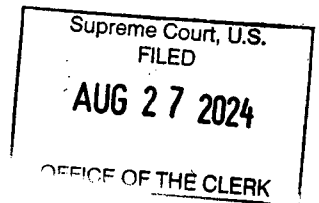


In the
Supreme Court of the United States



CHRYSSOULA ARSENIS; SPYRIDON ARSENIS;
AND GEORGE ARSENIS,

Petitioners,

v.

BOROUGH OF BERNARDSVILLE;
EDWARD KERWIN, TAX ASSESSOR;
TOM CZERNIECKI, BOROUGH ADMINISTRATOR;
AND ANTHONY SURIANO, BOROUGH CLERK,

Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of New Jersey

PETITION FOR A WRIT OF CERTIORARI

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October 3, 2024

QUESTIONS PRESENTED

The questions presented for review are

1. Whether the selective reassessment of 380 Claremont Road by Town Assessor Edward Kerwin, conducted without a district-wide revaluation or the presence of significant property improvements, violates the Equal Protection Clause of the Fourteenth Amendment by creating unconstitutional disparities in property taxation.

2. Whether the spot assessment conducted by the Town Assessor, which disproportionately targeted properties that had recently sold, violates New Jersey's constitutional and statutory requirements for uniform property taxation, as established in N.J.S.A. 54:4-23 and related case law, thus raising a substantial federal question of equal protection.

3. Whether the practice of spot assessing real property, as applied by Borough of Bernardsville, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, in light of the New Jersey Supreme Court's decision in *West Milford Tp. v. Van Decker*, 120 N.J. 354 (1990), which held that discriminatory spot assessments contravene principles of uniformity and fairness in taxation.

4. Whether the U.S. Supreme Court should intervene to resolve the conflict between federal equal protection principles and state practices of property assessment, particularly when such practices lead to discriminatory tax burdens on specific property owners without a rational basis for differential treatment.

PARTIES TO THE PROCEEDINGS

Petitioners

- Chryssoula Arsenis
- Spyridon Arsenis
- George Arsenis

Respondents

- Borough of Bernardsville
- Edward Kerwin, Tax Assessor
- Tom Czerniecki, Borough Administrator
- Anthony Suriano, Borough Clerk

LIST OF PROCEEDINGS

Supreme Court of New Jersey

C-520 September Term 2023, No. 088460

C. Arsenis, S. Arsenis, and G. Arsenis, *Plaintiffs-Appellants-Petitioners*, v. Borough of Bernardsville, Edward Kerwin, Tax Assessor, Tom Czerniecki, Borough Administrator, and Anthony Suriano, Borough Clerk, *Defendants-Respondents*.

Date of Final Judgment: May 28, 2024

Superior Court of New Jersey, Appellate Division

Docket No.A-0603-21

C. Arsenis, S. Arsenis, and G. Arsenis, *Plaintiffs-Appellants*, v. Borough of Bernardsville, Edward Kerwin, Tax Assessor, Tom Czerniecki, Borough Administrator, and Anthony Suriano, Borough Clerk, *Defendants-Respondents*.

Date of Final Judgment: June 28, 2023

Superior Court of New Jersey Law Division, Somerset County

Docket No. Som-L-1061-21

C. Arsenis., S.Arsenis, Arsenis.G, *Plaintiff's/Escrow*, v. Borough of Bernardsville, Edward Kerwin, Tax Assessor, Tom Czerniecki, Borough Administrator, Anthony Suriano, Borough Clerk, John Does 1-10 and ABC Corporation 1-10 (Collectively), *Defendants*.

Date of Final Judgment: September 24, 2021

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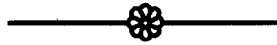
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PETITION FOR A WRIT OF CERTIORARI

Petitioner George Arsenis respectfully petitions for a writ of certiorari to review the judgment of the Superior Court of New Jersey, Appellate Division, which upheld the spot assessment of the property located at 380 Claremont Road, Bernardsville, New Jersey.

