



## School Funding Lawsuit – County Track Update

In January of 2018, the NAACP Delaware State Conference and Delawareans for Educational Opportunity (“DEO”) brought this lawsuit against several state and county officials because our schools do not provide an adequate education to all Delaware children. An important part of that failure is that the local property tax system that schools rely upon for almost a third of their funding is hopelessly broken, and state and local officials have failed in their duty to fix it.

### Why a lawsuit?

School funding relies in part on local taxes, but the ability of school districts to raise local funds is limited by the lack of regular property reassessments. Local education taxes are based on property values determined decades ago (1973 for Sussex, 1987 for Kent, 1983 for New Castle). As a result, local districts must regularly seek the tax rate increases just to keep up with inflation. Because of the lack of property assessments, people whose property has risen in value the least over the last four decades pay disproportionately higher taxes while people whose property has gained the most value pay a lower percentage of the true value of their property. This unfair situation persists even though state law requires that property taxes be based on the true value of property (9 Del. C. § 8306) and even though the Delaware Constitution requires uniformity in taxation (Art. VIII).

### What has the Court decided so far?

Both the State Defendants and County Defendants filed motions to dismiss the case. Vice Chancellor Laster denied both motions and then split the case into two separate tracks – County and State. In February 2019, the Vice Chancellor granted the City of Wilmington’s motion to intervene as a plaintiff in the case against the County Defendants.

Following a 2-day trial in July 2019, the Court ruled in May 2020 in favor of the Plaintiffs’ on the merits of the claim against the counties. In a 150-page decision, the Court found that by failing to conduct regular and systematic assessments, the counties inevitably created “a funding gap” for school districts. The Court explained that while the cost of running a school district increases annually, in the absence of a general reassessment, “the value of a school district’s tax base remains flat” and “the amount of money that the static tax base generates at the prevailing tax rate likewise remains flat.” Moreover, the failure to assess property at its true value in money deprives school districts of their fair share of State funds that are intended to equalize the funding between wealthy and less wealthy districts.

The Court rejected arguments that NAACP and DEO did not have the legal right to bring this challenge. In addition to finding that our clients met traditional standing requirements, the court also found that we had would have a right under the public interest exception to the technical rule. Quoting Dr. Martin Luther King, Jr., the Court reminded us that “law and order exist for the purpose of establishing justice and . . . when they fail in this purpose they become dangerously structured dams that block the flow of social justice.”

### What comes next?

The parties are in the process of scheduling further proceedings in the Chancery Court that will determine the nature and timing of a remedy that would bring the Counties into compliance with

their statutory and constitutional obligations. State law allows school districts to keep up to a 10% total revenue increase after a reassessment, but they must otherwise roll back the tax rate. Counties are also required to roll back the tax rate to make reassessment revenue neutral, with an allowance for recovering the cost of the reassessment if they choose to exercise it. The property tax system in DE currently is regressive. Owners of less expensive properties tend to pay more than their fair share of taxes, and owners of more expensive properties tend to less than their fair share. Effects of a reassessment on individual taxpayers would vary, with some seeing increases and others seeing decreases.

### **Who are the lawyers?**

A team from the international law firm Arnold & Porter Kaye Scholer LLP led by Peta Gordon and Saul Morgenstern, Karen Lantz of ACLU Delaware and Rich Morse of Community Legal Aid Society, Inc.

### **Where can I learn more?**

All of the major documents in the case, including the complaint, the motions to dismiss and related briefs, and the Court's decisions so far, are available for review on the [aclu-de.org website](http://aclu-de.org).