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OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE  
THE SUPREME COURT  
OF THE  
UNITED STATES

**CAPTION:** ALLEGHENY PITTSBURGH COAL COMPANY, Petitioner V. COUNTY  
COMMISSION OF WEBSTER COUNTY, WEST VIRGINIA; and  
EAST KENTUCKY ENERGY CORPORATION, ET AL., Petitioners V.  
COUNTY COMMISSION OF WEBSTER COUNTY, WEST VIRGINIA

**CASE NO:** 87-1303 & 87-1310

**PLACE:** WASHINGTON, D.C.

**DATE:** December 7, 1988

**PAGES:** 1 - 52

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IN THE SUPREME COURT OF THE UNITED STATES

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ALLEGHENY PITTSBURGH COAL :  
COMPANY, :  
Petitioner :

v. : No. 87-1303

COUNTY COMMISSION OF WEBSTER :  
COUNTY, WEST VIRGINIA; and :

-----x

EAST KENTUCKY ENERGY CORPORATION, :  
ET AL., :  
Petitioners :

v. : No. 87-1310

COUNTY COMMISSION OF WEBSTER :  
COUNTY, WEST VIRGINIA :

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Washington, D.C.

Wednesday, December 7, 1988

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States  
at 10:59 o'clock a.m.

APPEARANCES:

E. BARRETT PRETTYMAN, JR., ESQ., Washington, D.C.; on  
behalf of the Petitioners.

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**APPEARANCES: (Continued)**

**WILLIAM ULLRICH, ESQ., Chief Deputy Attorney General of  
West Virginia, Charleston, West Virginia; on behalf  
of the Respondent.**

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C O N T E N T S

<u>ORAL ARGUMENT OF:</u>	<u>PAGE</u>
E. BARRETT PRETTYMAN, JR., ESQ.	
On behalf of the Petitioners	4
WILLIAM ULLRICH, ESQ.	
On behalf of the Respondent	26
<u>REBUIITAL ARGUMENT OF</u>	
E. BARRETT PRETTYMAN, JR., ESQ.	
On behalf of the Petitioners	49



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P R O C E E D I N G S

(10:59 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument next in No. 87-1303, Allegheny Pittsburgh Coal Company v. County Commission of Webster County, and a companion case.

Mr. Prettyman, you may proceed whenever you're ready.

ORAL ARGUMENT OF E. BARRETT PRETTYMAN, JR.

ON BEHALF OF THE PETITIONERS

MR. PRETTYMAN: Thank you, Mr. Chief Justice and may it please the Court:

This case poses a question of whether a tax assessor in Webster County, West Virginia can adopt and apply the so-called welcome stranger doctrine to Petitioner taxpayers in a way that results in discriminatory taxes on their properties.

The welcome stranger doctrine favors long term residents of the county by leaving the valuations on their properties essentially as they have traditionally been, as they have been on the rolls, with only sporadic and de minimis increases, while valuing the properties of new purchasers at the prices they pay for similar properties.

As shown in this case, the result is very

1 dramatic disparities between the taxes paid on  
2 comparable pieces of property.

3 Now, I don't think I need to review in any  
4 detail here with you the facts relating to the  
5 Petitioners. Let me just say in a paragraph that in  
6 1974 Allegheny Pittsburgh bought 7306 acres of land in  
7 Webster County which it sold to East Kentucky Energy in  
8 1982, and in 1977, the Shamrock/Onelda property in  
9 Webster County was purchased, consisting of 7783 acres  
10 of land.

11 Applying the welcome stranger doctrine to  
12 these sales, the assessor revised the appraisals on each  
13 of the two sets of properties to conform to the  
14 statement of declaration in each deed. In each deed you  
15 must state what the price is, and their, their  
16 assessments were conformed accordingly.

17 The assessor, however, did not revalue or  
18 reappraise any adjoining or comparable properties either  
19 then or at any --

20 QUESTION: Well, Mr. Prettyman, are you  
21 suggesting that if there's a sale of a piece of  
22 property, the assessor has to go in and revalue all the  
23 adjoining property right then?

24 MR. PRETTYMAN: The statute tells the assessor  
25 to revalue property at its true and actual value.

1 QUESTION: Well, that's a matter of West  
2 Virginia law.

3 MR. PRETTYMAN: It is indeed, and  
4 consequently, she is under both a constitutional and a  
5 statutory duty in West Virginia which is very different  
6 than some other states, to --

7 QUESTION: You mean a federal constitutional  
8 duty?

9 MR. PRETTYMAN: Her federal constitutional  
10 duty is to make certain that there's no discrimination  
11 between like properties, and if they are going to value  
12 at a current value those properties which are sold, she  
13 must devise some system by which she, on some kind of  
14 current basis, revalues other properties. We don't for  
15 a moment say she must rush in every month and look at --

16 QUESTION: Well, must she rush in every year?

17 MR. PRETTYMAN: The states have varied on  
18 that, industry.

19 QUESTION: Well, but I mean as a matter -- you  
20 are talking about a matter of federal equal protection  
21 doctrine, I take it.

22 MR. PRETTYMAN: What we say is that on any  
23 kind of a regular basis we would -- whatever the  
24 circumstances are in the state -- in some states it's  
25 every year, in some states it's every other year, and in

1 some states it's every thirld or fourth year, but at  
2 least if there is a good faith attempt by the assessor  
3 to keep up with current market value, if that's the  
4 standard that they're going to use, then there cannot be  
5 the disparities that show up in this case.

6 But you've got to remember now that she didn't  
7 even attempt this. This is not a case where she was  
8 lagging behind. She didn't attempt in any way to  
9 revalue the property. This, the other properties have  
10 not been revalued.

11 What she did was she let everything sit on the  
12 books until there was a sale, and then she did nothing.

13 QUESTION: There's some dispute over that. I  
14 thought that there is some contention by the other side  
15 that in fact remaining property has been revalued  
16 upwards about 30 percent. You contest that, I  
17 understand, but --

18 MR. PRETTYMAN: Well, Your Honor, it doesn't  
19 make any difference whether that's true or not. I take  
20 issue with it simply because the circuit court found  
21 that that in fact did not happen, and the circuit court  
22 was looking at the actual records of how properties were  
23 treated. He found, for example, that some properties  
24 were raised \$10 and not 10 percent. He found that 35  
25 percent of the properties weren't raised at all.



1           But even if you take 10 percent, even if you  
2 say that in the three years that she purported to do  
3 this, which was in '76, '81 and '83, even if she did  
4 that, you get nowhere near the evaluations that you're  
5 talking about for our property. Moreover, that's not a  
6 re-evaluation of the property on the basis of current  
7 market value, which is what she did to us. Rather,  
8 that's just simply an arbitrary 10 percent raise every  
9 few years, and the disparity remains; the disparity  
10 remains, because we're talking about disparities in our  
11 case are from 32 to 35 times, not percent, in regard to  
12 East Kentucky and Allegheny Pittsburgh, and 8 to 20  
13 times the value in regard to Shamrock and Oneida.

14           QUESTION: Would it be lawful to have this  
15 kind of a system? We have evaluated all the property on  
16 site on one occasion 50 years ago. After that we simply  
17 increase the assessment on the basis of the inflation  
18 index for the area in question.

