STATE OF MICHIGAN
IN THE COURT OF APPEALS

Chelsea Health & Wellness Foundation,

Petitioner/Appellant/Cross Appellee,

v.

Scio Township,

Respondent; and

Village (now City) of Dexter and Dexter Downtown Development Authority, and Michigan Department of Treasury,

Intervenors-Respondents/Appellees/Cross Appellants.

Court of Appeals Case No. 332483

MTT Case No. 14-001671-TT

AMICUS CURIAE BRIEF

on behalf of

MICHIGAN MUNICIPAL LEAGUE, MICHIGAN TOWNSHIPS ASSOCIATION, MICHIGAN ASSOCIATION OF SCHOOL BOARDS, MICHIGAN ASSOCIATION OF COUNTIES, AND PUBLIC CORPORATION LAW SECTION OF THE STATE BAR OF MICHIGAN

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STATEMENT OF INTERESTS OF AMICUS CURIAE

1. Michigan Townships Association

The Michigan Townships Association is a Michigan non-profit corporation whose members, consisting of over 1,230 townships within the State of Michigan (including both general law and charter townships), have joined together for the purpose of providing education, information, and guidance to and among township officials to enhance the efficient and knowledgeable administration of township government services under the laws and statutes of the State of Michigan. The Board of Directors of the Michigan Townships Association has authorized and directed the undersigned law firm to file an Amicus Curiae Brief on behalf of the Michigan Townships Association.

2. Michigan Municipal League

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of 521 Michigan local governments, of which 478 are also members of the Michigan Municipal League Legal Defense Fund (the "Legal Defense Fund"). The Michigan Municipal League operates the Legal Defense Fund through a board of directors. The purpose of the Legal Defense Fund is to represent the member local governments in litigation of statewide significance.

This Amicus Curiae Brief is authorized by the Legal Defense Fund's Board of Directors, whose membership includes the president and executive director of the Michigan Municipal League, and the officers and directors of the Michigan Association of Municipal Attorneys: Clyde J. Robinson, city attorney, Kalamazoo; John C. Schrier, city attorney, Muskegon; Lori Grigg Bluhm, city attorney, Troy; Eric D. Williams, city attorney, Big Rapids; James O. Branson, III, city attorney, Midland; James J. Murray, city attorney, Boyne City and Petoskey;

Robert J. Jamo, city attorney, Menominee; Thomas R. Schultz, city attorney, Farmington and Novi; Lauren Trible-Laucht, city attorney, Traverse City; and William C. Mathewson, general counsel, Michigan Municipal League.

3. Michigan Association of Counties

The Michigan Association of Counties ("MAC") is a non-partisan, non-profit organization which advances education, communication and cooperation among county government officials in the State of Michigan. The MAC is the counties' voice at the State Capitol, providing legislative support on key issues affecting counties. Its membership is comprised of 81 of Michigan's 83 counties, with platforms created through the actions of the MAC's Board of Directors, who represent the member counties in issues of statewide significance.

4. Michigan Association of School Boards

The Michigan Association of School Boards ("MASB") is a voluntary, non-profit association consisting of approximately 600 local and intermediate school district boards of education throughout the State of Michigan, which includes nearly all of the state's public school districts. Officially organized in 1949, MASB's goal is to advance the quality of public education in the state, promote high educational program standards, help school board members keep informed about education issues, represent the interest of boards of education, and promote public understanding about school boards and citizen involvement in schools.

MASB is recognized as a major voice in influencing education issues at the state level and, through its affiliation with the National School Boards Association, at the national level. Consequently, for more than 65 years, MASB has worked to provide quality educational leadership services for Michigan Boards of Education and to advocate for student achievement and public education.

5. Public Corporation Law Section

The Public Corporation Law Section of the State Bar of Michigan is a voluntary membership section of the State Bar of Michigan, comprised of approximately 610 attorneys who generally represent the interests of government corporations, including cities, villages, townships and counties, boards and commissions, and special authorities. Although the Section is open to all members of the State Bar, its focus is centered on the laws, regulations, and procedures relating to public law.

The Public Corporation Law Section provides education, information and analysis about issues of concern to its membership and the public through meetings, seminars, the State Bar of Michigan website, public service programs and publications. The Public Corporation Law Section is committed to promoting the fair and just administration of public law. In furtherance of this purpose, the Public Corporation Law Section participates in cases that are significant to governmental entities throughout the State of Michigan. The Section has filed numerous Amicus Curiae briefs in state and federal courts.

The Public Corporation Law Section Council, the decision-making body of the Section, is has authorized the filing of this Amicus Curiae Brief. The position expressed in this Amicus Curiae Brief is that of the Public Corporation Law Section only and is not the position of the State Bar of Michigan.

STATEMENT OF JURISDICTION

The Amicus Parties concur with Appellees/Cross-Appellants City of Dexter and Dexter Downtown Development Authority's Statement of Jurisdiction in the Cross-Appellant Brief dated June 29, 2016.

STATEMENT OF QUESTIONS PRESENTED

Appellant, a non-profit organization, operates a fitness center. It charges market membership rates and offers a 50% discount to low-income individuals if they have a doctor's note and if they visit the gym at least two times per week. Those requirements do not apply to members who pay the full rate. Appellant sought property tax exemptions under MCL 211.7o, as a "charitable institution," and MCL 211.7r, for real property used for "hospital or public health purposes."

I. Did the Michigan Tax Tribunal correctly deny the requested property tax exemption under MCL 211.7o because Appellant imposes additional, arduous requirements on low-income individuals and therefore offers its charitable benefits on a "discriminatory basis"?

Appellant, Chelsea Health & Wellness Foundation, answers:	No.
Appellees, City of Dexter and the City DDA, answer:	Yes.
These Amicus Parties answer:	Yes.
The Tribunal answered:	Yes.

II. Did the Michigan Tax Tribunal correctly deny the requested property tax exemption under MCL 211.7r because Appellant does not operate a clinic, hospital, or health care facility?

Appellant, Chelsea Health & Wellness Foundation, answers:	No.
Appellees, City of Dexter and the City DDA, answer:	Yes.
These Amicus Parties answer:	Yes.
The Tribunal answered:	Yes.

III. Did the Michigan Tax Tribunal err by holding that Appellant's fitness center "lessens a burden of government" given that the state does not have an affirmative obligation to provide access to physical fitness facilities?

Appellant, Chelsea Health & Wellness Foundation, answers:	No.
Appellees, City of Dexter and the City DDA, answer:	Yes.
These Amicus Parties answer:	Yes.
The Tribunal answered:	No.

INTRODUCTION

This appeal arises out of Appellant Chelsea Health and Wellness Foundation's attempt to obtain a 100% property tax exemption for its $10 million fitness center. Appellant charges its members market rates for gym memberships – up to $185/month for a family of four – but purports to be a "charity" because it offers a 50% "scholarship" program to low-income individuals. Low-income individuals must obtain a doctor's note and visit the fitness center at least twice per week to receive the discounted rate, but those requirements do not apply to members who pay the full rate. In the tax years at issue, Appellant had *zero* members enrolled in its "scholarship" program and thus provided no charity.

