

**[J-73-2011]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

**CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, MCCAFFERY, ORIE MELVIN, J.J.**

MESIVTAH EITZ CHAIM OF BOBOV, INC.,	:	No. 16 MAP 2011
	:	
Appellant	:	Appeal from the order of Commonwealth
	:	Court at No. 2343 CD 2008 dated
v.	:	12-29-2009 affirming the order of the Pike
	:	County Court of Common Pleas, Civil
PIKE COUNTY BOARD OF	:	Division, at No. 1095-1997 dated
ASSESSMENT APPEALS,	:	09-11-2008.
	:	
Appellee	:	
	:	
DELAWARE VALLEY SCHOOL	:	
DISTRICT AND DELAWARE	:	
TOWNSHIP,	:	
	:	
Intervenors	:	ARGUED: September 13, 2011

**OPINION**

**MR. JUSTICE EAKIN**

**DECIDED: April 25, 2012**

Appellant, Mesivtah Eitz Chaim of Bobov, Inc., appeals the Commonwealth Court ruling, asking that we find it is an “institution[] of purely public charity” under Article VIII, § 2(a)(v) of the Pennsylvania Constitution, entitled to exemption from real estate taxes. We allowed appeal to determine if we must defer to the General Assembly’s statutory definition of that term. We affirm, holding our prior jurisprudence sets the constitutional minimum for exemption from taxes; the legislation may codify what is intended to be

exempted, but it cannot lessen the constitutional minimums by broadening the definition of "purely public charity" in the statute.

Appellant is a not-for-profit religious entity related to the Bobov Orthodox Jewish community in Brooklyn, organized pursuant to 26 U.S.C. § 501(c)(3). It operates a summer camp in Pike County. The camp consists primarily of lectures and classes on the Orthodox Jewish faith, and provides food and recreational activities for its students. The camp is funded by donations, rental income from a building in Brooklyn, and tuition from its students. The camp provides financial assistance to some students, which come from New York, Canada, England, and Israel. While the facilities are also open to the public, appellant is unaware of any Pike County resident utilizing these amenities.

Appellant sought a property tax exemption as a "purely public charity." "The General Assembly may by law exempt from taxation: ... Institutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution." Pa. Const. art. VIII, § 2(a)(v). We have held an "institution of purely public charity":

- (a) Advances a charitable purpose;
- (b) Donates or renders gratuitously a substantial portion of its services;
- (c) Benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
- (d) Relieves the government of some of its burden; and
- (e) Operates entirely free from private profit motive.

Hospital Utilization Project v. Commonwealth, 487 A.2d 1306, 1317 (Pa. 1985) (HUP).

This standard, which we refer to as the "HUP test," is the "test for determining whether

an entity qualifies as an 'institution of purely public charity' under the Pennsylvania Constitution." Alliance Home of Carlisle v. Board of Assessment Appeals, 919 A.2d 206, 216 (Pa. 2007).

The Pike County Board of Assessment denied appellant's exemption request. Appellant appealed to the trial court, which held a de novo hearing. Finding appellant was not a "purely public charity," the court denied the exemption. The Commonwealth Court, applying the HUP test, affirmed the trial court. Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals, No. 2343 CD 2008, unpublished memorandum at 11 (Pa. Cmwlth. filed December 29, 2009). The Commonwealth Court reasoned occasional use of appellant's recreational and dining facilities by Pike County residents was insufficient to prove appellant relieved Pike County's government of some of its burden. Id., at 10.<sup>1</sup>

Appellant argued that it need not satisfy the HUP test, since the General Assembly enacted the Institutions of Purely Public Charity Act, 10 P.S. §§ 371-385 (Act 55), after the HUP case was decided. The Act seeks to define the element of "burden relieving" more expansively than the HUP test, and provides, in pertinent part:

(f) GOVERNMENT SERVICE. -- The institution must relieve the government of some of its burden. This criterion is satisfied if the institution meets any one of the following:

(1) Provides a service to the public that the government would otherwise be obliged to fund or to provide directly or indirectly or to assure that a similar institution exists to provide the service.