19           MR. PRETTYMAN: Sure.

20           QUESTION: Except that where a property is  
21 sold, you have a more reliable valuation, so particular  
22 properties that are sold you reassess on the basis of  
23 the sales price.

24           MR. PRETTYMAN: If your system in the state,  
25 which it is in West Virginia, to value property on the

1 basis of current market value and you are in fact  
2 valuing some properties, namely, recently sold  
3 properties, on that basis, and a disparity grows because  
4 of the system that you simply -- that you just stated,  
5 and in fact the other are not being currently market  
6 valued, then you could indeed have discrimination,  
7 unconstitutional discrimination, particularly if you  
8 have the kind of disparities you have here.

9           What she's done is -- and I want to make clear  
10 now, this lady testified in this case in '81, '82, '83,  
11 '84, '85, her testimony was completely consistent as to  
12 what she did. There was no question about it, and she  
13 admitted it. She said I left everything on the rolls.  
14 This was a lady that was in the office, assessor's  
15 office for 27 years, not as the assessor but in the  
16 office. She said, I did this for as long as I can  
17 remember. We leave everybody's property just the way it  
18 is, and then if somebody sells it, wham, you get the new  
19 price.

20           QUESTION: Is it your position that the  
21 classification used here could never be adopted by the  
22 legislature into a constitutional scheme?

23           MR. PRETTYMAN: No, sir, but I want to  
24 emphasize that there are no classifications here, either

25 --

1 QUESTION: No, but I'm saying -- you're saying  
2 that, then that this could be a constitutional scheme if  
3 the legislature mandated it?

4 MR. PRETTYMAN: Could be but you would test it  
5 under a rational basis test.

6 In other words, let's suppose the  
7 legislature --

8 QUESTION: Well, why isn't it a due process  
9 argument that you have here then? If we have what is de  
10 facto a constitutionally acceptable scheme, where is the  
11 constitutional violation?

12 MR. PRETTYMAN: In, in that case, in the case  
13 that you posited, Justice Kennedy, let's suppose the  
14 state came along and they said we're going to make two  
15 classifications of property owners. We are going to  
16 make those who purchased recently and we're going to  
17 make those who didn't purchase recently, and we're  
18 establishing those two classes under state law.

19 Now, the reason that we're going that is X, Y,  
20 Z, so forth. Then they would come to this Court and  
21 they would try to say that X, Y, and Z had rational  
22 basis to state purposes and so forth and they'd have to  
23 convince you of that.

24 Now, that is nowhere near this case because  
25 under state law in West Virginia you cannot have classes

1 of property. You have, you have four classes that  
2 relate to the levy, but they don't relate in any way to  
3 appraisal or assessment. So --

4 QUESTION: Well, I'm still not certain why,  
5 then, this isn't just a case, if we can assume at least  
6 for the moment that this could be a constitutional  
7 scheme, why this isn't just a state where the -- case  
8 where the state law has been violated.

9 MR. PRETTYMAN: The state law has been what?

10 QUESTION: Has been violated.

11 If a state may reach a result by statute, why  
12 is it a denial of equal protection to reach it by an  
13 administrative device?

14 MR. PRETTYMAN: Well, I have not said for a  
15 moment that they could necessarily convince you of  
16 this. What I've said is that the case would come to you  
17 in a different posture. In that kind of a case they  
18 would try to be convincing you that somehow they had  
19 good state reasons for these two classifications.

20 Now, whether they could convince you of that  
21 or not is another question, but certainly that is more  
22 akin to what's happened in California, which I think is  
23 a very different situation under Proposition 13 than we  
24 have in this case.

25 QUESTION: Well, may I, may I go back one more



1 time then?

2 MR. PRETTYMAN: Sure.

3 QUESTION: I take it, then, you're arguing  
4 that the state could not constitutionally reach the  
5 result by statute that it in fact has reached here by  
6 administrative practice.

7 MR. PRETTYMAN: What I'm saying is that, that  
8 it is conceivable that the state could somehow come up  
9 with good grounds for this kind of distinction that  
10 might persuade this Court that it had a rational basis  
11 and the state could do it. What I'm saying is that the  
12 state has not in any way purported to do that in this  
13 case. It has not created any classifications. It  
14 purports to treat everybody the same, but in fact -- and  
15 in fact, has to under the constitution and state law of  
16 West Virginia which says in the constitution that taxes  
17 shall be equal and uniform, and that fair market value,  
18 in the statute, is to be the guide.

19 But they haven't done that, and they don't --

20 QUESTION: Were these claims made to the  
21 Supreme Court of West Virginia, Mr. Prettyman?

22 MR. PRETTYMAN: Pardon me?

23 QUESTION: Were these claims of statutory and  
24 constitutional, of state constitutional violation made  
25 to the Supreme Court of West Virginia?

1 MR. PRETTYMAN: In other cases, the --

2 QUESTION: I mean in this case.

3 MR. PRETTYMAN: In this case, the Supreme  
4 Court of West Virginia came down with what I consider a  
5 rather odd decision because --

6 QUESTION: Well, but I asked you not what kind  
7 of a decision it came down with but whether these claims  
8 were made to the Supreme Court of West Virginia, of  
9 state statutory violation and state constitutional  
10 violation.

11 MR. PRETTYMAN: There was no claim made that  
12 somehow this conformed to the state constitution. What  
13 they were saying was --

14 QUESTION: Well, you're --

15 MR. PRETTYMAN: -- that there was no  
16 systematic and intentional violation.

17 QUESTION: Well, I'm not asking what, what --  
18 I'm asking what claims your clients made. Did they  
19 challenge the assessment practices here as being  
20 violative of either the state statute or the state  
21 constitution?

22 MR. PRETTYMAN: We argued both the state  
23 statute and the state constitution.

24 QUESTION: In the Supreme Court of West  
25 Virginia.

1 MR. PRETTYMAN: We certainly did, yes.

2 QUESTION: And they rejected your claim.

3 MR. PRETTYMAN: They rejected it, though, on  
4 only two narrow grounds, number one, that there was no  
5 systematic and intentional violation, without  
6 explanation. I think what they're saying is that we  
7 treat everyone alike in the sense that if you're an old  
8 timer, you stay on the books as you were, and if you buy  
9 new, you get it changed, so that's okay. And the second  
10 ground was that even if there was a discrimination --  
11 and this is the most important point -- even if there  
12 was a discrimination, it doesn't make any difference  
13 because you have to due to get your neighbor's taxes  
14 raised. And of course, that in itself is  
15 unconstitutional under this Court's cases.

16 This Court has squarely said four times that  
17 that is not the remedy that comes out of --

18 QUESTION: Mr. --

19 QUESTION: Well, don't we have to take it as  
20 given, then, that at least so far as the Supreme Court  
21 of West Virginia is concerned there wasn't any violation  
22 either of the state statute or of the state constitution?

23 MR. PRETTYMAN: Well, that's why I began by  
24 saying the opinion is a little strange because this is  
25 one of a series of decisions in the West Virginia

1 Supreme Court of Appeals, Mr. Chief Justice, and they  
2 have been quite clear all the way along that in fact  
3 taxation has to be at true market value for everybody,  
4 for everybody.