Following an eight day trial, the Michigan Tax Tribunal issued a 106-page opinion denying the property tax exemption. The Tribunal applied Michigan Supreme Court's six-prong test for whether a taxpayer is a "charitable institution," which was articulated in *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 213-15; 713 NW2d 734 (2006). The Tribunal concluded that Appellant failed to satisfy the third factor, which provides as follows:

> A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.

Wexford Medical Group, 474 Mich at 215. Because Appellant requires low-income individuals to jump through "extra hoops" to receive a discounted rate, Appellant did not "serve any person who needs the particular type of charity being offered." (MTT Op, 93.) Instead, Appellant "discriminate[s] against a particular group, in this case, low income persons." *Id.* The Tribunal denied the exemption on that basis, and also denied Appellant's request for an exemption under MCL 211.7r, which exempts certain health care facilities from real property taxes.

The Amicus Parties submit that the Tribunal's denial of the exemption should be affirmed. Contrary to *Wexford Medical Group*, Appellant treats low-income individuals less favorably than members who can afford to pay the full rate. As a result, Appellant makes it harder, not easier, for low-income individuals to use the fitness facility, and thus Appellant has not satisfied the third factor of *Wexford Medical Group.* Contrary to Appellant's arguments, "discrimination" is not limited to disparate treatment of members of suspect classes, nor does *Wexford Medical Group* require charities to spend themselves out of existence. Because Appellant offers charitable benefits on a discriminatory basis, the Tribunal properly denied the exemption.

The Tribunal was also correct in denying Appellant's request for an exemption under MCL 211.7r, which exempts certain clinics and real property "used for hospitals or public health purposes." The plain language of the statute, when read as a whole, makes clear that the exemption only applies to clinics, hospitals, and related health care facilities, and not more broadly to any facility (like a gym) that conceivably advances public health but that does not provide medical services. Construing the statute to apply to Appellant's fitness center would expand the exemption far beyond what the Legislature plainly intended and would create a tremendous tax loophole for the fitness industry.

The Amicus Parties also concur with the City's arguments in its cross-appeal. In particular, the Tribunal erroneously held that Appellant's facility "lessens the burdens of government." The record does not establish that the state has an affirmative obligation to provide physical fitness facilities or to prevent obesity, and thus there is no "burden" that Appellant could be alleviating. Appellant's reliance on the state's general aspiration to promote "public health" is insufficient to sustain the exemption. If that were the standard, then a myriad

of private entities, from gyms to yoga studios to health food stores, could argue they are exempt because they promote the "public health" and thereby lessen the burdens of government. Such a broad exception would be large enough to swallow the rule, and it would be contrary to the narrow interpretation of tax exemptions required by Michigan law.

For these reasons, and as explained below, the Amicus Parties request that this Court affirm the Tribunal's denial of the requested property tax exemption.

STATEMENT OF FACTS

The Amicus Parties incorporate the Statements of Facts set forth in the City's Brief on Appeal (filed September 8, 2016) and Cross-Appellant Brief (filed June 29, 2016), as well as the factual recitation in the Michigan Tax Tribunal's Final Opinion and Judgment dated April 6, 2016.

ARGUMENT

I. Standard of Review

Appellant is appealing a decision of the Michigan Tax Tribunal that denied Appellant's request for a property tax exemption. This Court's review of the Tribunal's decision is "limited to the questions of whether the [T]ribunal committed an error of law or adopted a wrong legal principle." *Teledyne Continental Motors v Muskegon Tp*, 145 Mich App 749, 753; 378 NW2d 590 (1985). Under this "very limited" appellate review, "[f]actual findings made by the tribunal will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record." *Walgreen Co v Macomb Tp*, 280 Mich App 58, 62; 760 NW2d 594 (2008). "Substantial" evidence is "more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-53; 483 NW2d 416 (1992).

The scope of this Court's review is also impacted by the well-established rule that tax exemptions are "narrowly construed" in favor of taxing authorities because exemptions "upset the desirable balance achieved by equal taxation[.]" *Wexford Medical Group*; *see also Association of Little Friends, Inc v City of Escanaba*, 138 Mich App 302, 307; 360 NW2d 602 (1985) ("[e]xemption statutes are to be strictly construed in favor of the taxing unit").

Tax exemptions are generally "disfavored" and are in "derogation of the principle that all shall bear a proportionate share of the tax burden." *GMAC LLC v Treasury Dep't*, 286 Mich App 365, 375; 781 NW2d 310 (2009). Accordingly, the party seeking the exemption bears the burden of establishing that all requirements for an exemption have been satisfied. *Chauncey and Marion Deering McCormick Foundation v Wawatam Tp*, 196 Mich App 179, 182; 492 NW2d 751 (1992).

Under this limited scope of review, in which Appellant bears the heavy burden of showing that it is entitled to an exemption from property taxes, the Amicus Parties submit that Appellant is not entitled to any relief from this Court.

II. The Tribunal correctly denied Appellant's request for a property tax exemption because Appellant did not satisfy the third factor of the Michigan Supreme Court's *Wexford Medical Group* test.

Appellant first claims that it is entitled to a property tax exemption as a "charitable institution" under Section 7o of the General Property Tax Act, MCL 211.7o. However, the Tribunal correctly held that Appellant's fitness facility is not exempt as a "charitable institution" because Appellant offers its "charity" on a discriminatory basis. Specifically, Appellant imposes additional requirements on low-income individuals that do not apply to members who are financially able to pay the membership dues. The result is a "charity" program that creates barriers that discourage low-income individuals from using the fitness facility. Indeed, and perhaps unsurprisingly, during the tax years at issue, *no one* used Appellant's purported "charity" program. The Tribunal's denial of the exemption should be affirmed.

a. Under *Wexford Medical Group*, an institution is not a "charitable institution" if it offers its charity on a discriminatory basis.

Before reviewing the Tribunal's reasoning and decision, it is instructive to consider the historical underpinnings of the Supreme Court's decision in *Wexford Medical Group* and the Court's well-reasoned bases for constructing its six-part test for charitable institutions.

i. Factual Context of Wexford Medical Group

In *Wexford Medical Group*, the petitioner-taxpayer was a nonprofit corporation that provided health care in Wexford County, which was a federally designated health professional shortage area. *Wexford Medical Group*, 474 Mich at 196. The petitioner's stated mission was "providing access to quality and affordable health care services to the communities it serves."