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<sup>1</sup> This is not the precise measure, as a charity can relieve the government of some of its burden, even if the beneficiaries are not in the jurisdiction from which it seeks a tax exemption. See West Indies Mission Appeal, 128 A.2d 773, 781 (Pa. 1957) (holding charity can be entitled to exemption when its beneficiaries are outside Pennsylvania). However, this issue is outside the scope of our grant of allocatur.

(2) Provides services in furtherance of its charitable purpose which are either the responsibility of the government by law or which historically have been assumed or offered or funded by the government.

(3) Receives on a regular basis payments for services rendered under a government program if the payments are less than the full costs incurred by the institution, as determined by generally accepted accounting principles.

(4) Provides a service to the public which directly or indirectly reduces dependence on government programs or relieves or lessens the burden borne by government for the advancement of social, moral, educational or physical objectives.

(5) Advances or promotes religion and is owned and operated by a corporation or other entity as a religious ministry and otherwise satisfies the criteria set forth in section 5.

10 P.S. § 375(f)(1)-(5).

The Commonwealth Court rejected this argument. Mesivtah, at 10-11 (citing Alliance Home, at 222). We granted allocatur to determine:

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, 507 Pa. 1, 487 A.2d 1306 (Pa. 1985), occupied the constitutional field, leaving no room for legislative influence and input?

Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals, 13 A.3d 463, 463 (Pa. 2011) (per curiam). As this is a purely legal question, "our standard of review is de novo, and our scope of review is plenary." Buckwalter v. Borough of Phoenixville, 985 A.2d 728, 730 (Pa. 2009) (citing In re Milton Hershey School, 911

A.2d 1258, 1261 (Pa. 2006)). Further, “[i]n constitutional interpretation, our ultimate touchstone is the actual language of the constitution itself.” Id. (quoting Jubelirer v. Rendell, 953 A.2d 514, 528 (Pa. 2008)) (internal quotations omitted).

Appellant believes it meets the definition under Act 55, and that the Commonwealth Court erred in requiring it to meet the HUP test. It argues Article VIII, § 2(a)(v) authorizes the General Assembly to define what qualifies as a purely public charity. It claims the HUP test was a stopgap measure displaced by the General Assembly’s definition, suggesting that had Act 55 predated HUP, we would have deferred to the Legislature’s definition. Given the General Assembly’s broad power over taxation, appellant urges us to presume Act 55 is constitutional, as it shows a high degree of deference to the HUP test and serves worthy purposes.

Appellee, Pike County Board of Assessment Appeals, traces the development of our jurisprudence regarding “institutions of purely public charity,” up to our decision in HUP, and contends we have consistently applied the HUP test, even after the enactment of Act 55. It further argues the separation of powers doctrine prohibits the General Assembly from intruding upon the judiciary’s function of interpreting and defining the Constitution.

Intervenor School District echoes this and observes that the goals of Act 55 may be laudable, but noble purposes are not a basis for upholding otherwise unconstitutional legislation. Intervenor Delaware Township<sup>2</sup> argues the HUP test occupies the constitutional field and contends a party seeking an exemption must satisfy both the HUP test and Act 55. The Township contends appellant’s camp does not relieve it of

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<sup>2</sup> In addition, the Hospital and Healthsystem Association of Pennsylvania and the Elected Leaders of the Senate of the Commonwealth of Pennsylvania filed amici briefs in support of appellant. The Pennsylvania School Board Association and County Commissioners Association of Pennsylvania filed amici briefs in support of appellee.

any burden, as it must ensure the health, safety, and welfare of the campers, while the public gets minimal access to the camp's recreational facilities.

Appellant acknowledges this Court has the last say as to what constitutes an "institution of purely public charity," but encourages us to allow this meaning to evolve as the General Assembly sees fit, instead of being fixed by the HUP test. It contends that as a religious organization, appellant relieves the government of some of its burden by creating greater moral and social awareness in society.

