IN THE SUPREME COURT OF PENNSYLVANIA

No. 16 MAP 2011

MESIVTAH EITZ CHAIM OF BOBOV INC.,

Appellant,

v.

PIKE COUNTY BOARD OF ASSESSMENT APPEALS,

Appellee,

DELAWARE VALLEY SCHOOL DISTRICT and
DELAWARE TOWNSHIP,

Intervenors.

AMICI CURIAE BRIEF FOR THE ELECTED LEADERS OF THE SENATE OF THE COMMONWEALTH OF PENNSYLVANIA

On Appeal from the Judgment of the Commonwealth Court of Pennsylvania
(No. 2343 C.D. 2008, entered December 29, 2009)
Affirming the Judgment of the Court of Common Pleas of Pike County, Pennsylvania,
(No. 1095-1997 Civil, entered September 11, 2008)

Jonathan F. Bloom (No. 45542)
Thomas W. Dymek (No. 86248)
Karl S. Myers (No. 90307)
STRADLEY, RONON, STEVENS & YOUNG, LLP
2600 One Commerce Square
Philadelphia, PA 19103
(215) 564-8000

Attorneys for *Amici Curiae*,
Senator Joseph B. Scarnati, III, President Pro Tempore, Senator Dominic Pileggi, Majority Leader, and Senator Jay Costa, Minority Leader, of the Senate of the Commonwealth of Pennsylvania

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

STATE CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae, Senator Joseph B. Scarnati, III, President Pro Tempore, Senator Dominic Pileggi, Majority Leader, and Senator Jay Costa, Minority Leader, are the Elected Leaders of the Senate of the Commonwealth of Pennsylvania. The Senate Leaders file this brief to express their perspective on the critical role to be played by the Institutions of Purely Public Charity Act, Act of November 26, 1997, P.L. 508, 10 P.S. § 371 et seq. ("Act 55"), in interpreting the scope and effect of Article VIII, Section 2(a)(v) of the Pennsylvania Constitution. As the Elected Leaders of the Pennsylvania Senate, *amici curiae* have an interest not only in assisting the Court in defining the institutional power of the Legislature and the effect of its specific enactments, but more importantly in cooperating with the Legislature's sister branches of government, including this Court, in discharging their joint duty to support, obey and defend the Constitution of the Commonwealth of Pennsylvania.

ARGUMENT

Inherent in the architecture of Pennsylvania's Constitution is the Separation of Powers which, in its most simple understanding, commits to each of three branches of Commonwealth government independent and exclusive duties and obligations. The business of government is, of course, not nearly so formulaic and instead calls for interdependence and cooperation among the branches to meet their constitutional obligations. The assumption of such cooperation is textually engrained in the Pennsylvania Constitution itself, where in numerous places the People have committed joint responsibilities to the Judiciary and the Legislature, granting the Legislature powers to provide "by law" for such disparate subjects as the scope of sovereign immunity to be afforded Commonwealth entities (Article I, Section 11), the exemption of conscientious objectors from military service (Article III, Section 16), the identification of those state public offices that are incompatible with federal public service (Article VI, Section 2), and the grant of powers to area governments (Article IX, Section 7), among many other provisions. This appeal concerns one such constitutional provision of shared responsibility, Article VIII, Section 2(a)(v) – which states in relevant part that "The General Assembly may by law exempt from taxation . . . [i]nstitutions of purely public charity[.]"

The unique historical development of statutory tax exemptions premised on this Article VIII, Section 2(a)(v) power has led to the specific question confronted in this appeal. Prior to its enactment of Act 55 in 1997, the General Assembly provided for the exemption of certain charities from taxation in certain statutes, but did not expressly track the Constitution's language. While those statutes provided for charitable exemptions, this Court in Hospital Utilization Project v. Commonwealth, 507 Pa. 1, 487 A.2d 1306 (1985) ("HUP"), noted the apparently more limiting language of Article VIII, Section 2(a)(v)'s constitutional authorization for such legislative exemptions, is extended only to institutions of "purely public charity" and