Id. To that end, the petitioner had a "charity care" policy and an "open-access" policy for Medicare and Medicaid patients, meaning that anyone whose income was less than twice the federal poverty level would receive free or discounted health care services. *Id.* at 197. Patients were served on a first-come, first-served basis, and the petitioner did not limit the number of Medicare and Medicaid patients that it treated. *Id.*

The petitioner sought property tax exemptions under MCL 211.7o (charitable institution exemption for real property) and MCL 211.7r (public health purpose exemption)[1]. The local taxing unit denied the exemptions, and the petitioner appealed.

ii. Wexford Medical Group's Historical Review of "Charitable Institutions"

The *Wexford Medical Group* Court began its analysis with the plain language of MCL 211.7o, which provides as follows:

> Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.

MCL 211.7o; *see also Wexford Medical Group*, 474 Mich at 199. The Court explained that a three-part test has been developed through case law to determine whether the statutory requirements for the exemption are satisfied:

(1) the real estate must be owned and occupied by the exemption claimant;

(2) the exemption claimant must be a nonprofit charitable institution; and

(3) the exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

[1] The Supreme Court did not reach an analysis of Section 7r: "Because we find that petitioner is exempt as a charitable institution under MCL 211.7o, there is no need to delve any further. Thus, we leave further examination of the meaning of 'public health purpose' for another day." 474 Mich at 221.

Id. at 203. The Court noted that the first and third factors were not at issue, and that the petitioner was indisputably a "nonprofit" organization. *Id.* at 204. The "central inquiry" was "whether petitioner is a 'charitable institution,' and, in a more general sense, what precise meaning that term has." *Id.*

To answer that question, the Supreme Court traced the history of the term "charitable institution," beginning with its earliest reference in *Attorney General v Common Council of Detroit*, 113 Mich 388; 71 NW 632 (1897). In that case, the Court denied an exemption to a masonic temple association, reasoning that "[i]t is not enough, in order to exempt such associations from taxation, that one of the direct or indirect purposes or results is benevolence, charity, education, or the promotion of science. They must be organized chiefly, if not solely, for one or more of these objects." *Wexford Medical Group*, 474 Mich at 205, *quoting Attorney General*, 113 Mich at 390.

Next, the Court turned to a 1904 decision, which held that a hospital was "charitable" where it offered services at reduced rates, reasoning that "a corporation is sufficiently charitable to entitle it to the privileges of the [property tax exemption] act when the charges collected for services are not more than are needed for its successful maintenance." *Mich Sanitarium & Benevolent Ass'n v Battle Creek*, 138 Mich 676; 101 NW 855 (1904). A similar conclusion was reached in *Gundry v R B Smith Memorial Hospital Ass'n*, 293 Mich 36; 291 NW 213 (1940), where a nonprofit hospital was found to be exempt from property taxes where it earned a small profit but reinvested that profit back into the hospital. *See Wexford Medical Group*, 474 Mich at 206-207.

In continuing its historical review, the Court next examined a case involving a taxpayer's two nursing homes. *Michigan Baptist Homes & Dev Co v City of Ann Arbor*, 396 Mich 660; 242

NW2d 749 (1975). In that case, the Supreme Court affirmed the denial of an exemption to one nursing home, Hillsdale Terrace, in which residents "paid a substantial up-front sum and monthly fees thereafter." *Id.* at 667; *see also Wexford Medical Group*, 474 Mich at 208. Importantly, the petitioner offered reduced rates to only four of its 72 residents in one year, and waived the fees for only one resident, and those residents were "hand selected by the establishment" after an application process. *Mich Baptist Homes,* 396 Mich at 668-69; *see also Wexford Medical Group*, 474 Mich at 208.

The *Michigan Baptist Homes* Court allowed an exemption for the petitioner's other nursing home, which was funded by an endowment fund and which accepted residents "on the basis of their lack of ability to find care elsewhere, not on the basis of being in good financial and physical health." *Wexford Medical Group*, 474 Mich at 208. In justifying the different results for the two nursing homes, the Court reasoned that the Hillsdale Terrace facility "did not 'serve the elderly generally,' but, rather, 'provide[d] an attractive retirement environment for those among the elderly who have the health to enjoy it and who can afford to pay for it.'" *Mich Baptist Homes*, 396 Mich at 671; *see also Wexford Medical Group*, 474 Mich at 209.

Building on the holding of *Michigan Baptist Homes****Error! Bookmark not defined.***, the Court's next examination of the charitable institution exemption was in *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Township*, 416 Mich 340; 330 NW2d 682 (1982). In *Retirement Homes*, the Supreme Court emphasized that "to qualify for a charitable or benevolent tax exemption, property must be used in such a way that it 'benefit[s] the general public without restriction.'" *Id.* at 348; *see also Wexford Medical Group*, 474 Mich at 211. The Court then quoted a "widely used definition" of "charity":

> [Charity] * * * [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts

> under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Id. at 348-349, *quoting Jackson v Phillips*, 96 Mass (14 Allen) 539 (1867).

From that definition, the *Retirement Homes* Court framed the inquiry as follows: "Does [the petitioner] operate the apartments in such a way that there is a 'gift' for the benefit of 'the general public without restriction' or 'for the benefit of an indefinite number of persons'?" *Retirement Homes*, 416 Mich at 349. The Court concluded that the exemption should be denied because there was no "gift"; residents paid a monthly fee, and residents were "chosen on the basis of their good health, their ability to pay the monthly charge, and, generally, their ability to live independently." *Id.* at 349-50; *see also Wexford Medical Group*, 474 Mich at 211-12.

Finally, the *Wexford Medical Group* Court reviewed *Michigan United Conservation Clubs v Lansing*, 423 Mich 661; 378 NW2d 737 (1985), which involved an environmental organization that conducted educational seminars, published information brochures, and engaged in lobbying, among other things. In that case, the Court held that the organization was not a charitable institution because "the petitioner was organized to benefit its paying members rather than to benefit 'the general public without restriction' or 'for the benefit of an indefinite number of persons.'" *Id.* at 673; *see also Wexford Medical Group*, 474 Mich at 212.

iii. Wexford Medical Group's Analysis

After its review of nearly a century of case law, the Court identified "several common threads," including – relevant in this case – the following:

> A second indispensable principle is that the organization must offer its charitable deeds to benefit people who need the type of charity being offered. **In a general sense, there can be no restrictions on those who are afforded the benefit of the institution's charitable deeds.** This does not mean, however, that a charity has to serve every single person regardless of the type of charity offered or the type of charity sought. **Rather, a charitable institution can exist to serve a**

> **particular group or type of person, but the charitable institution cannot discriminate within that group.** The charitable institution's reach and preclusions must be gauged in terms of the type and scope of charity it offers.

Wexford Medical Group, 474 Mich at 213 (emphasis added). The Court then articulated a six-prong test for determining whether a taxpayer is a "charitable institution":

> (1) A "charitable institution" must be a nonprofit institution.
>
> (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
>
> (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
>
> (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
>
> (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
>
> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

Id. at 215.