5 In fact, they struck down a statute which  
6 allowed assessment at between 50 and 100 percent of true  
7 market value because they said that allowed variance.

8 Now, this didn't -- this case -- our case --

9 QUESTION: But, Mr. Prettyman, if we accept,  
10 just suppose that we accept the finding of the Supreme  
11 Court of West Virginia that there was no systematic or  
12 intentional violation here, and therefore no violation  
13 of state law, let's say we just accept that, then what  
14 is your federal constitutional argument?

15 MR. PRETTYMAN: The federal constitutional  
16 argument is plain, I don't care what they said. And  
17 that is that comparable equal properties are being taxed  
18 at totally different evaluations and assessments,  
19 resulting in great disparity in taxes, and you go back --

20 QUESTION: Is it, is it a violation of the  
21 federal Constitution that equivalent properties are  
22 given disparate values as the result of an adopted  
23 policy?

24 MR. PRETTYMAN: Absolutely. I don't think  
25 there's any question about that, that this Court has



1 held in a whole series of cases that even if your value  
2 is a true and actual value, if comparable properties are  
3 undervalued so that you are, you are paying disparate  
4 taxes, there is a constitutional violation. We're  
5 talking about the Sunday Lake, Southern Railway, Sioux  
6 City Bridge, Cumberland Coal, all of these cases which  
7 we cite in our brief.

8 QUESTION: Well, I thought you said a while  
9 ago that it's conceivable that, that recently-sold  
10 properties could be treated differently than properties  
11 that haven't been recently sold.

12 MR. PRETTYMAN: I guess what I'm really trying  
13 to do here --

14 QUESTION: Well, isn't -- that's what you said  
15 a while ago. Conceivably, a state could convince us  
16 that there was a rational basis for that kind of a  
17 classification.

18 MR. PRETTYMAN: What I'm really trying to do,  
19 Justice White, is to distinguish a Proposition 13 case.  
20 There's been some suggestion in the briefs that your  
21 ruling in this case would necessarily overrule  
22 Proposition 13, and I don't think that's true at all.  
23 Proposition 13 is part of a state constitution. It  
24 comes from an entirely different theory.

25 QUESTION: Well, I didn't ask you anything

1 about Proposition 13. If it's conceivable that a state  
2 could have a rational basis that would pass equal  
3 protection challenge to treat recently-sold property  
4 differently from property that hasn't been sold, why  
5 isn't the issue before us here that is there a rational  
6 basis for that difference?

7 MR. PRETTYMAN: Because not even the West  
8 Virginia Supreme Court has come forward and tried to  
9 tell you that there are two --

10 QUESTION: Well, the West Virginia Supreme  
11 Court said this doesn't violate state law, so it's, so  
12 it's in effect a ruling that the assessors may treat,  
13 under Virginia law, West Virginia law, can treat  
14 recently sold property differently.

15 MR. PRETTYMAN: If the West Virginia Supreme  
16 Court cannot come up here and try to give you a rational  
17 basis for a classification which they don't even say  
18 exists, I don't think it's up to this Court to try to,  
19 with great respect insinuate yourself into state law and  
20 try to dream up --

21 QUESTION: We wouldn't be insinuating, but the  
22 State of West Virginia is -- we're going to hear from  
23 the State of West Virginia. They may have some rational  
24 basis for this.

25 MR. PRETTYMAN: Well, I would be awfully --

1 it'll be the first time in this case if they try to say  
2 that there are two classifications and that there's, and  
3 that there's some rational basis for the two  
4 classifications because neither state law nor the state  
5 Supreme Court did it. It's just not a matter of state  
6 law in West Virginia that you can have these two  
7 classifications. Every single case, including the  
8 constitution and the code of the state, make it clear  
9 that you can't. Everybody is to be taxed at the same,  
10 assessed at the same rate. That's the whole point:  
11 true market value.

12 Now, it's interesting what they tell you here  
13 because they tell you, well, the code requires you to  
14 take the market value of the property. The code says  
15 something a little different. The code says you are to  
16 value as if the property were sold. In other words, the  
17 code doesn't assume that property is sold. The code  
18 tells the assessor to go on the property and find out  
19 what it's value is if it were to be sold. That's what  
20 her duty is, and that's what she hasn't done. She takes  
21 our property out of the deed and she doesn't do anything  
22 to anybody else's property, she totally, flagrantly  
23 violates the state law, and then what results are these  
24 huge disparities.

25 QUESTION: Well, suppose we say that West

1 Virginia didn't say that this system conformed to state  
2 law, but that it said there's no federal constitutional  
3 violation because what the assessor did wasn't done  
4 deliberately and intentionally, and hence, no equal  
5 protection violation.

6 MR. PRETTYMAN: With great respect, she  
7 testified for five years, and when she was specifically  
8 asked the question --

9 QUESTION: Not consecutively, I trust.

10 (Laughter.)

11 MR. PRETTYMAN: She did -- she testified --

12 QUESTION: It sounds like that airline case.  
13 It's been around a long time.

14 (Laughter.)

15 MR. PRETTYMAN: I was getting a little  
16 confused the last one.

17 She testified -- she was asked. Now, you've  
18 told us what you do. Did you intentionally do that?  
19 Was that part of a plan and a process? And she said yes.

20 So they can't possibly say that in the  
21 constitutional sense --

22 QUESTION: Well, so we just have to --

23 MR. PRETTYMAN: -- that it wasn't systematic,  
24 and intentional.

25 QUESTION: Well, we just have to ignore what



1 the West Virginia courts found in this respect?

2 MR. PRETTYMAN: You have to decide --

3 QUESTION: Which is a finding of fact under  
4 our cases.

5 MR. PRETTYMAN: No, sir. Again, with great  
6 respect, I think that's a constitutional question as to  
7 whether this kind of discrimination is intentional and  
8 systematic, and you can't read her testimony with  
9 finding -- without finding that it is.

10 Now, I do want to take a moment to talk about  
11 comparables because --

12 QUESTION: Well, apparently the West Virginia  
13 courts seem to have read it and found precisely what you  
14 say it couldn't have found.

15 MR. PRETTYMAN: Well, if you -- all I can tell  
16 you is if you look at this record, there is no  
17 conclusion that you can conceivably reach as a matter of  
18 constitutional law but that it was indeed intentional  
19 and systematic.

20 QUESTION: Can you cite me an authority  
21 outside of the tax area where it's unconstitutional for  
22 a state administrator to violate a state law, even  
23 though the administrator reaches a classification that's  
24 otherwise constitutional?

25 MR. PRETTYMAN: Well, I don't think -- I don't

1 think that's the situation we have here. I'm not  
2 arguing that this is unconstitutional because she  
3 violated state law. I'm just telling you she happened  
4 to have, and the state is not coming forward with a  
5 policy to sustain its discrimination here.

6 The problem from a constitutional standpoint  
7 is a very simple one, and that is she uses one method to  
8 tax us at a very high rate. She takes comparable  
9 property and she taxes it at a much lower rate, and that  
10 is the discrimination, and that's unconstitutional. It  
11 doesn't make any difference whether she's following  
12 state law or not.