not to charities generally. Id. at 12, 487 A.2d at 1311-12. Because the term "purely public charity" was not previously defined by law, this Court in HUP distilled from its long judicial experience a five-factor test to be used in assessing whether a particular organization qualified as a "purely public charity" subject to exemption from taxation under Article VIII, Section 2(a)(v). Id. at 13-22, 487 A.2d at 1312-17. The resulting "HUP test" became the constitutional measuring stick against which future charitable organization claims for tax exemption were measured. See, e.g., Couriers-Susquehanna, Inc. v. County of Dauphin, 165 Pa. Commw. 192, 197, 645 A.2d 290, 292 (1994); Scripture Union v. Dietch, 132 Pa. Commw. 134, 136, 572 A.2d 51, 52-53 (1990).

Twelve years after HUP was decided, the General Assembly enacted Act 55, the Institutions of Purely Public Charity Act. By way of Act 55, the General Assembly for the first time directly addressed what criteria needed to be met for a charitable organization to qualify as an "institution of purely public charity" entitled to exemption from taxation. 10 P.S. § 375. As is apparent from the legislative findings and statement of intent set forth as preface to the substantive provisions of Act 55, the purpose for this statute was to provide greater predictability and consistency between potentially tax-exempt organizations and governmental taxing bodies with regard to the eligibility standards for charitable tax exemptions. 10 P.S. § 372. To this end, Act 55 mirrored the five-factor HUP test, reciting detailed criteria for each factor pursuant to which charitable organizations could qualify for tax exempt status. 10 P.S. § 375. By providing such precise criteria where specific legislative standards previously did not exist, the General Assembly hoped to foster cooperation rather than conflict between charitable organizations and local government units, and to prevent the dissipation of the proceeds of charitable organizations

and those government units in wasteful litigation by providing fuller context and texture to the HUP test. 10 P.S. § 372(b).

By providing greater and more specific detail than the then-existing case law applying the HUP test set forth, Act 55's finely drawn criteria for how a charitable organization can satisfy each of the five factors from the HUP test laid the seed for a potential future clash between the Legislature's understanding of the scope of Article VIII, Section 2(a)(v) (as expressed through Act 55) and the Judiciary's formulation of that constitutional provision (through the HUP test). This Court identified this potential divergence and its dormant constitutional implications in Alliance Home of Carlisle, Pa v. Board of Assessment Appeals, 591 Pa. 436, 919 A.2d 206 (2007), where it noted that "[i]n theory at least, there may be disputes concerning whether a taxpayer is an institution of purely public charity where the HUP test and [Act 55] would lead to different results." Id. at 463, 919 A.2d at 222. Such divergence, the Court observed, could lead to "fundamental and foundational questions" concerning the respective roles to be played by the HUP test and Act 55. And this Court's theoretical ruminations in Alliance appear to have come to realization in this appeal, where this Court granted allocatur limited to a single question:

> Whether the Pennsylvania Legislature's enactment of criteria in Act 55 for determining if an organization qualifies as a "purely public charity" under Pennsylvania's Constitution is deserving of deference in deciding whether an organization qualifies as a "purely public charity" under Pennsylvania's Constitution, or has the test provided in Hospital Utilization Project v. Commonwealth, 487 A.2d 1306 (Pa. 1985), occupied the constitutional field, leaving no room for legislative influence and input?

This question directly impacts the Separation of Powers between the Judiciary and the Legislature, and its resolution is complicated by the fact that the specific constitutional provision

at issue entrusts both the Judiciary and the Legislature with roles in defining and applying its terms.