Applying those factors, the Court held that the petitioner in *Wexford Medical Group* **was** a charitable institution. Among other reasons, the Court emphasized the following:

> **Petitioner has a charity care program that offers free and reduced-cost medical care to the indigent with no restrictions.** It operates under an open-access policy under which it accepts any patient who walks through its doors, **with preferential treatment given to no one**. Although petitioner sustains notable financial losses by not restricting the number of Medicare and Medicaid patients it accepts, **it bears those losses rather than restricting its treatment of patients who cannot afford to pay.**

Id. at 216-17 (emphasis added). Thus, because the petitioner "provided a gift – free or below-cost health care – to an indefinite number of people by relieving them of disease or suffering," the petitioner was entitled to the exemption.

iv. Michigan Supreme Court's pending review of Wexford Medical Group

Wexford Medical Group is the benchmark standard for reviewing property tax exemptions for "charitable institutions." As this Court is aware, however, the Michigan Supreme Court is currently considering an Application for Leave to Appeal in a case that centers on the proper interpretation of *Wexford Medical Group*'s third factor. *Baruch SLS, Inc v Township of Tittabawassee*, Court of Appeals No. 319953, Supreme Court No. 152047. In *Baruch*, this Court affirmed the Tribunal's decision to deny a property tax exemption to the taxpayer, a senior living facility, because the taxpayer offered its purported "charity" on a discriminatory basis. The taxpayer filed an Application for Leave to Appeal.

In an Order dated April 1, 2016, the Michigan Supreme Court directed the Clerk to schedule oral argument on the Application, and it instructed the parties to file supplemental briefs addressing the following issues:

(1) whether *Wexford Medical Group*, correctly held that an institution does not qualify as a "charitable institution" under MCL 211.7o or MCL 211.9 if it offers its charity on a "discriminatory basis";

(2) if so, how "discriminatory basis" should be given proper meaning;

(3) the extent to which the relationship between an institution's written policies and its actual distribution of charitable resources is relevant to that definition; and

(4) whether, given the foregoing, the petitioner is entitled to a tax exemption.

(Exhibit A, April 1, 2016 Order.) The parties have filed their appellate briefs, and amicus briefs have been filed in support of both sides. These Amicus Parties filed an amicus brief in

support of the local unit, Township of Tittabawassee. Notably, the named parties in this appeal have also filed amicus briefs in the *Baruch* case – Appellant on behalf of the taxpayer, and the City on behalf of the local unit. As of this filing, oral argument on the Application has not been scheduled.

Notwithstanding the pending Application, *Wexford Medical Group* remains binding precedent at this time, and this Court declined Appellant's invitation to stay this appeal pending the outcome of *Baruch.* Under *Wexford Medical Group*, Appellant is plainly not entitled to an exemption because it offers its purported "charity" on a discriminatory basis and therefore fails to satisfy the third factor of the six-part test.

b. Appellant is not entitled to a property tax exemption because it offers charitable benefits on a "discriminatory basis."

i. Appellant requires low-income individuals to satisfy additional, burdensome membership requirements.

Under *Wexford Medical Group*, a taxpayer offers benefits on a "discriminatory basis" if, through its policies or practices, it does not "serve[] any person who needs the particular type of charity being offered." *Wexford Medical Group*, 474 Mich at 215. A charitable institution cannot offer its charity on unequal terms, but rather must extend its services even-handedly:

> A "charitable institution" does not offer its charity on a discriminatory basis **by choosing who, among the group it purports to serve, deserves the services**. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.

Wexford Medical Group, 474 Mich at 215 (emphasis added).

Here, Appellant is not a "charitable institution" because it does not extend equal treatment to all members of the group that it purports to serve. Rather, Appellant discriminates against low-income individuals by imposing additional requirements on them in exchange for a discounted membership price – but Appellant does not impose those same

requirements on members who are able to pay full price. As a result, Appellant makes it harder, not easier, for low-income individuals to use Appellant's fitness facility.

In its Brief on Appeal, Appellant paints an inaccurate picture of the Tribunal's decision. Appellants claims that the "discrimination" identified by the Tribunal was Appellant's requirement that low-income individuals verify their financial status. (Appellant's Brief on Appeal, p. 30.) Appellant buries in its 128th footnote the real basis for the Tribunal's finding of discrimination, which is that Appellant requires low-income members to visit the gym more frequently than members who pay full price. (*See* Appellant's Brief on Appeal, p. 30, n. 128.)

The facts bear out the Tribunal's conclusion. Appellant charges a market membership rate of $185/month for a family of four. (MTT Op, Finding of Fact Nos. 34, 36.) As this hardly can be considered a "gift," Appellant also offers a "scholarship" program, which applies to individuals whose income is at or below 200% of poverty guidelines, subject to income verification and a doctor's note stating the health benefit of a membership at the center. However, the "scholarship" only allows free access for eight weeks. After that, the individual must pay 50% of the usual rate, *and* must use the fitness center a minimum of twice a week – a requirement that does not apply to members paying the usual membership rate. *Id.* at 42.

In analyzing Appellant's exemption request, the Tribunal framed the third prong of *Wexford Medical Group* as follows: "[T]he issue is whether Petitioner is offering its services on a discriminatory basis *by choosing who, among the group it purports to serve, deserves the services*." *Id.* at 44 (emphasis in original). The Tribunal concluded that Appellant failed to establish that it satisfied this prong:

> While Petitioner's CEO appears to the Tribunal to be genuinely interested in providing access to everyone, the evidence shows that **persons with financial difficulties still have extra hoops to jump through to be able to overcome financial barriers to use the facility. The written policy places requirements**

> **upon scholarship members that are not present for those who can pay the fee.** Not only must prospective scholarship applicants verify their financial status, they must use the facility at least twice a week, or be in danger of losing their ability to use the facility.

Id. at 44-45 (emphasis added).

The Tribunal further acknowledged that the reduced monthly charge of $92.50 for a family of four is hardly "charity," and it noted that "**a 50% rate would likely continue to limit those among the group Petitioner purports to serve, deserves the services**. . . . As [testimony showed], the poor tend to have poorer health." *Id.* at 45 (emphasis added).

Consequently, by imposing additional requirements on individuals who cannot afford the $185/month family membership fee, and by offering only a 50% discount of this sizable fee, Appellant makes it **harder for the poor** to receive the benefits of the fitness center. Stated in the context of the Court's language in *Michigan Baptist Homes*, Appellant is not "serv[ing] the [public] generally," but rather is "provid[ing] an attractive [fitness] option" for those "who can afford to pay for it." *Michigan Baptist Homes*, at 671.

ii. Charitable institutions must not be permitted to discriminate against the poor.