This Petition is submitted in opposition to the spot assessment conducted by Town Assessor Edward Kerwin, which specifically targeted certain properties without a town-wide reassessment or any substantial changes to the properties that would justify such an increase. The property owner of 380 Claremont Road, Bernardsville, New Jersey, is challenging the spot assessment conducted by Town Assessor Edward Kerwin. The spot assessment selectively targeted this property for reassessment without a town-wide revaluation or any significant improvements justifying such action before the deed was signed on December 17, 2012. This practice not only violates New Jersey's statutory requirements for uniform property taxation but also infringes upon the federal constitutional rights of the property owner under the Equal Protection Clause of the Fourteenth Amendment based on the Arm's length purchase price on paper. The practice of spot assessment not only contravenes New Jersey state law but also violates federal constitutional protections under the Equal Protection Clause of the Fourteenth Amendment. This brief will demonstrate that the spot assessment conducted by Assessor Kerwin is illegal and must be overturned, relying on both New Jersey state law and federal case law.



OPINIONS BELOW

The decision of the Supreme Court of New Jersey denied discretionary review on May 29, 2024 is included in the Appendix (“App.”) at 1a.

The decision of the Superior Court of New Jersey, Appellate Division, upholding the spot assessment. (App.3a).

The order and reasoning of the Superior Court of New Jersey, Law Division, Somerset County, is included at App.24a, 26a.



JURISDICTION

The Supreme Court of New Jersey denied review on May 29, 2024. (App.1a). The Jurisdiction of this court is invoked under 28 U.S.C. § 1257(a) as this case presents Federal Questions under the Equal Protection Clause of the Fourteenth Amendment



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. XIV § 1 (Equal Protection Clause)

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.

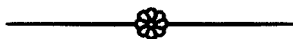
N.J.S.A. 54:4-23

Assessment of real property; conditions for reassessment.

All real property shall be assessed to the person owning the same on October 1 in each year. The assessor shall ascertain the names of the owners of all real property situate in his taxing district, and after examination and inquiry, determine the full and fair value of each parcel of real property situate in the taxing district at such price as, in his judgment, it would sell for at a fair and bona fide sale by private contract on October 1 next preceding the date on which the assessor shall complete his assessments, as hereinafter required; provided, however, that in deter-

mining the full and fair value of land which is being assessed and taxed under the Farmland Assessment Act of 1964, chapter 48, laws of 1964, the assessor shall consider only those indicia of value which such land has for agricultural or horticultural use as provided by said act; and provided further however, that when the assessor has reason to believe that property comprising all or part of a taxing district has been assessed at a value lower or higher than is consistent with the purpose of securing uniform taxable valuation of property according to law for the purpose of taxation, or that the assessment of property comprising all or part of a taxing district is not in substantial compliance with the law and that the interests of the public will be promoted by a reassessment of such property, the assessor shall, after due investigation, make a reassessment of the property in the taxing district that is not in substantial compliance, provided that (1) the assessor has first notified, in writing, the mayor, the municipal governing body, the county board of taxation, and the county tax administrator of the basis of the assessor's determination that a reassessment of that property in the taxing district is warranted and (2) the assessor has submitted a copy of a compliance plan to the county board of taxation for approval. In the case of real property located in a county participating in the demonstration program established in section 4 of P.L.2013, c.15 (C.54:1-104), the assessor of the municipality in which the real property is situated,

after due investigation, shall make a reassessment of the property in the taxing district that is not in substantial compliance. Following a reassessment of a portion of the taxing district pursuant to the provisions of this section, the assessor shall certify to the county board of taxation, through such sampling as the county board of taxation deems adequate, that the reassessment is in substantial compliance with the portions of the taxing district that were not reassessed. For the purposes of assessment, the assessor shall compute and determine the taxable value of such real property at the level established for the county pursuant to law.



STATEMENT OF THE CASE

A. Statement of Facts

Petitioner is the owner of the property located at 380 Claremont Road, Bernardsville, New Jersey. In 2012, Town Assessor Edward Kerwin reassessed the above property, resulting in a significant increase in the assessed value and corresponding property taxes. This reassessment was not part of a town-wide revaluation and was not based on any substantial improvements to the property. Instead, the reassessment appeared to target the property due to its recent sale at arm's length purchase price on paper, despite no uniform reassessment occurring across the district on December 17, 2012.