To resolve the question presented by this appeal, *amici curiae*, as the Elected Leaders of the Pennsylvania Senate, believe that this Court should not reject Act 55's contribution to understanding the term "institution of purely public charity" from Article VIII, Section 2(a)(v). Below, *amici curiae* discuss the general principles of constitutional law and the Separation of Powers that underlie their belief in the shared roles to be played here by both the Judiciary and the Legislature, highlight a past example of such inter-branch cooperation in the interpretation and application of another constitutional provision that similarly imposed shared responsibility on the two branches. Finally, *amici curiae* discuss the intersection of Article VIII, Section 2(a)(v), the HUP test and Act 55, and suggest that this Court recognize Act 55 to be an integrated legal test blending the Judiciary's well-crafted HUP test with the wide-ranging policymaking experience of the Legislature. Using Act 55 to more clearly define the five factors of the HUP test, courts could then apply a single legal analysis in future cases concerning what entities qualify as "institutions of purely public charity" and so provide enhanced predictability as to which charitable organizations enjoy tax exempt status. Such an outcome would inure to the shared benefit of those organizations, the citizens they serve, municipalities and other local government units, and the People generally.

I. THE JUDICIARY AND THE LEGISLATURE SHARE A JOINT DUTY TO DEFEND AND UPHOLD THE PENNSYLVANIA CONSTITUTION.

A. The overlapping nature of the Separation of Powers that established three independent branches as stewards of the Commonwealth.

The Separation of Powers among the three branches – Legislative, Executive and Judicial – has been an indelible feature of Pennsylvania government since as early as 1776, when the state convention created the Pennsylvania Plan or Form of Government. See In re:

Investigation by Dauphin County Grand Jury, September, 1938, 332 Pa. 342, 352, 2 A.2d 804, 807 (1938); see also John M. Mulcahey, *Separation of Powers: The Judiciary's Prevention of Legislative Encroachment*, 32 DUQ. L.REV. 539, 540 (1994). The Separation of Powers has continued throughout the several iterations of the Pennsylvania Constitutions that followed in 1790, 1838, 1874, and most recently in 1968. The hallmark of the Separation of Powers is a deeply engrained concept:

> The functions of the several parts of the government are thoroughly separated, and distinctly assigned to the principal branches of it, the legislature, the executive, and the judiciary, which, within their respective departments, are equal and co-ordinate.

DeChastellex v. Fairchild, 15 Pa. 18, 1850 WL 5938, at *3 (1850). While subject to check and balance by the other branches, each branch is designed to exercise its own exclusive powers. The power of the Legislature is to create the laws. PA. CONST. art. II, sec. 1. The power of the Executive is faithfully to execute the laws. PA. CONST. art. IV, sec. 1. The power of the Judiciary is to interpret the laws. PA. CONST. art. V, sec. 1. And the ultimate repository of all of the powers of Commonwealth government exercised by the three branches is, of course, the People. PA. CONST. art. I, sec. 2.

Among its many other powers, the General Assembly is entrusted under the Pennsylvania Constitution with broad fiscal authority. For example, responsibility for crafting a balanced budget is committed to the General Assembly, in accordance with the general grant of plenary legislative power at Article II, Section 1 and the core powers of taxing and spending specifically at Article III, Sections 10, 11 and 24 and Article VIII, Section 2. See Jefferson County Court Appointed Employees Association v. Pennsylvania Labor Relations Board, 603 Pa. 482, 498, 985 A.2d 697, 707 (2009) ("control of state finances, specifically, the power to appropriate funds and levy taxes, lies with the legislative branch."); Beckert v. Warren, 497 Pa.

137, 145, 439 A.2d 638, 642-43 (1981) (holding that the "fiscal power" of taxing and spending is exclusively "vested in the Legislature"); see also THE FEDERALIST NO. 48, at 310 (James Madison) ("the legislative department alone has access to the pockets of the people"). As is made clear at Article VIII, Section 13, it is the General Assembly that is empowered to finalize and adopt the state's budget subject to the constitutional requirement that the General Assembly exercise its powers to tax and spend in a responsible manner to arrive at a balanced annual budget. See, generally, Council 13, American Federation of State, County and Municipal Employees, AFL-CIO v. Commonwealth, 604 Pa. 352, 358-60, 986 A.2d 63, 67-68 (2009).