Although Appellant has softened its tone in its Brief on Appeal, this Court should note that in its amicus curiae brief in the Supreme Court, Appellant explicitly argued that **"the poor should not be a subclass of those against which a charity may not discriminate under Factor 3."** (**Exhibit B**, Excerpt of CWF Amicus Brief, p. 18.) In other words, Appellant advocated to the Supreme Court that charities *should* be permitted to discriminate against low-income individuals. Such an interpretation is plainly contrary to *Wexford Medical Group* and the heart of the charitable institution exemption. Indeed, the dictionary (and common sense) definition of "charity" places the focus squarely on the poor, who most need help:

> "Charity"
>
> . . .
>
> a: generosity and helpfulness especially toward the needy or suffering; also : aid given to those in need
>
> b : an institution engaged in relief of the poor
>
> c : public provision for the relief of the needy

Merriam-Webster Dictionary, accessed July 18, 2016.[2]

Appellant's claim that charities can create extra requirements for low-income people is incompatible with the definition of charity and discourages the poor from seeking Appellant's services. As the Tribunal aptly noted, "[w]hat cannot be proven is how many low income persons never bothered to apply for membership because its costs, and written policy were prohibitive." (Exhibit A, p. 45.) Rather than "accommodate" the poor, as Appellant purports to do, Appellant has created barriers that prevent low-income individuals from receiving its services. In so doing, Appellant has failed to satisfy the third factor of *Wexford Medical Group.*

> iii. Appellant's position would open the door to property tax exemptions for so-called "charitable institutions" that do not, in fact, provide any charity.

As a practical matter, Appellant's position is unworkable and would lead to absurd results. If taxpayers are permitted to craft charity "policies" that impose additional requirements on low-income individuals, then it would become easy for a taxpayer to escape property taxes by creating a policy so onerous that no charitable benefits would ever actually be provided. For example, a taxpayer like Appellant could require its low-income members to visit the gym seven days a week (instead of two days a week) to remain eligible for the 50% discount. Such an arduous requirement would almost certainly discourage anyone from participating in the

[2] http://www.merriam-webster.com/dictionary/charity

"scholarship" program, and the taxpayer would never provide any "charity" at all, *but would still be exempt from real property taxes*.

Indeed, for the tax years at issue, that is precisely what occurred: Appellant provided ***no charity*** because no one used the "scholarship" program, yet Appellant still demanded a property tax exemption as a "charitable institution." Although the Tribunal based its decision on the written "scholarship" program, and not whether anyone actually used the program, the absurdity of such an outcome should not be lost on this Court.

Nor should this Court lose sight of the practical impact of a decision in Appellant's favor, which would allow copious exemptions for "charities" that provide no charitable benefits. Such an outcome would be contrary to the narrow scope of property tax exemptions. *See, e.g., Wexford Medical Group*, 474 Mich at 204; *see also GMAC*, 286 Mich App at 375 (tax exemptions are generally "disfavored" and are in "derogation of the principle that all shall bear a proportionate share of the tax burden"). Improper tax exemptions also jeopardize the tax base of local communities and reduce the revenue available for public services and infrastructure. The potential consequences of Appellant's position are wide-reaching, which is why the Amicus Parties urge this Court to affirm the Tribunal's denial of the exemption.

c. Appellant's interpretation of MCL 211.7o is incompatible with *Wexford Medical Group*.

In support of its exemption request, Appellant argues for a novel interpretation of *Wexford Medical Group* that goes beyond the language of the statute or the case law. In this regard, Appellant makes two unavailing arguments: (1) that the "discrimination" factor is limited to race and other suspect classes; and (2) that the "discrimination" factor, as applied by the Tribunal, requires charities to spend themselves out existence. Both arguments are meritless.

i. "Discrimination" under *Wexford Medical Group* is not limited to discrimination against suspect classes.

Appellant argues that "the Factor 3 analysis should be limited to determining whether the charity discriminates against those it exists to serve by **denying service to those belonging to the suspect categories** defined by Michigan laws prohibiting discrimination." (Brief on Appeal, p. 32, emphasis added). This argument fails because discrimination against suspect classes is already prohibited under the law, so the Supreme Court would have no need to add it as a discrete factor. The Elliott-Larsen Civil Rights Act, Act 453 of 1976, MCL 37.2101 *et seq*, begins with a clear declaration that such classes are already protected from discrimination:

> The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right.

MCL 37.2102. Thus, any business or charity offering housing, public accommodations, public service, or educational facilities is already prohibited from discriminating based on religion, race, color, national origin, age, sex, height, weight, familial status, or marital status.

Additionally, an entity cannot be a tax-exempt nonprofit organization under Section 501(C)(3) of the Internal Revenue Code if it engages in racial discrimination. *See Bob Jones Univ v United States*, 461 US 574 (1983) (private school not having a racially nondiscriminatory policy as to students was not charitable within the common law concepts reflected in §§ 170 and 501(C)(3) of the Internal Revenue Code). Under *Wexford Medical Group*, a "charitable institution" must be a "nonprofit organization," which requires recognition under Section 501(C)(3). Thus, by virtue of the 501(C)(3) status requirement, a "charitable institution" is already barred from engaging in racial discrimination.

In light of those existing prohibitions, *Wexford Medical Group* cannot be read to limit the phrase "discriminatory basis" to discrimination against suspect classes. If discrimination against suspect classes is already prohibited, why would the Supreme Court add it as a separate factor? Clearly, the Supreme Court meant that charitable institutions cannot discriminate between people in the group to be served, regardless of whether that discrimination is based on membership in a "protected class" or based on another attribute or circumstance, such as the individual's ability to pay. The Court's intent is plain from the language of its opinion, where it articulated the third prong of the six-prong test:

> A "charitable institution" does not offer its charity on a discriminatory basis ***by choosing who, among the group it purports to serve, deserves the services***. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.

Wexford Medical Group, 474 Mich at 215 (emphasis added).

If the Court meant to define "discriminatory basis" as discrimination only against those in "suspect classes," then the Court could easily have stated as much in its Opinion. The Court did not do so. Rather, the Court dictated that a "charitable institution" may not give preference to certain individuals over others within the group that it purports to serve. *Id.*

That conclusion is further evidenced by the Court's favorable citation to the *Wexford Medical Group* petitioner's "open-access" policies, under which the petitioner provided care "with preferential treatment given to no one." The Court made no mention of race, color, or creed when discussing the petitioner's policies because the critical fact was that there was no discrimination of *any* kind; the petitioner provided equal access to *anyone* who needed care, **regardless of their ability to pay.**

Appellant's argument that charities can discriminate against anyone, except those of "suspect classes," fails under any reasonable construction of *Wexford Medical Group* and the case law on which it relied. Accordingly, this argument must be rejected.

ii. The current interpretation of *Wexford Medical Group* will not put charities "out of business."

Appellant further argues that if it is not allowed to impose extra burdens on low-income individuals, then every charity will be "require[d] . . . to spend itself out of existence" because charities will not have "the ability to fashion rules for those who cannot pay for the service . . ." (Appellant's Brief on Appeal, p. 31.)