Petitioner challenged the reassessment, arguing that it constituted an illegal spot assessment under New Jersey law and violated the Equal Protection Clause of the Fourteenth Amendment by creating unjustified disparities in property taxation. Both the New Jersey Court and the Superior Court of New Jersey, Appellate Division, upheld the reassessment. The New Jersey Supreme Court denied review.

This case concerns the constitutionality of spot assessments performed by the Borough of Bernardsville, which resulted in significant disparities in property tax assessments within the same class of properties. Petitioner, a property owner in Borough of Bernardsville experienced a substantial increase in property tax assessment following a spot assessment conducted in December 17, 2012 the date of purchase, which was not uniformly applied to similarly situated properties.

In *West Milford Tp. v. Van Decker*, 120 N.J. 354, the New Jersey Supreme Court held that spot assessments violate the principles of uniformity and fairness in taxation. The court found that the selective reassessment of certain properties, while leaving similarly situated properties untouched, constituted arbitrary and discriminatory spot assessments.

Tax Year:	2012
Total Assessment:	\$ 2,489,500
Taxable Amount:	\$ 43,317
"Spot Assessing":	
"Depreciation Factor":	
"Shell of a Building":	
Tax Year:	2013
Total Assessment:	\$ 2,979,400
Taxable Amount:	\$ 53,301
"Spot Assessing":	\$ 9,984.00

**“Depreciation Factor”:
“Shell of a Building”:**

Tax Year:	2014
Land:	664,000
Total Assessment:	\$ 3,058,300
Taxable Amount:	\$ 55,936
“Spot Assessing”:	
“Depreciation Factor”:	\$38,936
“Shell of a Building”:	\$17,000

Tax Year:	2015
Land:	664,000
Total Assessment:	\$ 3,139,800
Taxable Amount:	\$ 57,678
“Spot Assessing”:	
“Depreciation Factor”:	\$40,678
“Shell of a Building”:	\$17,000

Tax Year:	2016
Land:	664,000
Total Assessment:	\$ 3,173,900
Taxable Amount:	\$ 59,542
“Spot Assessing”:	
“Depreciation Factor”:	\$42,542
“Shell of a Building”:	\$17,000

Tax Year:	2017
Land:	664,000
Total Assessment:	\$ 3,081,800
Taxable Amount:	\$ 59,386
“Spot Assessing”:	
“Depreciation Factor”:	\$42,386
“Shell of a Building”:	\$17,000

Tax Year:	2018
Land:	628,000
Total Assessment:	\$ 2,949,600
Taxable Amount:	\$ 58,727
“Spot Assessing”:	
“Depreciation Factor”:	\$41,727
“Shell of a Building”:	\$17,000

2019 Land 588,000 \$67,662 - 43,317 + 6500
(improvements)=17,845 3,320,000

2020 Land 536,000 \$67,534.19 - 43,317 + 6500
(improvements)=17,717 3,200,000

Total Money to Tax Payer in Overpayment = \$251,815.00 not included interest, tremble damage investigation fees and punitive damages. The Property Record Card shows a total assessment of \$2,489,500, deducting the land value in the amount of \$664,000 and the remaining total value of the building is the amount of 1,825,500.00 times the depreciation factor of a “Shell of the Building”= 17% which is calculated in the amount \$310,335.00 for the years under construction such as 2014 plus the land value the total assessment should have been for 2014 \$974,335 with total tax equals \$17,820.05 instead it was taxed in the amount of \$55,936.00. In 2015 it was \$57,678.00, 2016 it was taxed \$59,542, 2017, it was taxed \$59, 386.00, until March 13, 2018 it was taxed \$58,726.00 and in 2019 he added cost of improvements factor of \$6500.00 with a total of \$67,662.00 and in 2020 the total assessment was \$3,209,000 with taxes in the amount \$67,534.19.