The Judiciary, in contrast, is granted few specifically enumerated powers under the Pennsylvania Constitution yet that branch commands perhaps the most potent governmental power of all: The power of judicial review to define and enforce the Pennsylvania Constitution itself. This intrinsic characteristic of judicial power emanates directly from the Separation of Powers itself. See In re: Investigation by Dauphin County Grand Jury, September, 1938, 332 Pa. at 352-53, 2 A.2d at 807 (discussing the "doctrine of separation of powers, and with the resulting necessity for judicial review to resolve differences of opinion between the legislative, executive or judicial . . . is so definitely settled that reference to precedents is unnecessary."). Using judicial review, this Court has become the principal arbiter of the Pennsylvania Constitution. See, e.g., City of Philadelphia v. Commonwealth, 575 Pa. 542, 580-81, 838 A.2d 566, 589-90 (2003) (holding enactment of statute which created Pennsylvania Convention Center Authority to have violated "single subject" rule of Article III, Section 3); Stander v. Kelley, 433 Pa. 406, 412-15, 250 A.2d 474, 477-79 (1969) (plurality) (stating that the Supreme Court passes upon the constitutionality even of amending the Constitution). Judicial review has become a

distinguishing power of the Court. See Williams v. Samuel, 332 Pa. 265, 273, 2 A.2d 834, 838 (1939) (explaining application of judicial review in Pennsylvania).

While the lines of demarcation among the branches appear neat and clean when recited as schoolbook formulations, in practice the powers of each branch overlap significantly. See Stander, 433 Pa. at 482, 250 A.2d at 422 ("the dividing line between and the boundaries and powers of the three separate co-equal branches of our Government . . . are sometimes indistinct and are probably incapable of any precise or exact definition"). But the Separation of Powers doctrine does not contemplate the total separation of the three branches. See Commonwealth v. Sutley, 474 Pa. 256, 262, 378 A.2d 780, 783 (1977) (citation omitted) ("[T]he doctrine of the separation of powers was not intended to hermetically seal off the three branches of government from one another."); see also Buckley v. Valeo, 424 U.S. 1, 104 (1976). The Separation of Powers not only envisions overlap, but relies on cooperation among the branches:

> Under the system of division of governmental powers it frequently happens that the functions of one branch may overlap another. But the successful and efficient administration of government *assumes* that each branch will co-operate with the others.

Leahey v. Farrell, 362 Pa. 52, 57, 66 A.2d 577, 579 (1949) (emphasis in original); Sutley, 474 Pa. at 262, 378 A.2d at 783 ("It was obviously intended that there would be a degree of interdependence and reciprocity between the various branches."). So while this Court has the unquestioned power of judicial review and serves as the ultimate guardian of the Pennsylvania Constitution, the Court is not unique among the branches in its responsibility to support, obey and defend the Constitution. See PA. CONST. art. VI, sec. 3. These duties are imposed on all of the branches.

The specific question presented in this appeal – whether and to what extent Act 55 is deserving of deference from the Judiciary in deciding the contours of an "institution of purely

public charity" under the Pennsylvania Constitution – falls squarely into this territory of shared responsibility. Based on these constitutional principles and as explained further below, *amici curiae* urge this Court to adopt the enhanced criteria articulated by the Legislature by way of Act 55 when interpreting the constitutional term "institution of purely public charity."

B. The General Assembly and this Court have previously worked collaboratively to define and apply the scope of constitutional terms entrusting a specific power to the General Assembly.

The Pennsylvania Constitution assumes cooperation between the Judiciary and the Legislature by repeatedly committing joint responsibilities to the Judiciary and the Legislature. The sometimes blurry line dividing the spheres of the co-equal Judiciary and Legislature branches is perhaps particularly difficult to divine in those very instances where the Pennsylvania Constitution endows the General Assembly with the specific prerogative "by law" to exercise a constitutional provision. In such circumstances, the People have textually elected to share the Judiciary's principle province of constitutional stewardship with the Legislature and to hem in the General Assembly's general legislative power with judicial involvement.

This Court confronts a question concerning one such constitutional clause here, where Article VIII, Section 2(a)(v) provides in relevant part:

> The General Assembly may by law exempt from taxation . . . Institutions of purely public charity . . . .

