A state statute provides that assessments of real property for tax purposes must represent the "actual value" of the property. In one county of the state, the county tax commission, in making its assessments, has uniformly and consistently determined the "actual value" of real property solely by reference to the price at which the particular property was last sold. In recent years, the market values of real property in the county have been rising at the rate of 15% per year.

An owner is required to pay real estate taxes on her home in the county that are 200% to 300% higher than those paid by many other owners of similar homes in similar neighborhoods in that county, even though the current market values of their respective homes and the owner's home are nearly identical. The reason the taxes on the owner's home are higher than those imposed on the other similar homes in similar neighborhoods is that she bought her home much more recently than the other owners and, therefore, it is assessed at a much higher "actual value" than their homes. Persistent efforts by the owner to have her assessment reduced or the assessments of the others raised by the county tax commission have failed.

The owner has now filed suit against the county tax commission, claiming only that the comparative overvaluation of her property by the commission is unconstitutional.

What is the owner's strongest argument to support her claim?

A. The tax assessment constitutes a taking of private property for public use without just compensation.
B. The tax assessment constitutes an ex post facto law.
C. The tax assessment deprives the owner of a privilege or immunity of national citizenship.
D. The tax assessment deprives the owner of the equal protection of the laws.

Explanation:

Tax assessments that treat **similarly situated property differently** can be challenged under the **equal protection** clause. Since these assessments are generally subject to rational basis review, they must rationally relate to a legitimate state interest. Rough equality in implementing tax assessments will satisfy this standard of review. But **intentional and substantial inequality** will not.

Here, the owner's real estate taxes are 200% to 300% higher than those paid by owners of similar homes (substantial inequality). And the county tax commission has repeatedly denied the owner's requests to reduce her assessment or raise the others' assessments (intentional inequality). Therefore, the owner's strongest argument is that the tax assessment deprives her of the equal protection of the laws.

(Choice A) The Fifth Amendment prohibits the government from taking private property for public use without just compensation. A taking occurs when the government (1) actually/physically appropriates the property *or* (2) extinguishes all economic benefits/uses of the property. But since the commission did neither, no taking occurred.

(Choice B) The Constitution prohibits the enactment of ex post facto laws—ie, criminal legislation that has a retroactive and punitive effect. But the tax assessment is not an ex post facto law because it is civil in nature.

(Choice C) The Fourteenth Amendment bars states from interfering with the narrowly defined privileges or immunities of national citizenship—none of which are affected here.

Educational objective:

Equal protection challenges to unequal tax assessments are subject to rational basis review. Although some inequality in tax assessments is permissible, intentional and substantial inequality is unconstitutional.

References

- Allegheny Pittsburgh Coal Co. v. Comm'r of Webster Cty., 488 U.S. 336, 345–46 (1989) (holding that an equal protection violation occurred when a tax commission intentionally and substantially undervalued similar property).

Levels of equal protection review