertheless, we hold that RETSL's lack of a post-tax-sale right of redemption provision does not violate the right to equal protection

¹² This question has reached this Court previously but was not decided for different reasons. See *Liggett v. Tax Claim Bureau Fayette Cty.* (Pa.Cmwlth., No. 2099 C.D. 2012, 2015 WL 5161319, filed Feb. 17, 2015) (holding appellants waived their equal protection claim); *Lewicki v. Washington Cty.* (Pa.Cmwlth., No. 2371 C.D. 2013, 2014 WL 10316922, filed Dec. 4, 2014) (finding appellants waived their equal protection challenge); *Battisti v. Tax Claim Bureau of Beaver Cty.*, 76 A.3d 111, 114 (Pa.Cmwlth. 2013) (declining to reach the equal protection claim and remanding the matter to the trial court for an evidentiary hearing).

under the law. The Supreme Court of Pennsylvania has declared that “the purpose of tax sales [under RETSL] is not to strip the taxpayer of his property but to [e]nsure the collection of taxes.” *Tracy v. Chester Cty., Tax Claim Bureau*, 507 Pa. 288, 489 A.2d 1334, 1339 (1985) (quoting *Hess v. Westerwick*, 366 Pa. 90, 76 A.2d 745, 748 (1950)). Further, this Court has held that “[t]he dominant purpose of [RETSL] is to provide speedier and more efficient procedures for enforcing tax liens and to improve the quality of title of the property sold at a tax sale.” *Pacella v. Washington Cty. Tax Claim Bureau*, 10 A.3d 422, 428 (Pa.Cmwlth. 2010). Thus, it is established that RETSL promotes a legitimate government interest. Further, we find the General Assembly’s classification—withholding the right of post-tax-sale redemption from property owners in second A through eighth class counties under RETSL while according such a right to property owners in first and second class counties under the MCTLA—bears a rational relation to the governmental objective. As we are “free to hypothesize reasons the legislature might have had for the classification,” *Curtis*, 666 A.2d at 268, we posit that Pennsylvania’s first and second class counties^[13] have larger pools of prospective buyers at tax sales. These larger pools of prospective buyers make it more likely that a property will be sold at a tax sale. Under these circumstances, the need for owner

¹³ Philadelphia County and Allegheny County, respectively. See AOPC: *County Classes*, available at http://www.pacourts.usinews-and-statistics/research-and-statistics/dashboard-table-of-contents/resources/WebHelp/General_Information/County_Class.htm (last visited Jan. 9, 2019).

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protection is greater, and that need is met by the equity of redemption in the more populous counties. Further, as these counties have a higher population and, therefore, a larger taxable base from which to derive revenue, 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.

As we are able to conceive of plausible reasons for the statute, and the legislative classification does not rest on grounds wholly irrelevant to the achievement of the state's purpose, we find that RETSL's lack of a post-tax-sale right of redemption provision satisfies rational basis review. *See Strong*, 552 A.2d at 353 (emphasis in original) (providing, "it [i]s not for the court to determine whether *in fact* the [challenged statute] would promote legitimate governmental purposes but whether the '[state] [legislature] *could rationally have decided*' it would") (quoting *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 466, 101 S.Ct. 715, 66 L.Ed.2d 659 (1981))^[14] Moreover, the "formidable"

¹⁴ See, e.g., *Leonard v. Thornburgh*, 507 Pa. 317, 489 A.2d 1349, 1352-53 (Pa. 1985) (holding that a statute providing for a lower wage tax cap on non-residents of the City of Philadelphia (City) than on residents of the City did not impinge on equal protection rights and was based on a "legitimate distinction," because "non-resident wage earners utilize services provided by the City . . . to a lesser extent than do residents," some services "are offered only to residents" and "residents of the [C]ity have recourse through their own elected representatives . . . in the event that they believe their tax rates are excessive"); *Appeal of McNelly*, 553 A.2d at 476 (holding that a law limiting a school employee residency requirement to school districts of the first class and first

burden of persuasion rests on the Fouses alone, *see Means*, 773 A.2d at 147, and they have failed to present any evidence or any reason under the law establishing why RETSL does not pass constitutional muster. *See Appeal of McNelly*, 553 A.2d at 476-77 (finding appellants “clearly failed to meet [their] burden” to establish that a statute violated their right to equal protection under the law, when “[t]hey . . . offered no evidence whatsoever to support their claim that there were no relevant distinctions or similarities between themselves and the Philadelphia and Pittsburgh school districts”).