13 Now, I've got to say something about  
14 comparables because I am afraid my opponent is going to  
15 get up here and say, well, you don't have to worry about  
16 any of this because these properties weren't comparable,  
17 and I just have to say that what they have not mentioned  
18 to you in their brief is a stipulation that they entered  
19 into, and the stipulation said that in lieu of evidence,  
20 the properties being compared were comparable  
21 properties, that they were substantially the same  
22 geologically, that they were neighboring, comparable  
23 properties.

24 They stipulated as to what the issues of law  
25 were in the case, and nothing was said about

1 comparables. The circuit court found that these  
2 properties were comparable. The Supreme Court of  
3 Appeals not only didn't disagree, didn't disagree with  
4 that, but apparently agreed with it because they called  
5 the properties comparable. They didn't go off on  
6 comparability.

7           There is evidence to that effect. There was a  
8 stipulation, and most importantly, and I think you've  
9 really got to concentrate on this, is that the assessor  
10 did not compare properties. She couldn't have cared  
11 less about any differences in properties. She said it.  
12 She didn't go out and look at properties. She didn't  
13 even look at the tax commissioner's guide that was sent  
14 to her. She testified she put it in a drawer and forgot  
15 it. And the state statute told her she should have  
16 looked at it, used it.

17           She didn't look at geology, she didn't look at  
18 the oil differences in the seams and the coal deposits  
19 or the reserves. She didn't, she didn't look at any of  
20 that.

21           So how can the state get up and say well,  
22 maybe these properties really aren't comparable when the  
23 lady who did the assessment couldn't have cared less  
24 about whether the properties were comparable or not  
25 comparable, better or worse? She paid no attention to

1 it whatever.

2 So I call those to your attention.

3 On the last point, as to the remedy --

4 QUESTION: Excuse me.

5 Would you tell me -- one thing I don't  
6 understand. On what basis did she make some minimal  
7 adjustments in the valuation of land that had not  
8 recently been sold?

9 MR. PRETTYMAN: Well, apparently, according to  
10 her, it was just kind of arbitrary. Every few years  
11 she'd just kind of raise people 10 percent. The record  
12 doesn't support her on that. It just doesn't. As a  
13 matter of fact, the circuit court found that if you take  
14 the actual increases that she made, it would take over  
15 500 years for her to catch up to our assessments, over  
16 500 years, they were so minimal, and he was looking at  
17 the actual records. He was looking at the exhibits in  
18 evidence that showed the properties and how they were  
19 increased.

20 My point is that whether she raised them 10  
21 percent in three years as an arbitrary matter, or  
22 whether she raised the more de minimis ones that he  
23 claimed, you still don't get up to us, and she's still  
24 not using obviously the same system in regard to  
25 everybody else.



1           QUESTION: Mr. Prettyman, you mentioned  
2 Proposition 13 in California earlier.

3           MR. PRETTYMAN: Yes, sir.

4           QUESTION: Isn't that in effect a  
5 legislatively mandated welcome stranger policy?

6           MR. PRETTYMAN: It is an entirely different  
7 system for this reason, Justice Brennan. First of all,  
8 West Virginia, as I've indicated, has a current value  
9 system. I mean, they start from the proposition that  
10 you're going to tax people at properties' current value,  
11 regardless.

12           California starts from the acquisition value  
13 system, and then it has several exceptions to it, one of  
14 which is when property is transferred. They try not to  
15 tax unrealized paper gains whereas in West Virginia they  
16 do tax unrealized paper gains.

17           Most importantly, in California the system is  
18 based on the constitution itself whereas, and as I say,  
19 maybe they could come forward sometime and give you some  
20 reasons --

21           QUESTION: Yes, but if welcome stranger is  
22 invalid as a denial of equal protection, as you are  
23 arguing today, how -- why isn't that, if it is  
24 legislatively mandated as a welcome stranger policy,  
25 equally invalid?

1 MR. PRETTYMAN: All I'm saying to you, Mr.  
2 Justice, is that if California eventually comes here,  
3 they may look at the history of Proposition 13 which is  
4 imbedded in the constitution, which is very different  
5 from West Virginia, could possibly come up with some  
6 grounds to convince you that there's a rational basis  
7 for what they have done.

8 All I'm saying is that this lady in West  
9 Virginia has done something totally on her own, that is,  
10 that goes in the face of the law.

11 QUESTION: Mr. Prettyman, I thought you have a  
12 quite different point, which is that if a state wants to  
13 have a welcome stranger policy and that's what the state  
14 law says, no one is being denied the equal protection of  
15 that law, so long as it is applied honestly and there's  
16 a rational basis for it. But West Virginia here does  
17 not have a welcome stranger law. It has a law that  
18 everybody should be taxed at current valuation, and your  
19 client has not been given the equal protection of that  
20 law.

21 If this were a welcome stranger law, you  
22 wouldn't be here.

23 MR. PRETTYMAN: Yes.

24 QUESTION: Or you'd be here on totally  
25 different grounds, right?

1 MR. PRETTYMAN: Yes. I would certainly agree  
2 with the last part of that, and I see that I don't have  
3 time to maybe discuss a few nuances in the first part of  
4 it. But just in regard to the remedy, I'll just say  
5 four times this Court has said that when this happens,  
6 you do not relegate the taxpayer to trying to sue to  
7 have other people's taxes raised because you'll never  
8 get it done. These rolls are closed on these other  
9 taxpayers. There's no way we can ever get their  
10 taxpayers -- their taxes up. We have to get our money  
11 back.

12 If I may reserve my time.

13 QUESTION: Very well, Mr. Prettyman.

14 Mr. Ullrich, we'll hear now from you.

15 ORAL ARGUMENT OF WILLIAM ULLRICH

16 ON BEHALF OF RESPONDENT

17 MR. ULLRICH: Mr. Chief Justice, and may it  
18 please the Court:

19 I should indicate at the beginning that I am  
20 here representing Webster County, and Webster County  
21 Board of -- Webster County Commission and not the State  
22 of West Virginia as my client, but we will offer to this  
23 Court a very serious interpretation of state law that we  
24 think is accurate.

25 QUESTION: Could you tell me, just so we're on

1 the last topic we were discussing, Is this state law a  
2 welcome stranger law?

3 MR. ULLRICH: I don't think that it has to be  
4 a welcome stranger law, but to the extent that it is,  
5 it's certainly defensible. It is not in violation of  
6 the constitution.

7 QUESTION: Well, what does the state law  
8 require? Does state law require all property to be  
9 taxed at current value?

10 MR. ULLRICH: Oh, yes, Your Honor. It has a --

11 QUESTION: It does. Well, that's not a,  
12 that's not a welcome stranger law. A welcome stranger  
13 law would be, say the property should be taxed at the  
14 value of its last sale.

15 MR. ULLRICH: Justice Scalia, there are --  
16 there's more than one relevant law that applies to these  
17 facts. There is the law that sets as a goal and one  
18 that under West Virginia law must be met by all the  
19 actions of the assessor, which is that she is to attempt  
20 to, in her actions, to determine true and actual value.