The question is whether the General Assembly may, by statute, influence the definition of the constitutional phrase "purely public charity." While the General Assembly necessarily must attempt to interpret the Constitution in carrying out its duties, the judiciary is not bound to the "legislative judgment concerning the proper interpretation of constitutional terms." Alliance Home, at 223 n.9 (quoting Stilp v. Commonwealth, 905 A.2d 918, 948 (Pa. 2006)). The General Assembly cannot displace our interpretation of the Constitution because "the ultimate power and authority to interpret the Pennsylvania Constitution rests with the Judiciary, and in particular with this Court." Stilp, at 948; see also Pottstown School District v. Hill School, 786 A.2d 312, 319 (Pa. Cmwlth. 2001) (en banc) ("Nor can the General Assembly alter the Constitution by purporting to define its terms in a manner inconsistent with judicial construction; interpretation of the Constitution is the province of the courts."); THE FEDERALIST No. 78 (Alexander Hamilton) ("The interpretation of the laws is the proper and peculiar province of the courts.").

Article VIII, § 1 provides that "[a]ll taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws." Pa. Const. art. VIII, § 1. "Article VIII, Section 2(a)(v) thus allows for a legislatively-approved exception to the general rule that all real

estate in Pennsylvania is to be taxed uniformly upon the same class of subjects.” Alliance Home, at 214. The relevant exception of Article VIII, § 2(a)(v) is limited to “institutions of purely public charity.” Pa. Const. art VIII, § 2(a)(v). While the Pennsylvania Constitution permits exempting of purely public charities, it does not require the General Assembly to do so.

Neither appellant nor any amici specifically identify any part of the Constitution which grants non-reviewable authority to the General Assembly to determine what does or does not constitute an “institution of purely public charity.” The legislature may certainly determine what exemptions it chooses to grant, but only within the boundaries of the Constitution – the constitutional identification of those boundaries remains the unique province of the judiciary.

Prior to the 1874 Constitution, “the legislature, by special act, relieved from taxation just what property it saw fit, whether the property was charitable, religious, or even devoted solely to purposes of corporate or private gain. The legislative habit had grown into a great abuse.” Alliance Home, at 215 (quoting White v. Smith, 42 A. 125, 125 (Pa. 1899)). The people of this Commonwealth, in 1874 and 1968, voted for Constitutions limiting the authority of the General Assembly to grant such exemptions. The very purpose of Article VIII, § 2 “was not so much to limit the scope of exemptions to charities as to destroy the obnoxious feature of favoritism by special legislation.” Donohugh’s Appeal, 86 Pa. 306, 312 (1878). Nonetheless, “the provision does go a step farther, and put a limit upon the legislative power to exempt which was before unlimited.” Id.

Accordingly, Article VIII, § 2 was designed not to grant, but limit, legislative authority to create tax exemptions. To eliminate judicial review of the constitutionality of the General Assembly’s creations would defeat this purpose. The General

Assembly could, by statute, define any entity whatsoever as an “institution of purely public charity” entitled to exemption from taxes, returning to the practice the constitutional provision was designed to eliminate. It could create classifications of charities so oblique it would turn § 2 into an exception that swallows the uniformity requirement of Article VIII, § 1. Such a counterintuitive outcome would be contrary to Article VIII, § 2’s purpose of limiting the General Assembly’s ability to grant tax exemptions.<sup>3</sup>

Appellant contends we should defer to Act 55 because it was enacted for laudable purposes, including reducing “confusion and confrontation among traditionally tax-exempt institutions and political subdivisions,” 10 P.S. § 372(a)(4), and establishing “a fair and equitable system of property tax assessment.” Id., § 372(a)(6). Appellant also claims deferring to the General Assembly will offer more flexibility than the HUP test, and suggests we would have deferred to Act 55 had it predated that decision.