The above set forth fully represents the Constitutionality of Spot Assessments performed by Edward Kerwin Town Assessor for the Borough of Bernardsville which resulted in significant disparities in property tax assessment within the same class of properties. The Above Spot Assessment conducted December 17, 2012 resulted in substantial increase in property tax assessment which was not uniformly applied to similarly situated properties.

B. New Jersey Legal Framework

1. Unconstitutionality of Spot Assessments in New Jersey

Under New Jersey law, spot assessments are prohibited because they violate the state constitution's requirement for uniform taxation. As established in *Tri-Terminal Corp. v. Borough of Edgewater*, 68 N.J. 405 (1975), the New Jersey Supreme Court emphasized that all properties must be assessed uniformly. Assessors are required to assess each property at its true value, and any reassessment must be part of a district-wide revaluation or reassessment to ensure uniformity.

Moreover, *Regent Care Center, Inc. v. Hackensack City*, 362 N.J. Super. 403 (App. Div. 2003), reaffirmed that spot assessments, which selectively reassess properties based on recent sales or other isolated criteria, are unconstitutional. The court in *Regent Care* held that assessors are required to maintain uniform assessments across the entire municipality and that singling out properties for reassessment violates the principles of fairness and uniformity enshrined in New Jersey's taxation laws (Justia Law).

2. The Prohibition of Spot Assessments

New Jersey statutes and case law explicitly prohibit spot assessments. According to N.J.S.A. 54:4-23, all real property must be assessed to the person owning the property on October 1 of each year, and assessments must reflect the full and fair value of the property. This property was reassessed on December 17, 2012 the day of the purchase. The New Jersey Tax Court, in *Kathleen Schumar v. Bernardsville Borough*, 21 N.J. Tax 619 (2004), reiterated that spot assessments, where a property is reassessed based solely on recent sales data or other selective criteria, are invalid under New Jersey law.

3. Violation of New Jersey's Constitutional and Statutory Requirements

The New Jersey Constitution mandates uniformity in property taxation, as articulated in Article VIII, Section 1, Paragraph 1. This principle of uniform taxation is further reinforced by New Jersey statutory law under N.J.S.A. 54:4-23, which requires that all real property be assessed at its full and fair value annually. In this context, the reassessment of 380 Claremont Road constitutes an illegal spot assessment.

In *Tri-Terminal Corp. v. Borough of Edgewater*, 68 N.J. 405, the New Jersey Supreme Court emphasized that spot assessments violate the uniformity requirement by selectively targeting specific properties without conducting a broader reassessment of all properties in the district. The court held that such practices are unconstitutional because they result in disparate treatment of property owners.

Furthermore, the New Jersey Appellate Division in *Regent Care Center, Inc. v. Hackensack City*, 362 N.J. Super. 403, reiterated that spot assessments are impermissible. The court clarified that assessors must maintain uniformity across all properties in the municipality and that selective reassessment based on recent sales or other isolated factors is unconstitutional. The assessor's actions in targeting 380 Claremont Road for reassessment on December 17, 2012 without a corresponding reassessment of comparable properties clearly contravenes these legal principles.

4. Lack of Justification for the Spot Assessment

In *Kathleen Schumar v. Bernardsville Borough*, the New Jersey Tax Court ruled that an assessment increase based solely on knowledge of a recent property sale or minor property changes is insufficient to justify reassessment. The court found that reassessments must be based on consistent and objective criteria applicable to all properties in the taxing district. Assessor Kerwin's actions in reassessing 380 Claremont Rd on December 17, 2012 is selective because the assessor did not conduct a similar review of other properties in the district but based it on the recent sale constitutes an arbitrary practice and must be overturned.

C. Federal Legal Framework

1. Violation of the Equal Protection Clause

The practice of spot assessment also runs afoul of federal constitutional protections under the Equal Protection Clause of the Fourteenth Amendment. The U.S. Supreme Court in *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County*, 488 U.S. 336

(1989), found that a county's practice of assessing recently sold properties at higher values than similar unsold properties violated the Equal Protection Clause. The Court held that the significant disparities in property tax assessments constituted a lack of uniformity and fairness, which are fundamental requirements of the Equal Protection Clause.