PA. CONST. art. VIII, sec. 2(a)(v). Plainly, this constitutional text gives the General Assembly the discretion to exempt certain entities from taxation. The more nuanced issue presented here is not whether the General Assembly may establish such an exemption at all – that much is not in dispute. Rather, the issue is whether and to what extent the General Assembly may provide assistance and participate with this Court in defining the outer scope of that exemption. Put another way, while Article VIII, Section 2(a)(v) grants the Legislature the exclusive discretion to

exempt certain entities from taxation, how far does that same constitutional prerogative extend into allowing the Legislature to help define the meaning of the term "institutions of purely public charity" to which the exemption may apply?

This sort of question is not unprecedented. The potential for a similar instance of competing interpretations arose when the General Assembly enacted the sovereign immunity provisions of the Act of October 5, 1980, P.L. 693, No. 142, 42 Pa. C.S. § 8501 et seq. (the "Sovereign Immunity Act"). Cooperation between the branches avoided any possible impasse. Under Article I, Section 11 of the Pennsylvania Constitution, quoted below in relevant part, the Legislature is empowered to determine for which cases sovereign immunity applies:

> Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

PA. CONST. art. I, sec. 11.[1] Article I, Section 11 grants the Legislature the authority to extend sovereign immunity to certain governmental entities, much like Article VIII, Section 2(a)(v) regarding the authority to exempt certain entities from taxation. And Article I, Section 11 left open the question of how the General Assembly could participate in defining the term "Commonwealth" to which sovereign immunity could apply, also much like Article VIII, Section 2(a)(v) regarding the question of how the General Assembly may participate in defining

---

[1] Prior to 1978, Pennsylvania courts recognized a form of sovereign immunity emanating directly from Article I, Section 11 of the Pennsylvania Constitution. See, e.g., Sweigard v. Pa. Dep't of Transp., 454 Pa. 32, 34-35, 309 A.2d 374, 375-76 (1973). This Court eventually repudiated this interpretation of the Pennsylvania Constitution. See Mayle v. Dep't of Highways, 479 Pa. 384, 399-406, 388 A.2d 709, 716-19 (1978). In reaction, the General Assembly re-established sovereign immunity by exercising its constitutional discretion under Article I, Section 11, and enacting the Act of September 28, 1978, P.L. 788, No. 152, 1 Pa. C.S. § 2310. With that statute, the General Assembly directed by law that the Commonwealth and its actors enjoy general immunity from all lawsuits unless the General Assembly provides a specific waiver of immunity.

the meaning of the term "institution of purely public charity" to which a tax exemption may apply.

Through the Sovereign Immunity Act, the General Assembly not only exercised its constitutional prerogative under Article I, Section 11 to extend sovereign immunity as the General Assembly "may by law" direct, but simultaneously spoke by statute as to the meaning of "Commonwealth," and thus to the scope of that immunity. The General Assembly first furnished sovereign immunity generally by way of 1 Pa. C.S. § 2310, and then more specifically defined those governmental entities to which sovereign immunity extended by statutorily defining "Commonwealth party" at 42 Pa. C.S. § 8501 and "Commonwealth government" at 42 Pa. C.S. § 102. Perhaps because these definitional terms did not conflict with a pre-existing and highly evolved judicial construct for defining the constitutional term "Commonwealth" in Article I, Section 11, but rather filled a void opened by the Judiciary's departure in Mayle from its prior role in exclusively determining to which governmental entities sovereign immunity applied, this Court was not faced with a case involving the precise constitutional tension here between the definitions in the HUP test and Act 55.