Good intentions do not excuse non-compliance with the Constitution, see Stilp, at 944 (“[T]he legislative motivation is not of primary importance.”), and our courts will apply the HUP test in light of evolving circumstances. See G.D.L. Plaza Corp. v. Council Rock School District, 526 A.2d 1173, 1175 (Pa. 1987) (quoting Presbyterian Homes Tax Exemption Case, 236 A.2d 776, 778 (Pa. 1968)) (“[P]rior cases have limited value as precedent,’ because of the continually changing nature of the concept of charity.”). While the HUP test was created in the absence of legislative guidance, it was not pulled out of thin air. See HUP, at 1318 (“[W]e adhere to the principles established by a long line of prior case law.”) (citation omitted).

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<sup>3</sup> Appellant suggests we need not worry about such abuses anymore. However, the constitutional limitations on governmental power exist to protect against potential abuse. One does not throw out the raincoat just because the weather is nice today.



Relevant here, we have long held a “purely public charity” must relieve the government of some of its burden. See, e.g., Ogontz School Tax Exemption Case, 65 A.2d 150, 153 (Pa. 1949) (finding school ineligible for tax exemption because it did not relieve government of any burden); Young Men’s Christian Association of Germantown v. Philadelphia, 187 A. 204, 210 (Pa. 1936) (noting charity “relieves the government of part of [its] burden”), disapproved on other grounds, West Allegheny Hospital v. Board of Property Assessment, 455 A.2d 1170, 1173 (Pa. 1982). The cases thus defined “purely public charity” before the explanation in HUP, and a preexisting statute would not have altered this constitutional definition.

In the end, to receive an exemption without violating the Constitution, the party must meet the definition of “purely public charity” as measured by the test in HUP. If it does so, it may qualify for exemption if it meets the statute’s requirements. Act 55, however, cannot excuse the constitutional minimum – if you do not qualify under the HUP test, you never get to the statute. We have repeatedly held “[a]n entity seeking a statutory exemption for [sic] taxation must first establish that it is a ‘purely public charity’ under Article VIII, Section 2 of the Pennsylvania Constitution before the question of whether that entity meets the qualifications of a statutory exemption can be reached.” Alliance Home, at 222 (quoting Community Options v. Board of Property Assessment, 813 A.2d 680, 683 (Pa. 2002)); see also HUP, at 1312 (“Because we reach the conclusion ... that HUP is not a ‘purely public charity’ within the meaning of the Constitution, we do not reach whether HUP qualifies [for a tax exemption] under the Pennsylvania Code definition.”). We see no reason to alter this standard.

The Commonwealth Court held appellant did not satisfy the HUP test, and our grant of allocatur was limited to its continued viability in light of Act 55. As such, we will

not review the Commonwealth Court's application thereof, nor the relevance or constitutionality of Act 55.

The order of the Commonwealth Court is affirmed.

Jurisdiction relinquished.

Mr. Justice Baer, Madame Justice Todd and Mr. Justice McCaffery join the opinion.

Mr. Justice Saylor files a dissenting opinion in which Mr. Chief Justice Castille and Madame Justice Orie Melvin join.

**[J-73-2011][M.O. – Eakin, J.]**  
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**MIDDLE DISTRICT**

MESIVTAH EITZ CHAIM OF BOBOV, INC.,	:	No. 16 MAP 2011
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court at No. 2343 CD
	:	2008, dated 12/29/09 affirming the order
v.	:	of the Pike County, Court of Common
	:	Pleas, Civil Division at No. 1095 of 1997
	:	dated 9/11/08
PIKE COUNTY BOARD OF ASSESSMENT	:	
APPEALS,	:	
	:	
Appellee	:	
	:	
DELAWARE VALLEY SCHOOL DISTRICT	:	
AND DELAWARE TOWNSHIP,	:	
	:	
Intervenors	:	ARGUED: September 13, 2011