Appellant's "sky is falling" rhetoric has not been borne out by reality. Charities have continued to survive and thrive in the ten years since *Wexford Medical Group* was decided. More importantly, the Supreme Court has already recognized that charities are not required to "spend [themselves] out of existence":

> A second indispensable principle is that the organization must offer its charitable deeds to benefit people who need the type of charity being offered. In a general sense, there can be no restrictions on those who are afforded the benefit of the institution's charitable deeds. **This does not mean, however, that a charity has to serve every single person regardless of the type of charity offered or the type of charity sought.** Rather, a charitable institution can exist to serve a particular group or type of person, but the charitable institution cannot discriminate within that group. The charitable institution's reach and preclusions must be gauged in terms of the type and scope of charity it offers.

Wexford Medical Group, 474 Mich at 213 (emphasis added).

In articulating the factor that is at issue in this appeal, the Supreme Court acknowledged that a charity need not "serve every single person." But in limiting who receives service, the charity cannot discriminate. It must extend its benefits even-handedly, giving "preference to no one," like the petitioner in *Wexford Medical Group*. Because *Wexford Medical Group* controls this case, Appellant is not entitled to the requested property tax exemption under Section 7o.

III. Appellant is not entitled to a property tax exemption under MCL 211.7r.

Appellant further claims a property tax exemption under Section 7r of the General Property Tax Act, MCL 211.7r, which reads as follows:

> **The real estate and building of a clinic** erected, financed, occupied, and operated by a nonprofit corporation or by the trustees of health and welfare funds is exempt from taxation under this act, if the funds of the corporation or the trustees are derived solely from payments and contributions under the terms of collective bargaining agreements between employers and representatives of employees for whose use the clinic is maintained. **The real estate with the buildings and other property located on the real estate on that acreage, owned and occupied by a nonprofit trust and used for hospital or public health purposes** is exempt from taxation under this act, but not including excess acreage not actively utilized for hospital or public health purposes and real estate and dwellings located on that acreage used for dwelling purposes for resident physicians and their families.

MCL 211.7r (emphasis added). Appellant argues that it uses the fitness facility for "public health purposes" and that the property should therefore be exempt, even though Appellant does not operate a "clinic" or "hospital" on the property, and even though it provides no medical services. The Tribunal disagreed and denied Appellant's exemption request. The Tribunal's decision should be affirmed because a fitness facility does not qualify for an exemption under the plain and unambiguous language of MCL 211.7r.

As this Court is well aware, when reviewing questions of statutory interpretation, a court must begin by examining the plain language of the statute. *Nawrocki v Macomb Co Rd Comm'n*, 463 Mich 143; 615 NW2d 702 (2000). "It is a fundamental principle of statutory construction that the words used by the Legislature shall be given their common and ordinary meaning, and only where the statutory language is ambiguous may we look outside the statute to ascertain the Legislature's intent." *Id.* A statute is ambiguous "if it irreconcilably conflicts with another provision or when it is equally susceptible to more than one meaning." *Mich Basic Prop Ins*

Ass'n v Office of Fin & Ins Reg, 288 Mich App 552; 808 NW2d 456 (2010). A statute "should be viewed as ambiguous only after all other conventional means of interpretation have been applied and found wanting." *Id.*

Here, Appellant has not alleged or identified any ambiguity whatsoever, yet Appellant dives immediately into legislative history and even medical research and expert testimony to support its strained reading of the statute. Appellant alleges, wrongly, that the Tribunal "simply misread" the statute, "without reference to its history or structure." (Appellant's Brief, p. 41.)

Appellant's reliance on legislative history, medical journals, and witness testimony[3] is misplaced because the language of MCL 211.7r is plain and unambiguous. The Tribunal's inquiry and this Court's review begin and end with the words selected by the Legislature. Based on its plain language, **there is no reasonable construction of MCL 211.7r that would extend a property tax exemption to a fitness facility where no medical services are rendered.**

MCL 211.7r's plain language shows that the property tax exemption is limited to medical facilities, such as "clinics" and "hospitals," which are both expressly identified in the statute. The first sentence of Section 7r, undisputedly, affords an exemption only to "a clinic erected, financed, occupied, and operated by a nonprofit corporation or by the trustees of health and welfare funds," only if the funds "are derived solely from payments and contributions under the terms of collective bargaining agreements between employers and representatives of employees for whose use the clinic is maintained." MCL 211.7r. Appellant does not claim an exemption under the first sentence. (Appellant's Brief, p. 40.)

Instead, Appellant claims that the second sentence of the statute is "independent" from the first sentence and that Appellant is exempt under the second sentence, which reads:

[3] See, e.g., Appellant's Brief, p. 44.

> The real estate with the buildings and other property located on the real estate on that acreage, owned and occupied by a nonprofit trust and **used for hospital or public health purposes** is exempt from taxation under this act, but not including excess acreage not actively utilized for hospital or public health purposes and real estate and dwellings located on that acreage used for dwelling purposes for resident physicians and their families.

MCL 211.7r (emphasis added). Appellant latches on to the phrase "public health purposes" without regard to either the first sentence of the statute (exempting "clinics") or the rest of the second sentence (exempting "hospitals"). Appellant would have this Court read Section 7r to confer a property tax exemption on any property that advances "public health."

But the rules of statutory construction prohibit such a sweepingly broad reading. Under the doctrine of *noscitur a sociis*, "a word or phrase is given meaning by its context or setting." *GC Timmis & Co v Guardian Alarm Co*, 468 Mich 416; 662 NW2d 710 (2003). Words in a statute "cannot be read in a vacuum" but rather must be "read in context" with the remainder of the statute. *Id.* More to the point here, and in direct contravention of Appellant's interpretation, **"words and clauses will not be divorced from those which precede and those which follow."** *People v Vazquez*, 465 Mich 83; 631 NW2d 711, 89 (2001). Instead, "words grouped in a list should be given related meaning." *Id.*

Further, the doctrine of *ejusdem generis* provides that "in a statute in which general words follow a designation of particular subjects, the meaning of the general words will ordinarily be presumed to be and construed as **restricted by the particular designation** and as including only things of the same kind, class, character or nature as those specifically enumerated." *Sands Appliance Servs v Wilson*, 463 Mich 231; 615 NW2d 241 (2000) (emphasis added).

When these rules of statutory construction are applied, Section 7r is plainly limited to health care (*i.e.,* medical) facilities – not gyms or other facilities that generally promote "public

health." The phrase "public health purposes" cannot be divorced from the words preceding or following it, nor can it be read in a vacuum. *See GC Timmis & Co, supra.* The words preceding "public health purposes" here are "clinic" and "hospital", and the latter portion of the statute refers to dwellings for "resident physicians and their families." Read in context, as it must be read, Section 7r provides an exemption for clinics, hospitals, and related health care facilities.

This conclusion is further confirmed by the *ejusdem generis* principle. "Public health services" is a general term that follows a more specific term – "**hospital."** The phrase "public health services" is therefore construed to be "restricted by the particular designation" of hospital, and can only include "things of the same kind, class, character or nature" as hospitals. *See Sands Appliance Servs, supra.* Consequently, Section 7r provides an exemption for facilities that provide public health services *in the same nature as a hospital.* An urgent medical care facility or doctor's office might fit the bill; a gym does not.