Accordingly, for the foregoing reasons, we affirm the trial court’s decision to deny the Fouses’ Petition to Redeem and its conclusion that RETSL’s lack of a post-tax-sale right of redemption provision does not violate the right to equal protection under the law.

class A was “rationally related to legitimate governmental interests,” as the school districts could “be distinguished on the basis of population, high unemployment, lack of adequate tax base, enhancement of the quality of employee performance and the general economic flow from local expenditures of employees’ salaries”); *Strong*, 552 A.2d at 351-52 (holding that an ordinance setting the compensation for municipal tax collectors at a percentage of the assessed value of municipal property for which they would collect taxes but capping compensation for the tax collector of a particular township was rationally related to the legitimate governmental objectives of “[r]educing county costs and achieving uniformity among municipal tax collectors”).

ORDER

AND NOW, this 7th day of March, 2019, the October 23, 2017 order of the Court of Common Pleas of Huntingdon County is AFFIRMED.

DISSENTING OPINION

McCULLOUGH, JUDGE

Fred and Jolene Fouse had their property sold at an upset tax sale due to delinquent taxes that they owed. If the property was located in Philadelphia County or Allegheny County, counties that proceed solely and exclusively under the Municipal Claims and Tax Liens Act (MCTLA),^[1] the Fouses would have possessed a right to redeem their property “within nine months from the date of the acknowledgment of the sheriff’s deed . . . upon payment of the amount bid at such sale[.]” Section 32(a) of the MCTLA, 53 P.S. § 7293(a).^[2] However, the Fouses’ place of residence and the property is sited in Huntingdon County, a sixth class county, and the Real Estate Tax Sale Law

¹ Act of May 16, 1923, P.L. 207, *as amended*, 53 P.S. §§ 7101-7505.

² There is an exception for the City of Pittsburgh, where tax sales are governed by the Second Class City Treasurer’s Sale and Collection Act, Act of October 11, 1984, P.L. 876, *as amended*, 53 P.S. §§ 27101-27605 (Treasurer’s Act). Under section 304 of the Treasurer’s Act, the owner of the property “may redeem the property by payment of the full amount of the claims for which the property was sold . . . [w]ithin 90 days after the date of the treasurers sale.” 53 P.S. § 27304.

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(RETSL)^[3] applies to this county. See sections 102 and 201 of the RETSL, 72 P.S. §§ 5860.102 (defining “county” in pertinent part as “a county of the second A, third, fourth, fifth, sixth, seventh or eighth class[.]”), 201 (“[A] Tax Claim Bureau is hereby created in each county in the office of the county commissioners.”). Unlike the MCTLA, under the RETSL, “[t]here shall be no redemption of any property after the actual sale thereof.” Section 501(c) of the RETSL, 72 P.S. § 5860.501(c).

The Fouses contend that the inclusion of a post-sale right to redemption in the MCTLA, and the exclusion of such a right from the RETSL, violate principles of equal protection. “[I]n evaluating this question, we employ the rational basis test, under which a statutory classification will be upheld so long as it bears a reasonable relationship to accomplishing a legitimate state purpose.” *Commonwealth v. Duda*, 592 Pa. 164, 923 A.2d 1138, 1151 (2007).

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. In *City of Allentown v. Kauth*, 874 A.2d 164 (Pa.Cmwlth. 2005), this Court explained that “[t]he RETSL’s mechanisms for upset and judicial sales are virtually identical to those in the MCTLA.” *Id.* at 166. We observed that “[t]he MCTLA and RETSL . . . permit, through strikingly similar and

³ Act of July 7, 1947, P.L. 1368, as amended, 72 P.S. §§ 5860.101-5860.803.

parallel mechanisms, a taxing authority to expose a delinquent property for an upset sale and, in the absence of receiving the upset price by which to satisfy the delinquent taxes and claims, a ‘free and clear’ judicial sale.” *Kauth*, 874 A.2d at 168-69. Indeed, “the two statutes are very similar and operate concurrently with one another” and are essentially one and the same; although they are technically two different statutes, both contain “procedures for the resolution of the same disputes[.]” *Kauth*, 874 A.2d at 169. Additionally, “*Whether 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.*” *Kauth*, 874 A.2d at 169 (emphasis added).