**DISSENTING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: April 25, 2012**

This case presents the issue left open in Alliance Home of Carlisle, PA v. Board of Assessment Appeals, 591 Pa. 436, 463, 919 A.2d 206, 222-23 (2007), where this Court noted that a constitutional problem with Act 55 might arise when that statute and the test set forth in Hospital Utilization Project v. Commonwealth, 507 Pa. 1, 21-22, 487 A.2d 1306, 1317 (1985) ("HUP"), lead to different results. On this question, I agree with the majority that the relevant terms of Act 55 are in tension with the previous constitutional interpretation of Article VIII, Section 2(a)(v) set forth in HUP. See Majority Opinion, slip op. at 8-9. Specifically, permitting a charitable association to satisfy the requirement that its actions relieve the government of some burden, see HUP, 507 Pa. at 21-22, 487 A.2d at 1317, by simply being an organization that "[a]dvances or

promotes religion and is owned and operated by a corporation or other entity as a religious ministry,” 10 P.S. § 375(f)(5), is not consistent with prior caselaw applying this prong of the HUP test, both before and after this Court announced the definitive constitutional test in that case. See, e.g., HUP, 507 Pa. at 23-24, 487 A.2d at 1318 (citing numerous cases for the proposition that its holding “adhere[s] to the principles established by a long line of prior case law”); see also Ogontz School Tax Exemption Case, 361 Pa. 284, 291-92, 65 A.2d, 150, 153 (1949) (“Any institution which by its charitable activities relieves the government of part of this burden is conferring a pecuniary benefit upon the body politic, and in receiving exemption from taxation it is merely being given a ‘quid pro quo’ for its services in providing something which otherwise the government would have to provide.”) (quoting Young Men’s Christian Ass’n of Germantown v. City of Philadelphia, 323 Pa. 401, 187 A. 204 (1936)).

However, I do not believe that this conclusion ends the inquiry. Rather, this appeal requires us to address the appropriate roles of the Legislature and the Court in defining the term “purely public charity.” See Pa. Const. art. VIII, § 2(a)(v). In this regard, although I agree with the majority that the judiciary retains the power to interpret the Constitution in the first instance, see Majority Opinion, slip op. at 6 (citing Stilp v. Commonwealth, 588 Pa. 539, 589, 905 A.2d 918, 948 (2006)), I do not believe that this eliminates the Legislature’s role entirely. Instead, the Legislature’s policy decisions, such as those underlying Act 55, provide the necessary impetus for this Court to review such assessments in light of the ongoing, changeable nature of public policies and their relation to baseline constitutional principles to which the Legislature must adhere. Cf. G.D.L. Plaza Corp. v. Council Rock Sch. Dist., 515 Pa. 54, 59-60, 526 A.2d 1173, 1175 (1987) (“[P]rior 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.”) (internal citations omitted). Indeed, as the majority acknowledges, the HUP test itself is subject to change, see Majority Opinion, slip op. at 8, but the majority does not explain how such change may come about. In my view, the catalyst for such alterations in the constitutional standards can only be found in a function served by the Legislature -- monitoring policies as they shift with societal changes. In a largely policy-oriented area such as the present context, and where this Court is interpreting a constitutional provision that directly grants certain powers to the General Assembly, I find legislative determinations particularly important. See Appeal of Donohugh, 86 Pa. 306, 1878 WL 13276, at \*4 (Pa. 1878) (defining the term “purely public charity,” and stating that, “[e]specially is great respect due to the legislative construction of a constitutional provision where, as in the present case, it is a question, not of private right, but of public policy”).