With regard to the sovereign immunity issue, this Court simply treated questions as to which governmental entities qualify as the "Commonwealth," and thus fall within the scope of sovereign immunity, as straightforward questions of statutory interpretation not implicating Separation of Powers concerns. This Court's reasoning from Marshall v. Port Authority of Allegheny County, 524 Pa. 1, 568 A.2d 931 (1990),[2] typifies this type of analysis. In Marshall, this Court examined, in sequence, the touchstones of 1 Pa. C.S. § 2310, 42 Pa. C.S. § 8501, and

[2] While Marshall is a plurality opinion, the majority opinion and the dissent each employ the same form of statutory analysis (albeit to differing ultimate effect). Compare 524 Pa. at 4-5, 568 A.2d at 933 with 524 Pa. at 14-18, 568 A.2d at 938-40 (Papadakos, J., dissenting).

42 Pa. C.S. § 102, to conclude that a port authority enjoyed sovereign immunity. Id. at 4-5, 568 A.2d at 933 ("Clearly, PAT may claim sovereign immunity if it is a 'Commonwealth party.' A 'Commonwealth party' is defined in 42 Pa. C.S. § 8501 . . . ."); see also Sherk v. County of Dauphin, 531 Pa. 515, 518 n.2, 614 A.2d 226, 228 n.2 (1992). With Article I, Section 11, this Court allowed the General Assembly's enactments to inform the scope of sovereign immunity available under the Pennsylvania Constitution. The respect and deference shown between the Judiciary and Legislature with regard to that constitutional provision can be a guide for the sort of respect and comity that this Court should show to Act 55 now.

While illustrative, the analogy of the Sovereign Immunity Act to Act 55 is, of course, imperfect. But the branches' cooperation in defining the scope of Article I, Section 11 affording certain "Commonwealth" parties sovereign immunity can certainly be a model for the comity that can now be shown between the branches with regard to Act 55's participation in defining the scope of Article VIII, Section 2(a)(v) affording certain "institutions of purely public charity" exemption from taxation, in order to provide greater certainly and predictability to charitable organizations and local government units alike. Act 55 provides the important contribution of detailed, particularized criteria designed to enhance the HUP test by providing the Court will well-marked contours for its five factors, and thus for construing Article VIII, Section 2(a)(v) in this area of shared constitutional responsibility.

II. ACT 55 REFLECTS THE LEGISLATURE'S CONTRIBUTION TO UNDERSTANDING THE SCOPE OF ARTICLE VIII, SECTION 2(A)(V) OF THE PENNSYLVANIA CONSTITUTION.

Act 55's criteria for "institutions of purely public charity" are meant to provide charitable organizations, local governmental units, and courts with constructive input as to the scope of the tax exemption under Article VIII, Section 2(a)(v), all in an effort to provide enhanced predictability as to which charitable organizations enjoy tax exempt status. In

Alliance, however, this Court suggested three possible "fundamental and foundational questions" that could arise if the HUP test and Act 55 were to diverge from each other and become inconsistent. 591 Pa. at 464, 919 A.2d at 223. The first question is whether the HUP test assumed constitutional primacy and thus "occupied the constitutional field," or "left room for the General Assembly to address the matter[.]" Id. The second potential issue identified by the Court is whether the subsequently enacted Act 55 wholly displaced the HUP test. Id. Third, assuming that the HUP test is preeminent, is whether Act 55 nevertheless gave the Court reason "to reconsider the contours of the test[.]" Id.

Amici curiae, as the Elected Leaders of the Pennsylvania Senate, suggest that these and any other such "fundamental and foundational questions" are subject to a deceptively simple answer: Because the Judiciary and the Legislature share a joint duty to support, obey and defend the Pennsylvania Constitution, they should cooperate as co-equals within their respective constitutional spheres to define and apply provisions like Article VIII, Section 2(a)(v) of the Constitution. Just as neither the Judiciary nor the Legislature are superior to the other, neither the HUP test nor Act 55 is superior to the other in fully defining the term "institution of purely public charity" – a phrase which stands at a crossroads of both branches' constitutional duties. The branches are co-equal. And because the interpretation and application of Article VIII, Section 2(a)(v) is one of those instances where, by textual constitutional design, the functions of these two branches overlap, the successful and efficient administration of Commonwealth government demands comity between the co-equal branches. See Leahey, 362 Pa. at 57, 66 A.2d at 579; Sutley, 474 Pa. at 262, 378 A.2d at 783.