Similarly, in *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923), the Supreme Court emphasized that all taxpayers must be treated equally, and any deviation from uniformity in assessments could result in a violation of federal constitutional rights. The Court made it clear that discriminatory assessment practices that disproportionately burden certain property owners are unconstitutional.

The U.S. Supreme Court has long held that discriminatory tax practices, including spot assessments, violate the Equal Protection Clause of the Fourteenth Amendment. In *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County*, 488 U.S. 336, the Court found that assessing recently sold properties at higher values than comparable unsold properties constituted an unconstitutional lack of uniformity. The Court emphasized that all taxpayers must be treated equally, and any deviation from uniformity in assessments is unconstitutional.

Similarly, in *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, the Supreme Court ruled that a state cannot impose taxes on a property at a higher rate than other properties of the same class within the same taxing district due to the purchase price on December 17, 2012. Assessor Kerwin's reassessment of 380 Claremont Road without applying the same criteria to all comparable properties in Bernardsville creates

an unjustified disparity that violates the Equal Protection Clause.

2. The Precedent of Uniformity

In *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350 (1918), the Supreme Court held that tax assessors must apply uniform criteria when assessing properties. The Court noted that arbitrary or selective reassessment practices that create significant disparities between properties are unconstitutional. The actions of Assessor Kerwin in selectively reassessing 380 Claremont Road without conducting a similar review of other properties in the district constitute such an arbitrary practice and must be overturned. The court held the systematic discriminatory annual tax over evaluation of the property, despite the fact the farmstead was completely gutted to remove the asbestos/lead since 1895. Therefore, the Farmstead was vacant and did not have a certificate of occupancy. These cases highlight the Federal Judiciary's role in ensuring that property assessment are conducted uniformly and fairly protecting property owner(s) especially in reference to this property a farmstead devoted to woodland management and agriculture. Notably, this farm including the farmstead is among the few remaining in the State of New Jersey which has not fallen victim to the peril of construction of Apartments and Development by the Builders in spite of The Borough of Bernardsville's efforts to force the property owner(s) to give up the importance of farming for the sake of development by the builders. Agricultural and Woodland Manager Property owner(s) should be protected from discriminatory tax practices by local Assessor such as Mr. Kerwin because the action of the local assessor and board review constitutes an intentional systematic

discrimination". In the case of *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 247 U.S. 350, 247 U.S. 352, 353, this court said:

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond v. Chicago Union Traction Company*, 207 U.S. 20, 207 U.S. 35-37 (1907)"

Analogous cases are *Greene v. Louisville & Interurban R. Co.*, 244 U.S. 499, 244 U.S. 516-518 (1917); *Cummins v. National Bank*, 101 U.S. 153, 101 U.S. 160 (1880); *Taylor v. Louisville & N. R. Co.*, 88 F. 350, 364-365, 372-374 (1933); *Louisville & N. Ry. Co. v. Bosworth*, 209 F. 380, 452 (1917); *Washington Water Power Co. v. Kootenai County*, 270 F. 369, 374 (1922).

3. Lack of Justification for Disparate Treatment

In the current case, Assessor Kerwin's selective reassessment of certain properties without conducting a broader revaluation or reassessment of all properties within the municipality creates an unjustified disparity in tax burdens. This selective reassessment constitutes discriminatory treatment of certain property owners, in direct violation of the principles set forth in *Sunday*

Lake Iron Co. v. Wakefield, 247 U.S. 350, where the Court held that property assessments must be based on consistent and non-arbitrary criteria.



REASONS FOR GRANTING THE PETITION

I. The Reassessment Violates the Equal Protection Clause of the Fourteenth Amendment

The U.S. Supreme Court has consistently held that discriminatory taxation practices, such as spot assessments, violate the Equal Protection Clause. In *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County*, 488 U.S. 336, the Court struck down a property tax scheme that resulted in significant disparities in the assessments of similar properties, ruling that such practices violated the Equal Protection Clause. Similarly, in *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, the Court held that all taxpayers within a taxing district must be treated equally.