21 But there are specific guidelines which, if  
22 she follows, may result in some systematic  
23 discrimination. We do not concede that it did, as a  
24 matter of fact. We think that there are genuine  
25 differences in the values of these properties, and I



1 will address that in a few moments. But there is no  
2 inconsistency in the position that state law says  
3 accomplish a specific purpose, that's your goal, but I'm  
4 also going to create some procedures which, if they  
5 create some subclassifications under the kind of  
6 analysis that this Court acknowledged in prior cases,  
7 Carmichael, then that's a legitimate classification, and  
8 the deference that this Court gives to states should be  
9 given to the procedure and the law of West Virginia. In  
10 fact, that should be construed as the law under the  
11 approach of the national -- Nashville, Chattanooga & St.  
12 Louis v. Browning.

13 But the record here shows that the Petitioners  
14 are trying to take the actual market driven differences  
15 between the value of their property and other properties  
16 and wield that as a sign of discrimination. I think if  
17 the Court looks closely at the record of the finding by  
18 the circuit court judge and the Justices in the West  
19 Virginia Supreme Court of Appeals, you will discover  
20 that it is not -- the factual findings and the evidence  
21 do not preclude this Court from concluding that a  
22 reasonably accurate determination of true and actual  
23 value occurred.

24 I would focus the Court for a moment on the  
25 decision by the West Virginia Supreme Court of Appeals

1 in the Petitioners' appendix on page 6a where the court  
2 indicates -- pardon me, on page 8a, Your Honor, the  
3 remaining case -- the remaining question presented by  
4 this case is whether the undervaluation of other  
5 property in Webster County was intentional and  
6 systematic, and on page 44a of the appellates -- of the  
7 appendix, you'll note that the Court below never made  
8 any finding that any value was -- any property was  
9 undervalued. It simply made a finding that in the  
10 court's opinion, comparable properties should have  
11 created a different system of reaction.

12 So the fact that he made a finding of  
13 comparability, a finding that I think is not a term of  
14 art, although -- or should be a term of art to have the  
15 consequences argued by Mr. -- by the Petitioners, if you  
16 made a finding of comparability, the circuit court said,  
17 then you had to go on and have some other procedures or  
18 else you'd violate due process -- violate equal  
19 protection, excuse me.

20 QUESTION: I don't understand.

21 Did you stipulate, as counsel stated, the  
22 comparability of the parcels at issue in this case or  
23 not?

24 MR. ULLRICH: Yes, but I need to explain that.  
25 that's why I said that a comparability is being used in

1 different fashions. I think it's quite arguable that  
2 that's the case.

3 Comparability was stipulated one time in 1984,  
4 comparability only insofar as properties were  
5 geologically similar, not that they were the same  
6 sufficiently that they should be treated identically or  
7 trigger some presumption of identity under equal  
8 protection.

9 QUESTION: What would comparability mean in  
10 the context of this case except that they were of  
11 comparable value? What would be the use of stipulating  
12 comparability in any other sense?

13 MR. ULLRICH: In the context of the --

14 QUESTION: I mean, what, they are, they have  
15 the same elevation above sea level or -- obviously the  
16 only comparability that's relevant in this case is  
17 whether they are of comparable value, and to stipulate  
18 to comparability without understanding that that's  
19 what's being stipulated I can't understand.

20 MR. ULLRICH: Well, but to construe the  
21 stipulation, respectfully, Your Honor, of similarity, of  
22 geological similarity, which is the limitation that was  
23 put on the stipulation as being a concession of identity  
24 or similarity to such an extent that they should be  
25 treated as --

1           QUESTION: So if a property's highest and best  
2 use was mining coal or its coal reserve, then a certain  
3 acre of the -- acreage of the comparable property would  
4 be expected to be roughly similar in value to these  
5 value of the property in question.

6           MR. ULLRICH: Well, that's exactly what's not  
7 a legitimate conclusion from that stipulation. Merely  
8 because it's geologically comparable at some level of  
9 the use of the word does not mean that there are proven  
10 reserves that would generate marketable strip mining or  
11 coal.

12           Being comparable at one level of similarity  
13 may be very consistent with; nevertheless, the  
14 geologically comparable minerals in one tract of land  
15 are a lot more easy to mine because of their location  
16 compared to the --

17           QUESTION: You say the stipulation doesn't  
18 cover those factors; it just covers geological  
19 similarity?

20           MR. ULLRICH: On the face of the stipulation  
21 itself, it says comparable insofar as they are  
22 geologically similar.

23           QUESTION: It's certainly a silly stipulation.

24           MR. ULLRICH: And I would suggest to the Court  
25 that it was in fact a -- not a stipulation that



1 convinced convinced the circuit court of the identity of  
2 the values enough to apply a remedy that the true and  
3 actual value of the Petitioners' property should be  
4 applied to these "comparables." He was reluctant to do  
5 that, and that's demonstrated on page 44a of his -- of  
6 the Petitioners' Appendix. He said that, if I may once  
7 again point that, point out the language of the court,  
8 he commented not only, on the first full paragraph of  
9 page 44a in relevant part, the differing abilities of  
10 various tax -- estate owners to bear the burden of real  
11 estate taxes based on prices paid by the wealthy leads  
12 the undersigned to conclude that the consideration  
13 declared in petitioners' deeds should not, in this case,  
14 serve as the basis for the assessment of all  
15 substantially similar real estate in Webster County.

16           Apparently the court did not conclude that the  
17 owners of this property that was next door to this very  
18 expensive property were wealthy. I think that looking  
19 at it carefully, you see that the judge himself didn't  
20 create a remedy consistent with his own conclusions.

21           Similarly, he indicated that it should -- the  
22 fact, under these circumstances, the fact of similarity  
23 should not generate an automatic application of the  
24 price to the comparable properties.

25           QUESTION: Well, suppose we don't agree with

1 you? Suppose we, as we read and understand it, the  
2 stipulation was or the finding was that these properties  
3 were comparable in actual, for assessment purposes? Are  
4 you going to tell us why it's rational to treat recently  
5 purchased property differently than --

6 MR. ULLRICH: Absolutely, Your Honor. In  
7 fact, we need to recognize the three relevant facts.  
8 One, or context in which to ask that question. It's not  
9 asserted or it's not proven that the assessor  
10 deliberately discriminated against any particular group  
11 as a -- having intentionality to fly to a specific  
12 entity. It is not --

13 QUESTION: Well, I guess it is clear, and I  
14 suppose you would concede, that the policy of the  
15 assessor was to revalue based on current sales.

16 MR. ULLRICH: That's correct.

17 QUESTION: And other properties that weren't  
18 sold were not revalued.

19 MR. ULLRICH: That's correct, Your Honor.

20 QUESTION: That seems to be clear enough.

21 MR. ULLRICH: Oh, actually, excuse me, I  
22 misspoke. It's not that the other properties were not  
23 revalued. That is not accurate. The assessor assessed,  
24 valued and was obligated to do so under the statutes of  
25 West Virginia, presumed to have performed the law, and

1 the court didn't find otherwise, to make an assessment,  
2 a judgment decision regarding the true and actual value  
3 of every property every year, and the record is --

4 QUESTION: But that assessment was made if  
5 there -- If the properties had been sold within the  
6 year, then that sale price was used for a revalue.