The HUP test and Act 55 may not be identical, but they share many common elements. Indeed, Act 55 intentionally replicated and was built upon the tested architecture of

the HUP test, setting forth the same five general factors defining what charitable organizations qualify as "institutions of purely public charity," then providing additional context by commenting in detail on how each of those factors can be satisfied in order to qualify for tax exempt status. In this way, the shared five-factor HUP/Act 55 test is especially well-suited to joint development and cooperation between the branches. As this Court has previously observed, in the context of discussing the judicial process of determining whether a specific charity qualifies an institution of purely public charity, "prior cases have limited value as precedent because of the continually changing nature of the concept of charity and the many variable circumstances of time, place, and purpose." G.D.L. Plaza Corporation v. Council Rock School District, 515 Pa. 54, 59-60, 526 A.2d 1173, 1175 (1987) (internal quotations and citation omitted). Here, the General Assembly sought to reinforce this judicially-acknowledged shortcoming in the common law process with complementary legislation. With each branch acting within its own sphere of constitutional competence, therefore, the broad knowledge gathered from the legislative process of wide-ranging policymaking was intended to enrich the deep experience learned from the judicial process of considering individual cases. This joint, inter-branch effort produced in Act 55 a contemporary and lasting definition to what it means to be an "institution of purely public charity" in the Commonwealth.

In this appeal, the Commonwealth Court appears to have concluded that the HUP test and Act 55 part ways when it comes to whether a charitable organization relieves the government of some of its burden – the fourth factor under both the HUP test and Act 55. Whether the HUP test and Act 55 are discordant on this point, when specific record facts are applied to law, is a question for the Court alone to resolve. But *amici curiae* disagree with the analytical process used by the Commonwealth Court in arriving at its decision below. Rather

than considering Act 55's specific criteria, listing how an entity may relieve government of some of its burden, the Commonwealth Court chose to eschew Act 55 altogether. The Commonwealth Court did not so much as allow the particularized requirements listed at Section 5(f) of Act 55 to inform the court's discussion of the government burden that appellant argues it relieved. In so doing, the Commonwealth Court refused to give any deference whatsoever to the Legislature's collective voice on the constitutional scope of Article VIII, Section 2(a)(v). Act 55 should not be sidestepped in favor of exclusive reliance on judicial precedent, especially in an area of law where this Court noted that "prior cases may have little value as precedent." G.D.L. Plaza, 515 Pa. at 62, 526 A.2d at 1176. Instead, Act 55 should be given a vital role as a comprehensive legal test that incorporates the HUP test into a legal structure that further details the judicial factors of that test with specific legislatively arrived-at criteria.

Ironically, even while this Court now expressly addresses questions sparked by the intersection of the HUP test and Act 55 and weighs a Commonwealth Court decision that drew a sharp dividing line between the judicial test and the legislative one, other case law from the 14 years since the enactment of Act 55 shows a remarkable degree of natural comity between the branches. Even in the short time since this Court granted allocatur in this case, the Commonwealth Court twice has been called upon to apply the overlapping standards of the HUP test and Act 55 and has done so with grace and justice. In Church of the Overcomer v. Delaware County Board of Assessment Appeals, --- A.3d ---, 2011 WL 904170 (Pa. Commw. March 17, 2011), for example, an *en banc* Commonwealth Court applied both the HUP test and Act 55 to a question involving the exemption from taxation of property owned by a religious non-profit corporation. In performing its analysis, the Commonwealth Court noted that Act 55 "codifies the HUP requirements and defines the same, setting forth specific elements that must be met to

satisfy each requirement." Id. at *5. Similarly, in City of Philadelphia, Trustee Under the Will of Stephen Girard v. Cumberland County Board of Assessment Appeals, --- A.3d ---, 2011 WL 1226286 (Pa. Commw. April 4, 2011), the Commonwealth Court gave body to the framework of the HUP test by applying the more specific criteria of Act 55 to the question of taxation exemption presented. Id. at *5-*6. In both decisions, which are representative of scores of cases that precede them, courts seamlessly used Act 55 to better understand and apply the HUP test.