In this case, Assessor Kerwin's selective reassessment of 380 Claremont Road created an unjustified and substantial disparity between the assessed value of the Petitioner's property and other similar properties in Bernardsville, thus violating the principles of equal protection. The reassessment was arbitrary and lacked a rational basis, as it was not conducted as part of a town-wide revaluation or prompted by significant property improvements, simply put it was conducted on December 17, 2012 the date of the purchase.

II. The Reassessment Contravenes New Jersey's Requirements for Uniform Property Taxation

New Jersey law, under N.J.S.A. 54:4-23, mandates that all real property be assessed at its true value and that such assessments must be uniform across the district. The New Jersey Supreme Court, in *Tri-Terminal Corp. v. Borough of Edgewater*, 68 N.J. 405, held that spot assessments violate this uniformity requirement. The Appellate Division's decision to uphold the spot assessment contradicts this established state law and allows for the unconstitutional taxation practices that the New Jersey Constitution seeks to prevent.

This Court should resolve the conflict to ensure uniform application of the Equal Protection Clause across jurisdictions.

III. National Importance

The practice of discriminatory spot assessments is of national importance, as it affects property owners across the United States. The practice of selective reassessment undermines public confidence in the fairness of the property tax system and has significant financial implications for property owners. Given the widespread implications of this issue it is crucial that this court provide guidance.

IV. Need for Clarification

This case presents an opportunity for the Court to clarify the application of the Equal Protection Clause in the context of property tax assessments. The Court should provide guidance on the standards that lower courts must apply when evaluating claims of discriminatory spot assessments. This court's intervention is necessary to clarify the standards that must

be applied to ensure that property assessments are conducted fairly and uniformly.

V. The Conflict Between State and Federal Law Requires Resolution by This Court

This case presents a substantial conflict between state practices and federal constitutional principles. The New Jersey courts' decisions, upholding a practice that results in unequal treatment of taxpayers, necessitate this Court's intervention to protect the federal constitutional rights of property owners. The resolution of this conflict is essential to ensure that state taxation practices comply with the Equal Protection Clause.

“... the intentional, systematic undervaluation by state officials of taxable property of the same class belonging to other owners contravenes the constitutional right of one taxed upon the full value of his property”.

Cumberland Oil Co. v. Board of Revision, 284 U.S. 23, 28 (1931)



CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted to address the significant constitutional and statutory issues raised by the spot assessment conducted by Town Assessor Edward Kerwin on December 17, 2012 based on the sales price. The spot assessment conducted by Town Assessor Edward Kerwin is illegal under both New Jersey and federal law. It violates New Jersey's statutory and constitutional requirements for uniform taxation and contravenes the Equal Protection Clause of the Fourteenth Amendment by creating unjustified disparities in property tax assessments. As such, this spot assessment must be overturned, and any resulting tax increases should be rescinded. The homeowner(s) respectfully request that the court grant relief in favor of the affected property owners and mandate a return to uniform and fair assessment practices in accordance with state and federal law. The spot assessment conducted by Town Assessor Edward Kerwin for 380 Claremont Road, Bernardsville, New Jersey 07924, is illegal under both New Jersey and federal law. It violates New Jersey's constitutional and statutory requirements for uniform property taxation and infringes upon the federal constitutional rights of the property owner(s) under the Equal Protection Clause. The reassessment of 380 Claremont Road on December 17, 2012 must be invalidated, and the property's tax assessment should be restored to its previous level, ensuring compliance with the principles of fairness and uniformity in taxation. The Homeowner(s) request that the court grant relief in favor of the property owner and mandate

the return to a fair and uniform assessment practice consistent with state and federal law.

For the foregoing reasons. Petitioner respectfully request the Petition for Writ of Certiorari be granted based “on the equal protection clause that protects the individual from state action treatment by subjecting him to taxes not imposed on other the same class .

I, certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted,

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October 3, 2024