7 MR. ULLRICH: That is one of the factors and  
8 absolutely correct, Your Honor, she did do that. She  
9 did use other factors as well.

10 QUESTION: And she did not use that sale value  
11 to go re-examine adjacent properties.

12 MR. ULLRICH: She did not, and Your Honor,  
13 arguably she should not or could not absent some Indi --  
14 some notice, some knowledge of relevant similarity at  
15 the time that she did her assessing, her discretionary  
16 act. And in fact, that's a very important observation.

17 QUESTION: Isn't it her job to find  
18 similarities? I mean, you say the similarities have to  
19 come to her? I thought it's her job to find out what's  
20 similar and what's dissimilar.

21 MR. ULLRICH: Whether it is her job or not,  
22 Your Honor, Justice Kennedy brought up I think a very  
23 important point. If she didn't do her job well, she may  
24 have violated or failed to meet some minimum standard of  
25 West Virginia law, but that does not amount to a

1 constitutional violation.

2 QUESTION: I don't understand that. So long  
3 as a denial of equal protection is done by a lower  
4 functionary, it's all right, it's just a technical --

5 MR. ULLRICH: No, Your Honor. Equal  
6 protection, respectfully, doesn't guarantee 100 percent  
7 accuracy if she makes a -- If her actions individually  
8 are part of a reasonable scheme, if she acted  
9 reasonably, nonarbitrarily in adopting a policy, then  
10 her actions aren't going -- should not be construed to  
11 have violated equal protection. The fact that an  
12 assessment or even a series of assessments --

13 QUESTION: Can you, can you look to state law  
14 to see whether or not the official acted rationally or  
15 reasonably?

16 MR. ULLRICH: You say can you?

17 QUESTION: Yes.

18 MR. ULLRICH: Yes, I think so, and the state  
19 can put any standard it wants, but I think that on the  
20 record before us --

21 QUESTION: So there can be an equal protection  
22 violation for an irrational application of state law.

23 MR. ULLRICH: Well, a state, I think it is  
24 very clear that the, that states can make  
25 classifications, and those classes, those classes have



1 to be treated under the equal protection analysis.

2 QUESTION: Well, didn't West Virginia classify  
3 these properties the same way and say that each should  
4 be given current value annually?

5 MR. ULLRICH: West Virginia certainly  
6 classified all properties as having to be --

7 QUESTION: At current value?

8 MR. ULLRICH: Absolutely, but it's not  
9 precluded from having some subclassifications under the  
10 Carmichael analysis, and in fact, the system that they  
11 create, which says you must use recent values, you  
12 should consider the Commissioner's report unless you  
13 have a reason not to, you should add all improvements,  
14 and you certainly should take the presumption of the  
15 last entry on that property as valid, that might  
16 result --

17 QUESTION: I mean, the problem is that this  
18 looks like such an egregious situation, actually, I  
19 mean, you have properties side by side. They have  
20 coal. I mean, they are there to produce -- their  
21 highest and best use appears to be coal production.

22 MR. ULLRICH: That --

23 QUESTION: And the paper increase in value of  
24 the adjacent properties is just not taken into account  
25 by the assessor, apparently.

1 MR. ULLRICH: That, that -- Your Honor put  
2 your finger on one of the critical concerns, which is  
3 why I feel that it's important that this Court look  
4 behind the conclusions at a superficial level of the  
5 circuit court. That egregious difference, if it's a  
6 reflection, if in fact it's a reflection of real  
7 differences in value, that the Petitioners bought the  
8 property they did and they didn't try to buy the  
9 property next to it, then it would be a horrendous  
10 mistake for the -- bad facts make bad law -- for this  
11 Court to treat, to treat this as if properties that had  
12 the same value were treated in violation of equal  
13 protection.

14 The reality of coals and minerals and  
15 mountains are such that properties right next to each  
16 other can have geological similarity and absolute  
17 difference in value.

18 QUESTION: But one would be more satisfied  
19 with your explanation if one felt that the assessor has  
20 made that sort of a determination rather than really  
21 doing nothing in the light of this recent sale.

22 MR. ULLRICH: That's the -- we should start  
23 off with what is her job, what is the presumption, what  
24 are the presumptions that she's burdened with in  
25 performing her job, and under due process she can't go

1 out, and in fact, had she, just because neighboring  
2 property was worth a lot more and was geologically  
3 similar, she tried to reassess somebody else's property  
4 based on that information, we'd be here on a different  
5 case, a violation --

6 QUESTION: It happens every day, all over  
7 America, in every tax jurisdiction except apparently  
8 this one in West Virginia.

9 MR. ULLRICH: Well, Your Honor, I do not  
10 suggest that she is precluded from doing an excellent  
11 and exotic job of assessing, but the equal protection  
12 does not place a burden on her, starting with a  
13 statutorily mandated presumption that the property was  
14 properly assessed in the previous year, and a duty to  
15 assess each piece of property accurately, that she  
16 should somehow explain why she doesn't treat this  
17 property similar to or the same as other properties.

18 QUESTION: There is some fun's fun but you  
19 can't die laughing principle involved here. I mean,  
20 there can be some, some dissimilarity that's tolerable,  
21 but the discrepancies here are incredible, don't you  
22 think?

23 MR. ULLRICH: Well, I think the discrepancies  
24 in value --

25 QUESTION: Given geologically similar land.

1 MR. ULLRICH: Your Honor, I think that the,  
2 that the market tested the reality of the value of that,  
3 of those lands, and I think it is not irrational, it's  
4 certainly a reasonable estimate that some of the land  
5 was worth more just because of the fact that it was  
6 purchased for the price that it was.

7 But it's important to know, Your Honor, that  
8 even if this land was grossly misvalued, the actions  
9 that are being challenged here are the failure of the  
10 assessor and the Board of Equalization and Review to  
11 raise their, their valuations from the presumed accurate  
12 ones that they had initially made.

13 The West Virginia Supreme Court pointed out  
14 that that's actually what's being challenged here. The  
15 assessor's decision to use the true, the recent  
16 transaction, the recent transfer price of the property  
17 to assess Petitioners' property was not unreasonable.  
18 The circuit court below found that that would be okay.  
19 The circuit court simply said that having done that, the  
20 circuit court found it was a violation of equal  
21 protection not to raise the rest, or not to explain why  
22 the failure to do so would have been -- was not  
23 arbitrary.

24 So what we're really testing here is an  
25 actions of an assessor and the actions of a Board of



1 Review in failing to believe the evidence that convinced  
2 the circuit court. The assessor and the Board of Review  
3 heard the allegations, the complaints of the  
4 Petitioners, but knowing the nature of the region,  
5 knowing the nature of coal properties, knowing their  
6 duties under statute, did not think that they were on  
7 sufficient notice that they were deprived of a  
8 reasonable conclusion that the properties -- that they  
9 should stick with the presumptions, and unless they have  
10 sufficient evidence to convince themselves in an honest  
11 way that the other people's properties have increased in  
12 value then, according to West Virginia law, they won't.