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,^[4] 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. *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”);^[5] *see also 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”). Hence,

⁴ Added by section 8 of the Act of August 14, 2003, P.L. 83.

⁵ *Shapiro* was overruled in part on other grounds by *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974).

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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.^[6]

In this vein, I view the right of redemption as 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. While the General Assembly unconditionally granted homeowners with property in Philadelphia County and Allegheny County such a right, it did not provide or expressly bestow this right upon any other homeowner of the other counties in the Commonwealth who fall within the ambit of the RETSL. It

⁶ This point is buttressed by the fact that, under the Treasurers 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—which occurs after the sale has been consummated—under the MCTLA, 53 P.S. § 7293(a). *See Brentwood Borough School District v. HSBC Bank USA*, 111 A.3d 807, 808-10 and n.2 (Pa.Cmwlth. 2015) (explaining that the Treasurer's Act applies to the City of Pittsburgh, and not to the Borough of Brentwood, which is located in Allegheny County just outside the City of Pittsburgh, and analyzing the right of redemption under the MCTLA for a tax sale conducted in connection with property located in the Borough of Brentwood). 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.

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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. In terms of equal protection, the federal and state constitutions “both reflect the principle that like persons in like circumstances must be treated similarly” and “a classification will be struck down if it is based upon artificial or irrelevant distinctions[.]” *Harrisburg School District v. Zogby*, 574 Pa. 121, 828 A.2d 1079, 1088-89 (2003).

Upon review, 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. Through its operation, the MCTLA grants a privilege and benefit upon one class of individuals as a matter of right and, apart from a mere preference for one group over another, I cannot ascertain why the General Assembly has not afforded the same right to the class of individuals covered under and subjected to the RETSL. Consequently, I would conclude that the RETSL fails the rational basis test and would declare that the statute, on its face, violates the rights of equal protection under the United States and Pennsylvania Constitutions. I, therefore, would enjoin enforcement of the RETSL and enter an order requiring all the counties in the Commonwealth to utilize the MCTLA (which they are already authorized to do) as the sole

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procedure through which to conduct tax sales,^[7] thereby ensuring that all the homeowners in this Commonwealth are treated alike and are vested with the right to redeem their property.^[8]

Hence, I respectfully dissent.

⁷ This would be to the exclusion of the City of Pittsburgh, which would continue to conduct tax sales under the Treasurer's Act.

⁸ See *Commonwealth v. Butler*, 458 Pa. 289, 328 A.2d 851, 860 (1974) (Pomeroy, J., concurring) ("Where a statute denies equal protection by making an unconstitutional classification, the classification can be abolished by making the statute operate either on everyone or on no one," quoting *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1136-37 (1969)).

IN THE COURT OF COMMON PLEAS
OF HUNTINGDON COUNTY,
PENNSYLVANIA
CIVIL DIVISION

FRED LOHR and	:	
JOLENE K. FOUSE,	:	
Plaintiffs	:	
vs.	:	
SARATOGA PARTNERS, L.P.,	:	NO. 2016-1701
and HUNTINGDON COUNTY	:	
TAX CLAIM BUREAU,	:	
Defendants	:	

ORDER

AND NOW, this 23rd day of October, A.D., 2017, after argument held October 10, 2017, it is Ordered that the "Petition to Redeem Property Sold at Tax Sale" filed on behalf of Plaintiffs is denied since the Court is satisfied that the Real Estate Tax Sale Law of 1947 does not violate either the Equal Protection Clause of the United State Constitution or Article III of the Pennsylvania Constitution.

BY THE COURT:

/s/ Stewart Kurtz
S.J.