This interpretation is mandated by the plain language of the statute and the fundamental rules of statutory construction. And under this interpretation, Appellant cannot qualify for the exemption. Appellant does not operate a clinic, hospital, or hospital-like facility on the subject property. As the Tribunal noted, Appellant's by-laws *prohibit* Appellant from providing medical services on the property. Appellant does not employ any medical personnel in their capacity as medical professionals. (MTT Op, Finding of Fact No. 17.) Appellant does not and *cannot* provide any services that would bring it under the umbrella of Section 7r.

Notably, neither Appellant nor the Tribunal could locate a single case in which an exemption under Section 7r was upheld for a property other than a hospital, clinic, or closely related medical facility. The main case on which Appellant relies – *Rose Hill Center v Holly Township,* 224 Mich App 28; 568 NW2d 332 (1997) – involved a licensed mental health facility

that provided treatment to mentally ill adults. The subject property in *Rose Hill* is not in any way analogous to the fitness center for which Appellant seeks a property tax exemption.

If Appellant is granted an exemption under Section 7r, then the exemption could be deemed available to countless facilities that do not provide medical services but that promote the "public health" in some fashion. Under Appellant's standard – that "public health purposes" means providing "exercise programs" and promoting "wellness" – many recreational facilities would qualify, such as yoga studios, golf courses, health food stores, and massage parlors. None of those facilities would be considered a clinic, hospital, or health care facility, and yet under Appellant's reading of Section 7, all would potentially be able to avoid paying property taxes, so long as they structure themselves to be owned and occupied by a non-profit trust. Such a broad exemption is plainly not what the Legislature intended when it adopted Section 7r, and Appellant's erroneous interpretation must therefore be rejected.

In sum, the plain language of Section 7r affords an exemption only to clinics, hospitals, and related medical facilities – not to fitness centers that provide no medical services. A contrary interpretation would open the door to property tax exemptions for any non-profit facility that purports to benefit the "public health," which is clearly beyond the intended scope of the statute. The Tribunal properly granted summary disposition to the local units, and the Tribunal's decision should therefore be affirmed.

IV. The Tribunal erred by concluding that Appellant satisfied the remaining factors for a "charitable institution" under *Wexford Medical Group.*

The Amicus Parties submit that the Tribunal's decision denying the property tax exemption should be affirmed. However, the Amicus Parties also concur with the arguments raised by the City of Dexter in its Cross-Appeal – namely, that the Tribunal erred by finding that Appellant satisfied the other requirements for an exemption under Section 7o. The City has

thoroughly briefed its arguments in its Cross-Appellant Brief, and the Amicus Parties will not repeat those (largely fact-driven) arguments. Rather, the Amicus Parties focus the remainder of this brief on a legal issue with potentially widespread impact, which is whether a fitness center "relieves a burden of government," such that it can qualify as a "charitable institution."

As discussed above, the Supreme Court's six-part test for determining whether a taxpayer is a "charitable institution" under Section 7o is as follows:

(1) A "charitable institution" must be a nonprofit institution.

(2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.

(3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.

(4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.

(5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.

(6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.

Wexford Medical Group, 474 Mich at 215. In its decision, the Tribunal concluded that Appellant had satisfied the fourth factor, finding that although the fitness center does not "relieve people's bodies from disease, suffering or constraint" (because it is not a health care facility), the fitness center "otherwise lessens the burdens of government." (MTT Op, p. 80.) The Tribunal reasoned in part as follows:

> The government does suffer a burden when its population is "de-conditioned" in the form of higher Medicaid costs, and lost productivity. As former Michigan House Speaker Paul

> Hillegonds testified, the Michigan Constitution sets forth the state's role in public health and general welfare.
>
> These observations have spurred Michigan's governor to put forth his Four-by-Four plan, which sets forth three of the same four healthy behaviors as Petitioner's vision.
>
> . . .
>
> Clearly, prevention of a healthcare apocalypse as the boomer generation ages, and younger generations suffer from obesity is a problem that the state, as well as the Federal government will be burdened with in the form of Medicare and Medicaid expenses, as well as lost productivity. Centers such as the subject that address the non-covered ailment of de-conditioning help reduce the burden of government. Accordingly, Petitioner meets the test under Wexford Factor 4.

(MTT Op, 81-83.) The Tribunal relied on testimony concerning the consequences of obesity, including "unnecessary suffering" and "increased healthcare costs." *Id.* Respectfully, the Tribunal's conclusion that the government has the "burden" of preventing obesity constitutes an error of law.

The fourth element of the *Wexford Medical Group*'s test can be traced to the historical and well-established[4] definition of "charity":

> [Charity] * * * [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works **or otherwise lessening the burdens of government**.

Wexford Medical Group, 474 Mich at 211. In the context of property tax appeals, the Supreme Court has addressed this principle numerous times and has held that "lessening the burdens of government" means relieving the government of an affirmative obligation.

[4] This definition of "charity" was first articulated in 1867 and has since been favorably used by courts across the country. *See Jackson v. Phillips, 96 Mass. 539, 556, 14 Allen 539 (1867); see, e.g., Provena Covenant Med Center v Dep't of Revenue*, 236 Ill 2d 368; 925 NE2d 1131 (Ill 2010); *Under the Rainbow Child Care Ctr Inc v City of Goodhue*, 741 NW2d 880 (Minn 2007); *Catholic Health Initiatives Colorado v City of Pueblo*, 207 P3d 812 (Colo 2009).

In *Ladies Literary Club v City of Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980), the Court noted that an institution seeking an educational exemption must "mak[e] a substantial contribution to the relief of the burden of government." *Id.* at 755-56, *citing David Walcott Kendall Memorial School v Grand Rapids*, 11 Mich App 231; 160 NW2d 778 (1968). In that case, the Court denied an exemption to the taxpayer because the taxpayer's educational programs did not "sufficiently relieve the government's educational burden." *Id.* at 756. The Court reasoned that "[w]hile the community may benefit culturally from [the taxpayer's] activities, these activities are not the type which entitle one to an exemption because he has **relieved the community from the expense of a like service**." *Id* (emphasis added).

Similarly, in *Michigan United Conservation Clubs*, the taxpayer sought an educational exemption because it provided hunter safety classes and firearm safety classes and published an atlas of the county road system and fishing streams. *Id.* at 669. The Court denied the exemption, holding that "conservation education per se is not mandated. Therefore, we fail to see how [the taxpayer's] public school programs 'fit into the general scheme of education provided by the state.'" *Id.*

As in *Ladies Literary Club* and *Michigan United Conservation Clubs*, Appellant has not demonstrated that the state is *required* to alleviate obesity or provide physical fitness opportunities. Appellant cited a "special message" from the Governor, encouraging residents to eat healthy, exercise regularly, get annual physical examinations, and avoid tobacco use. (MTT Exh. P 210.) Nothing in that message imposes any burden or obligation on the state. Appellant does not "relieve the [state] from the expense of a like service." *Ladies Literary Club*, 409 Mich at 669. Likewise, Appellant relies on the state's "4 x 4 Plan," which calls for additional outdoor recreation and access to parks, bike paths, and sidewalks – but which does not obligate the state

to provide physical fitness centers. (MTT Exh P 240.) Appellant identified nothing that requires the state to either provide access to fitness centers or, even more generally, to reduce the occurrence of obesity. Although the state would no doubt desire to see a reduction in obesity rates, that does not mean that the state has the "burden" (obligation) of preventing obesity.