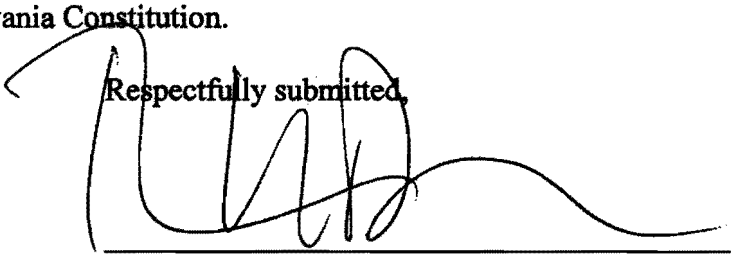
The General Assembly's role and prerogative under Article VIII, Section 2 should not be treated like some kind of constitutional light switch, where the General Assembly can do nothing more than simply choose whether to invoke its power to exempt entities from taxation. The General Assembly should also be able to contribute to understanding what that constitutional provision means. Act 55, thus, does not reflect just the General Assembly's invocation of its power to provide tax exempt status to certain charities, but that statute is also the General Assembly's constitutional mechanism to participate with the Judiciary in determining which entities are to be subject to exemption. Rather than allowing lower courts to continue regarding the HUP test and Act 55 as seemingly parallel but distinct legal tests, this Court should use this opportunity to recognize Act 55 as a single legal matrix blending the HUP test with the additional, particularized criteria detailed in Section 5 of that statute according to which organizations can predictably seek treatment as institutions of purely public charity in the Commonwealth. In a sign of respect to the Judiciary and in acknowledgement of the value of the HUP test, Act 55 was purposefully constructed atop that already sturdy judicial framework. *Amici curiae* simply ask this Court to accord to Act 55 the same kind of respect now so that the extra value it independently offers – predictable and reliable guidance for charitable

organizations and local government units alike – can strengthen the HUP test and continue to serve the best interests of the Commonwealth and its People.

CONCLUSION

For all the foregoing reasons, *amici curiae*, Senator Joseph B. Scarnati, III, President Pro Tempore, Senator Dominic Pileggi, Majority Leader, and Senator Jay Costa, Minority Leader, as the Elected Leaders of the Senate of the Commonwealth of Pennsylvania, request that this Court hold that the General Assembly's exercise of its Article VIII, Section 2 power through the enactment of Act 55 deserves comity and respect and should be used as the polestar to determining whether a charitable organization qualifies as an "institution of purely public charity" under the Pennsylvania Constitution.

Respectfully submitted,



Jonathan F. Bloom (No. 45542)
Thomas W. Dymek (No. 86248)
Karl S. Myers (No. 90307)
STRADLEY, RONON, STEVENS & YOUNG, LLP
2600 One Commerce Square
Philadelphia, PA 19103
(215) 564-8000

Attorneys for *Amici Curiae*,
Senator Joseph B. Scarnati, III, President Pro Tempore, Senator Dominic Pileggi, Majority Leader, and Senator Jay Costa, Minority Leader,
of the Senate of the Commonwealth of Pennsylvania

Dated: April 21, 2011

CERTIFICATE OF SERVICE

I, Thomas W. Dymek, Esquire, certify that on April 21, 2011, I caused two copies of the foregoing to be served upon each of the following via U.S. first class mail:

Howard J. Bashman, Esquire
2300 Computer Avenue
Suite G–22
Willow Grove, PA 19090

Stacey Beecher, Esquire
BEECHER & CHELAK
106 West High Street
Milford, PA 18337

Stephanie E. DiVittore, Esquire
Lawrence B. Abrams III, Esquire
RHOADS & SINON, LLP
One South Market Square
P.O. Box 1146
Harrisburg, PA 17108-1146

Anthony J. Magnotta, Esquire
Oxford Place Route 590
P.O. Box 408
Hawley, PA 18428-0408

Thomas W. Dymek