13           And if their actions were neither an  
14 intentional, deliberate discrimination against  
15 particular groups, if there was a reasonable,  
16 nonarbitrary decision by the assessors and the Board of  
17 Equalization Review to use certain policies as indicated  
18 by the government, and if these behaviors are part and  
19 parcel of a statutory scheme that results in unequal  
20 valuations, that's not a violation of the United States  
21 Constitution. That would be, in fact, a state  
22 discrimination, a state classification of techniques  
23 that in some circumstances, or even predictably, would  
24 lead to differences in valuation.

25           By the way that would only occur in a time of

1 inflation or deflation, but all we're really talking  
2 about here is the court says to the assessors, use this  
3 information because it's very accurate.

4           What we have is a -- Petitioners were some  
5 individuals about whose property there was very  
6 probative evidence, and it was, according to West  
7 Virginia law, and properly so, considered by the West  
8 Virginia assessor regarding true and actual value.

9           QUESTION: Well, do you know of any cases in  
10 West Virginia, either trial court or Supreme Court, that  
11 says that under West Virginia law that it's quite proper  
12 for an assessor just to increase the assessment of a  
13 recently sold property and not assess comparable  
14 property any higher until it's sold?

15           That's not West Virginia law, is it, or is  
16 there some case that says it is?

17           MR. ULLRICH: No, not that -- not as stated,  
18 Your Honor. There is West Virginia law that says,  
19 especially at the time that she was taking her actions,  
20 that her duties were primarily ministerial. The court  
21 changed its focus in the late seventies and early  
22 eighties about what the relative roles of the county  
23 assessors were vis-a-vis the state tax commissioner, and  
24 at the times of this -- these transactions, the assessor  
25 had the primary duty. But it was in the context of a

1 heavy recognition of a ministerial role, and there are  
2 clear presumptions that I think read in pari --

3 QUESTION: But I just want, whoever is  
4 responsible for enforcing the West Virginia law --

5 MR. ULLRICH: Yes, Your Honor.

6 QUESTION: -- is there any case that says in  
7 West Virginia that West Virginia's system is to tax  
8 recently sold property, or to assess recently sold  
9 property differently from property that hasn't been sold?

10 MR. ULLRICH: As stated, I think --

11 QUESTION: Is it any closer, is there any  
12 closer decision than this one in this case?

13 MR. ULLRICH: Not that I'm aware of, Your  
14 Honor, but the way you ask the question is important.  
15 It's not that this property is to be assessed with a  
16 different purpose, but that it is to be -- but that all  
17 properties in all of West Virginia, if there's evidence  
18 regarding true and actual value that is generated by a  
19 recent sale, should be given priority by the assessor.

20 So that's the law of West Virginia. That is  
21 clearly the law, that if it's there, use it; don't  
22 ignore it, not try -- but that does not exempt under  
23 West Virginia law the assessor of the duty to use it in  
24 a uniform manner to try to determine a uniform value, a  
25 uniform result, which is accuracy, true and actual value.

1           Your Honor, I would suggest that the Court  
2 before today has as its most appropriate option to  
3 dismiss this action as a petition for a writ of  
4 certiorari that was improvidently granted. The record  
5 below, as I think Justice White pointed out a few  
6 moments ago, is a factual finding that is determinative  
7 of the issue. It is settled that there was no  
8 intentional and systematic undervaluation, and absent  
9 that, there is no case that should be considered by this  
10 Court.

11           The Court should, for reasons that it's  
12 articulated many times in the past, leave facts, as it  
13 did in Sioux City, as it did in Iowa-Des Moines, to the  
14 justices of -- to the judges and the, ultimately the  
15 justices of the West Virginia Supreme Court.

16           So the facts are settled. If the Court looks  
17 behind those facts, looks behind that conclusion and  
18 analyzes the evidence, I think the evidence, as I  
19 pointed out before, is very consistent with at least a  
20 suspicion, if not a conclusion, that these properties  
21 were not so similar as Petitioners would have this Court  
22 treat them that they had to be assessed on the basis --  
23 at the same price per acre merely because of some kinds  
24 of similarities.

25           Third, even if this system as applied in West



1 Virginia was discriminatory, it's not prohibited.

2 QUESTION: Mr. Ullrich, on this factual  
3 finding point, it can't be the case, can it, that so  
4 long as the state courts say, well, no, we haven't done  
5 anything bad, we have to accept that?

6 MR. ULLRICH: Oh, no, Your Honor. It's not  
7 that --

8 QUESTION: Isn't that a federal question?  
9 Isn't the fact of whether there's been equal treatment  
10 or not equal treatment, isn't that a federal question  
11 itself?

12 MR. ULLRICH: Equal treatment is, but not what  
13 you just said, respectfully, Your Honor. The court  
14 didn't say, oh, this isn't bad. The court said this  
15 didn't happen. I -- the court said the evidence is  
16 insufficient to support a finding that the assessor or  
17 the Board of Equalization and Review intentionally and  
18 systematically did an act that would result in an  
19 unconstitutional discrimination. It's a threshold issue.

20 So the fact, the predicate facts were found  
21 not to exist. It's not -- this Court isn't even hearing  
22 from the West Virginia Supreme Court any proclamation  
23 about whether, had they done so, this would have been  
24 bad or good. It's just that they didn't -- the record  
25 didn't support a conclusion that the assessor did what

1 she is alleged to do.

2 QUESTION: Yes, but the reasons, the reasons  
3 that the West Virginia court gave for saying the  
4 evidence didn't support it are really pretty thin.

5 MR. ULLRICH: Well, I would say, I think, in  
6 fact, the reasons aren't there. They are not given.  
7 But I don't think that the Supreme Court of West  
8 Virginia, to have its factfinding sustained and deferred  
9 to by this Court, needs to be explained in the written  
10 opinion. It waxed eloquent, perhaps, regarding other  
11 procedures and options that were available under West  
12 Virginia law, assuming there were some inaccuracies that  
13 did not amount to a constitutional violation, and I  
14 don't think this Court should be seduced by  
15 misinterpreting either what the court said in its  
16 opinion or what it implied in its opinion. It simply  
17 pointed out that having found no facts sufficient to  
18 make a constitutional violation, I'd like to  
19 gratuitously point out to the Petitioners that they have  
20 options to fix an inaccurately functioning system which  
21 they --

22 QUESTION: No facts? What facts didn't they  
23 find? They had facts to show what, intentional under --

24 MR. ULLRICH: And systematic discrimination,  
25 and in the paragraph before the court said the only

1 issue left --

2 QUESTION: Is that a fact or a conclusion,  
3 really?

4 MR. ULLRICH: I think that -- well, I think  
5 it's a fact, but let me demonstrate that, Your Honor.  
6 It's -- the court said the only issue left for us to  
7 decide is whether there was an intentional and  
8 systematic undervaluation. Those were the words of the  
9 court. Intentional and systematic undervaluation, if  
10 proven, is not necessarily a violation of the  
11 Constitution. The constitutional standard really is  
12 intentional and arbitrary discrimination.

13 So the court made a finding that the  
14 allegations below were not there, systematic and  
15 intentional undervaluation. All three are definable and  
16 provable without reference to any legal standard, and  
17 the intentional and systematic discrimination,  
18 therefore, is a conclusion that must logically follow  
19 from that decision, and from that, of course, no  
20 violation of equal protection or a violation of the  
21 Constitution of West Virginia.