The Tribunal conceded that it was "true" that there is no governmental duty to provide recreation, but nonetheless cited higher Medicaid costs and lost productivity as "burdens" of the state that would relieved by Appellant's fitness center. The Tribunal erred by construing "burden" to mean an ill effect (*i.e.*, the state may incur additional costs because of the obesity epidemic) rather than to mean that the state has an affirmative duty to provide the service that is being provided by the taxpayer – which is how "burden of government" has been defined by the Supreme Court. *See Ladies Literary Club, supra; see Michigan United Conservation Clubs, supra.* As in both of those cases, the services provided by Appellant may provide a cultural benefit, but they do not relieve the state of the cost of performing any of its mandatory functions.

In its scathing cross-appellee brief, Appellant cites *OCLC Online Computers Library Center v City of Battle Creek*, 224 Mich App 608; 569 NW2d 676 (1997), for the proposition that a private entity can lessen the burdens of government "simply by making it easier for the government to carry out its obligations." (Cross-Appellee Brief, p. 37.) But *OCLC* offers limited guidance because in that case, unlike here, the state had a specific, mandatory obligation to "provide for the establishment and support of public libraries." *Id.* at 617. The taxpayer worked directly with public libraries by providing a database used to "catalog library materials, maintain electronic library catalogs, facilitate interlibrary loans, locate library materials, and provide reference information to patrons." *Id.* at 610. Thus, the taxpayer's activities saved the government a cost that it would otherwise incur in supplying those library services.

Here, as discussed above, the state does not have such a specific, mandatory obligation. The general provisions quoted by Appellant – such as the Public Health Code's aim to "prevent disease, prolong life, and promote the public health" – are not analogous to the Constitution's mandate that the state "provide for the establishment and support of public libraries." And unlike the taxpayer in *OCLC*, Appellant is not working directly with the state or any of its agencies; Appellant does not, for example, receive reimbursement from Medicaid or Medicare. As the City aptly noted in its Cross-Appellant Brief, "[b]ecause there is no burden in the first place, there can be no lessening of a governmental burden."

Moreover, as discussed in Argument III, this Court risks creating a slippery slope if it finds that a fitness center lessens the burdens of government. Countless private entities could be found to "prevent disease, prolong life, and promote the public health" – gyms, yoga studios, health food stores, golf courses, and perhaps even medical marihuana dispensaries. *See* MCL 333.26422(c) (medical marihuana act adopted "for the health and welfare" of Michigan citizens). Widening the exemption to include any facility that arguably "relieves" a burden of the state by promoting physical fitness or, even more broadly, "health and wellness," would be a dangerous precedent and is unsupported by decades of case law from our Supreme Court.

For these reasons, the Tribunal erred by holding that Appellant's fitness facility "relieves a burden of government."

CONCLUSION

For the reasons set forth in this Brief, the Amicus Parties request that this Court affirm the Michigan Tax Tribunal's decision to the extent that it denied Appellant's requests for property tax exemptions under Sections 7o and 7r of the General Property Tax Act.

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Dated: September 29, 2016

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EXHIBIT A

Order

Michigan Supreme Court
Lansing, Michigan

April 1, 2016

Robert P. Young, Jr.,
Chief Justice

152047

Stephen J. Markman
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen,
Justices

BARUCH SLS, INC.,
Petitioner-Appellant,

v

SC: 152047
COA: 319953
Tax Tribunal: 00-395010;
00-415093

TOWNSHIP OF TITTABAWASSEE,
Respondent-Appellee.

_____/

On order of the Court, the application for leave to appeal the April 21, 2015 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on whether to grant the application or take other action. MCR 7.305(H)(1). The parties shall file supplemental briefs within 42 days of the date of this order addressing: (1) whether *Wexford Medical Group v City of Cadillac*, 474 Mich 192 (2006), correctly held that an institution does not qualify as a "charitable institution" under MCL 211.7o or MCL 211.9 if it offers its charity on a "discriminatory basis"; (2) if so, how "discriminatory basis" should be given proper meaning; (3) the extent to which the relationship between an institution's written policies and its actual distribution of charitable resources is relevant to that definition; and (4) whether, given the foregoing, the petitioner is entitled to a tax exemption. The parties should not submit mere restatements of their application papers.

t0329

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 1, 2016

Clerk

EXHIBIT B

STATE OF MICHIGAN

IN THE SUPREME COURT

BARUCH SLS, INC.,

Petitioner-Appellant,

v.

TOWNSHIP OF TITTABAWASSEE,

Respondent-Appellee.

Supreme Court No. 152047

Court of Appeals No. 319953

Michigan Tax Tribunal Nos.

0395010, 0415093

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BRIEF OF AMICUS CURIAE CHELSEA HEALTH & WELLNESS FOUNDATION (DBA FIVE HEALTHY TOWNS FOUNDATION)

have income insufficient to pay the charge for those services permitted under Factor 5. In the simplest terms possible: *The poor should not be a subclass of those against which a charity may not discriminate under Factor 3.* The Factor 3 analysis should be limited to determining whether the charity discriminates against those it exists to serve by denying service to those belonging to the suspect categories defined by Michigan laws prohibiting discrimination, *among whom the poor are not included.* See *supra* note 10.

The question whether a charity adequately addresses the needs of the poor can be addressed in a number of ways. For example, it can be assessed either as part of the analysis required under Factor 2, to determine whether it is "organized chiefly, if not solely, for charity;" under Factor 4, to determine if it performs any of the missions it enumerates so as to "lessen the burdens of government;" under Factor 6, as part of the determination whether the "overall nature of the institution is charitable, ... regardless of how much money it devotes to charitable activities in a particular year," or under a combination of these factors. This approach, though feasible, poses some problems, because no one or combination of these factors is obviously or specifically adapted to assessing the charity's service to the poor.

A perhaps superior alternative might be the addition of a new Factor 7, one that specifically obligates those planning a charitable institution, and courts evaluating such an institution's claim of charitable exemption, to consider whether the poor are considered and provided for among those benefited, as undoubtedly they must be, under the *definition of charity that this Court approved in Wexford:*

> "[Charity] *** [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise relieving the burdens of government."

Wexford, 474 Mich at 214, quoting *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Lake Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982) (quoting *Jackson v Phillips*, 96 Mass 539; 14 Allen 539 (1867)).