Therefore, I would uphold the General Assembly’s reasonable policy determination that Act 55, with its broader definition of the ways in which an institution can demonstrate that it relieves the government of some of its burden, see 10 P.S. § 375(f), serves to advance the morals and ethics of society, so long as the provision at issue is otherwise consistent with the Constitution.<sup>1</sup> In this regard, the direction taken by the Legislature fosters behavior that reinforces the ultimate goal of the Constitutional provision at issue: encouraging community responsibility and acts of charity that benefit the public good. Cf. HUP, 507 Pa. at 18, 487 A.2d at 1315 (“The word ‘charitable,’ in a legal sense, includes every gift for a general public use, to be applied, consistent with

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<sup>1</sup> I express no opinion as to whether Act 55’s inclusion of religious institutions as a means of relieving the government of some of its burden violates the religion clauses of the federal and state constitutions. See U.S. Const. amend. I; Pa. Const. art. I, § 3. Although Appellee does set forth some argument on this issue, see Brief of Appellee, at 18 n.3, the question is beyond the scope of the grant of allocatur in this case.

existing laws, for the benefit of an indefinite number of persons, and designed to benefit them from an educational, religious, moral, physical or social standpoint. In its broadest meaning it is understood 'to refer to something done or given for the benefit of our fellows or the public.')

(quoting Hill School Tax Exemption Case, 370 Pa. 21, 25, 87 A.2d 259, 262 (1952)).

Notably, this Court has consistently emphasized the proper allocation of roles between the legislative and judicial branches of the Commonwealth's government: the Legislature sets policy; the Court ensures that such legislation, and its enforcement, conform to constitutional mandates.<sup>2</sup> I believe that the Legislature remained true to its role under the present circumstances, with appropriate deference to this Court's constitutional rulings, by requiring organizations seeking exemptions under Act 55 to demonstrate each prong of the HUP test. See 10 P.S. § 375(f). Going one step further by specifying additional criteria for each prong does not, in my view, displace this Court's constitutional rulings or the HUP test in its entirety. Rather, the General Assembly determined -- as a matter of policy -- that more refinement was necessary for efficient, uniform application of that test and enacted legislation to serve that goal. See Alliance Home, 591 Pa. at 464, 919 A.2d at 223 ("[T]he General Assembly was concerned with a perceived inconsistent application of eligibility standards for charitable

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<sup>2</sup> See, e.g., Weaver v. Harpster, 601 Pa. 488, 502, 975 A.2d 555, 563 (2009) ("[T]he power of the courts to declare pronouncements of public policy is sharply restricted[;] . . . [r]ather, it is for the legislature to formulate the public policies of the Commonwealth.") (internal citation omitted); Program Admin. Services, Inc. v. Dauphin Cnty. Gen. Auth., 593 Pa. 184, 192, 928 A.2d 1013, 1017-18 (2007) ("[I]t is the Legislature's chief function to set public policy and the courts' role to enforce that policy, subject to constitutional limitations."); Glenn Johnston, Inc. v. Commonwealth, Dept. of Revenue, 556 Pa. 22, 30, 726 A.2d 384, 388 (1999) (noting, in the context of applying a different tax exemption, that "[s]uch policy determinations, however, are within the exclusive purview of the legislature, and it would be a gross violation of the separation of powers doctrine for us to intrude into that arena").

tax exemptions. Act 55 found that the inconsistencies had led to ‘confusion and confrontation’ among traditionally tax-exempt institutions and political subdivisions to the detriment of the public, a detriment which included the ‘unnecessar[y] diver[sion]’ of ‘charitable and public funds . . . from the public good to litigate eligibility for tax-exempt status.’”) (quoting 10 P.S. § 372(b)).

In sum, I agree with amici, the Elected Leaders of the Senate of the Commonwealth of Pennsylvania, that Act 55 is “an integrated legal test blending the Judiciary’s well-crafted HUP test with the wide-ranging policymaking experience of the Legislature.” Brief for Amici Curiae, Elected Leaders, at 5. Thus, so long as the statute otherwise comports with the Constitution, I would defer to the General Assembly’s reasonable policy determination that an organization satisfying the criteria set forth in Act 55 is a purely public charity.

Mr. Chief Justice Castille and Madame Justice Orie Melvin join this dissenting opinion.