22 Your Honor, I would like to point out in  
23 closing that this Court should think, but what would  
24 happen if in fact Petitioners prevailed. What it would  
25 be in danger of doing is creating a kind of an

1 exclusionary rule that would benefit large investors,  
2 large mineral property owners that could buy properties  
3 and after making expensive explorations which are a  
4 prerequisite to their knowing it's worth it, and rest  
5 assured that because others won't be able to make that  
6 determination, they are not going to have to carry their  
7 fair tax burden unless the county goes out and does some  
8 exotic, complicated, expensive exploration and survive  
9 this exclusionary rule because the evidence won't have  
10 to come in against them.

11 I think that the Court should be aware of the  
12 fact that not merely Webster County will be subjected to  
13 tremendous, had its primary source of revenue --

14 QUESTION: Can you name any state where that's  
15 happened?

16 Can you name any state where that's happened?

17 MR. ULLRICH: Well, I cannot, Your Honor,  
18 although if -- West Virginia would be the first if the  
19 Court ruled in favor of Petitioners.

20 QUESTION: Why do you describe this business  
21 of appraising real estate as such an exotic new science?

22 MR. ULLRICH: Well, it isn't a --

23 QUESTION: It's been going on for a long time.

24 (Laughter.)

25 MR. ULLRICH: It's not that its an exotic



1 science, Your Honor. It's just that to discover true  
2 and actual value of underground minerals --

3 QUESTION: Maybe it's difficult for the --

4 MR. ULLRICH: -- takes expensive exploration.

5 QUESTION: More than the assessor in Webster  
6 County was willing to devote to the problem, at least.

7 MR. ULLRICH: And I think more than she had as  
8 a matter of resources available to her.

9 The bottom line is, Your Honor, that the  
10 county's --

11 QUESTION: [Inaudible] -- increased the  
12 assessment on some of the property, she'd have more  
13 resources. You could hire a real assessor.

14 (Laughter.)

15 QUESTION: [Inaudible] -- on itself. It's a  
16 wonderful --

17 MR. ULLRICH: Well, I think that the assessor,  
18 not having -- if the Court doesn't find that -- the  
19 court below found that she didn't act intentionally or  
20 systematically to under -- even with the result of  
21 undervaluing, there's no finding anywhere that any  
22 property was undervalued. There was -- nor is there a  
23 finding anywhere in the record that any -- what the true  
24 and actual value of the property was that was outside of  
25 the Petitioners' property.

1           The very worst that this Court should even  
2 consider doing is to remand under the kind of reasoning  
3 and thinking that it articulated in Sioux City for a  
4 finding of what the value was of those properties out  
5 there. Or -- but actually, the Court shouldn't go that  
6 far because unlike Sioux City, where there hadn't been a  
7 determination of the basic, the relevant facts of  
8 intentional and systematic discrimination, here there  
9 has been.

10           The Court should dismiss this case for want of  
11 a substantial federal question on this rather bizarre  
12 record, and this case, the Court should, even if it  
13 believes all of the conclusions of the circuit court, in  
14 view of its own doctrines, affirm the court below.

15           Thank you.

16           QUESTION: Thank you, Mr. Ullrich.

17           Mr. Prettyman, you have three minutes  
18 remaining.

19           REBUTTAL ARGUMENT OF E. BARRETT PRETTYMAN, JR.

20           ON BEHALF OF THE PETITIONERS

21           MR. PRETTYMAN: Mr. Chief Justice just a few  
22 brief points.

23           Justice O'Connor and Justice Stevens, in  
24 regard to the points that you were just making, you'll  
25 be interested in the wording of the West Virginia code.

1 All property shall be assessed annually as of the first  
2 day of July at its true and actual value, that is to  
3 say, at the price for which the property would sell if  
4 voluntarily offered.

5           Apparently West Virginia in its code doesn't  
6 think it's such a difficult job.

7           Justice White, you were asking for a state  
8 case --

9           QUESTION: Say assessed doesn't necessarily  
10 mean be reappraised.

11           MR. PRETTYMAN: Well, it has to be reappraised  
12 in order to be, in order to be assessed. The assessment  
13 is based, is simply 50 percent of the reappraisal. The  
14 assessment is the automatic 50 percent.

15           QUESTION: You could assess it annually.  
16 You're not saying that that's necessarily -- you're not  
17 going to be back in front of us and say that there has  
18 to be annual reassessment as well as annual reevaluation.

19           MR. PRETTYMAN: But it has to be, it has to be  
20 at its true and actual value. You can't determine that  
21 without an appraisal.

22           QUESTION: Well, you can make your best  
23 guess. Maybe you can do, do it every other year and  
24 that's close enough.

25           MR. PRETTYMAN: Well, that's fine. Let's have

1 her do it, and maybe it'll come up to anywhere near  
2 where we're at.

3 Justice White, you asked about a case that was  
4 anywhere near this. Back at the time when they had sort  
5 of a moving evaluation, in Killen, which is in the  
6 briefs, the West Virginia Supreme Court said equal and  
7 uniform taxation cannot result when each county assessor  
8 can vary assessments up to 50 percent of the appraised  
9 value both within and among classes of property,  
10 declared it unconstitutional.

11 In regard to the intimation here that no  
12 comparability findings were made, the circuit court made  
13 ten comparability findings, and I will cite you  
14 specifically to six, just to 16a, 24a, 72a and 74a out  
15 of those.

16 A point was made about the stipulation being,  
17 referring only to geologically. It also said, Exhibit  
18 B, the comparables, accurately reflects the increase to  
19 neighboring comparable properties both as to assessment  
20 per acre and percentage increase for the period '75  
21 through '74.

22 And also, the circuit court not only was  
23 banking on geological, which was the whole point --  
24 after all, we're talking about coal -- but also had maps  
25 and, huge maps here showing where these properties were



1 and so forth, they were adjoining, they were contiguous,  
2 and so forth.

3 And finally, let me just say that please  
4 remand this case in a way where we get something out of  
5 it. You've been confronted with several cases recently  
6 where the Petitioners went back and thought they'd won,  
7 and they got nothing. The only way -- we're going back  
8 now eleven years. The only way that we can possibly get  
9 any, our taxes back is for you to say that we are not  
10 relegated to suing somebody to get their taxes raised.

11 CHIEF JUSTICE REHNQUIST: Thank you, Mr.  
12 Prettyman.

13 MR. PRETTYMAN: Thank you.

14 CHIEF JUSTICE REHNQUIST: Your time has  
15 expired.

16 The case is submitted.

17 (Whereupon, at 11:59 o'clock a.m., the case in  
18 the above-entitled matter was submitted.)  
19  
20  
21  
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23  
24  
25

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

No. 87-1303 - ALLEGHENY PITTSBURGH COAL COMPANY, Petitioner V. COUNTY COMMISSION OF WEBSTER COUNTY, WEST VIRGINIA; and

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No. 87-1310 - EAST KENTUCKY ENERGY CORPORATION, ET AL., Petitioners V. COUNTY COMMISSION OF WEBSTER COUNTY, WEST VIRGINIA

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and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY alan friedman

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