

**Allegheny County Public Meeting to Discuss Constitutional Amendment on Tax-Exempt Properties,  
Public Charities Testimony - March 12, 2015**

[Nick Cafardi](#), Dean Emeritus and Professor of Law, Duquesne University Law School

[Lois Campbell](#), Executive Director, Pennsylvania Interfaith Impact Network

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[Michael Lamb](#), Controller, City of Pittsburgh

Art Martynuska, President, Pennsylvania Professional Fire Fighters Association

[Tom McGough](#), Executive Vice-President and Chief Legal Officer, UPMC

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**Additional Testimony**

[Greater Pittsburgh Nonprofit Partnership](#)

[John W. Paul](#), President and CEO, Allegheny Health Network

[Anne L. Gingerich](#), Executive Director, Pennsylvania Association of Nonprofit Organizations

**Statement of Tom McGough**  
**Executive Vice President and Chief Legal Officer, UPMC**  
**Before the Pennsylvania Auditor General's Public Hearing**  
**March 12, 2015**

Thank you for asking UPMC to appear today and discuss the standards governing an "Institution of Purely Public Charity," or "IPPC," and more particularly the advisability of a constitutional amendment vesting principal authority over those standards in Pennsylvania's General Assembly.

In western Pennsylvania, no discussion of the definition of IPPC gets very far without turning to UPMC. Our integrated system of more than 20 hospitals, 3,600 physicians, a thriving international division and the state's second-largest and fastest-growing health insurance company (with more than 2.5 million members) generates interesting and unique issues as to which of UPMC's corporate elements qualify for which available tax exemptions.

We are entirely confident, however, that those UPMC entities that are structured as IPPCs fully satisfy the definition of that term under both the test set forth in Hospital Utilization Project v. Commonwealth, 487 A.2d 1306 (Pa. 1985) ("HUP") and Act 55. We are also confident that should the courts, the legislature, or even the voters change that definition UPMC can adapt its organization to accommodate and abide by those standards. As we have said repeatedly, we ask only that the laws and regulations governing IPPC status be interpreted and applied fairly and uniformly.

In that regard, those who have contended, some very vocally, that UPMC is somehow vulnerable to attack under HUP understand neither UPMC nor HUP. UPMC is an integrated system of more than 200 corporate subsidiaries and affiliated organizations, some for-profit, some nonprofit, some fully taxable, some partially taxable, and some tax-exempt. Each year, UPMC collectively pays hundreds of millions of dollars in local, state, and federal taxes. Meanwhile, each year UPMC collectively provides hundreds of millions of dollars in community benefits — nearly \$900 million in the last fiscal year alone, approximately \$2.5 million each day.<sup>1</sup> To put that \$900 million in perspective, it's more than the cost of building PNC Park, Heinz Field, and the Consol Energy Center combined — each year. You can — and should — look at those community benefits as the dividend UPMC pays to the citizens of western Pennsylvania in exchange for the tax exemptions it has been granted.

In December, the Auditor General's office issued a report aggregating the real estate owned by UPMC's constituent hospitals in Allegheny County and suggested that if all these properties were put on the tax rolls they would generate approximately \$48 million in additional property taxes. Note that amount is less than six percent of the direct benefits UPMC provided last year to our community *because* some of its entities are tax exempt.

UPMC Mercy is a good example. It was founded by the Sisters of Mercy in 1847 and was Pittsburgh's first hospital. It sits on and owns dozens of separate parcels of property, 25 of which are tax exempt. It has been an Institution of Purely Public Charity for more than 100 years, long before it joined UPMC's system in 2008. Last year, Mercy provided the community with approximately \$53 million in free or uncompensated care per IRS guidelines. By contrast,

the total amount of property taxes that would be paid on its exempt real estate would be \$4.9 million, or less than ten percent of that charity care. In fact, the \$53 million in free or uncompensated care Mercy provides by itself exceeds the \$48 million in property taxes the Auditor General's report suggested all of UPMC's hospitals would pay if their properties were put on the tax rolls.

Two years ago, Pittsburgh's then-Mayor Luke Ravenstahl launched a highly publicized attack on UPMC's tax exemptions. He did not bring that challenge against UPMC Mercy, or UPMC McKeesport, or Children's Hospital, all of which are the titled owners of their real estate and all of which have their own payroll. Instead, his administration sued UPMC itself, the parent entity, and waged a parallel public relations battle designed to convince the community that UPMC was not an IPPC and therefore did not qualify for tax exemption. In doing so the then-Mayor and the City's lawyers ignored the legal reality that the tax exemptions they were challenging were being claimed not by UPMC, but by its constituent hospitals. Ultimately the Court dismissed the case, but not before the City had squandered hundreds of thousands of its scarce dollars in legal fees to outside counsel.

I suggested earlier that those who think that UPMC is vulnerable to attack under HUP not only do not understand UPMC, but also do not understand the HUP test itself. In Hospital Utilization Project v. Commonwealth, 487 A.2d 1306, 1317 (Pa. 1985), the Supreme Court of Pennsylvania specified that 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.

Two aspects of that test are particularly relevant to hospitals. First, HUP specifies that an IPPC must "relieve the government of some of its burden." Pennsylvania is the only large state in the nation without public hospitals. As a result, the responsibility to provide medical care for Pennsylvania's poor and underprivileged falls not upon taxpayers or local governments, as it does in many states, but rather upon nonprofit hospitals like UPMC Mercy. A public facility like, say, Cook County Hospital in Chicago, would cost this region's taxpayers hundreds of millions of dollars to establish and tens of millions of dollars annually to operate.

Second, those arguing against tax exemptions for hospitals all too frequently mischaracterize — intentionally or unintentionally — the fifth leg of the HUP test, asserting that it requires an IPPC to operate "entirely free of profit motive" when in fact it reads "entirely free of *private* profit motive." (emphasis added.) That error has cropped up in press releases touting such challenges,<sup>2</sup> in newspaper editorials,<sup>3</sup> and even in the Auditor General's Special Report on property tax exemptions.<sup>4</sup>

The difference between "profit motive" and "private profit motive" is not merely semantic. All companies, whether for-profit or nonprofit, must try to generate more in revenues than they

pay out in expenses if they want to avoid going out of business. That, on its face, is “profit motive.” The test for a nonprofit, and for an IPPC, is not whether it is trying to generate operating surpluses, but rather whether it is trying to enrich private individuals or for-profit entities, *i.e.*, “private profit motive.” If a nonprofit or an IPPC is fortunate or skilled enough to generate profits it must either invest them back in the organization or pay them out in community benefits. UPMC, of course, does both.

This repeated distortion of the HUP test assures that nonprofits, taxing bodies, newspaper columnists, competing business interests, combative unions, and other special interest groups will continue

battling each other over whether the nonprofit’s activities are “entirely free from profit motive,” when in fact those activities are absolutely and necessarily motivated, at least in part, by the need for financial solvency in pursuit of the nonprofit’s mission. Even more perversely, this sometimes overheated debate takes its largest toll on, and poses its greatest threat to, smaller nonprofits and community hospitals that don’t have UPMC’s nine-person tax department or its 30-lawyer legal department to help them sort all this out.

Recently, the *Pittsburgh Post-Gazette* ran a lengthy article headlined, “Small Non-Profit Groups Losing Property Tax Exemptions in First Wave of County’s Review,”<sup>5</sup> and indeed they are. As described in the article, last year Allegheny County required each nonprofit claiming an IPPC tax exemption to submit a detailed explanation of how it qualifies under HUP. One-hundred-ninety properties with assessed values totaling \$59 million came back onto the tax rolls. Almost all of those properties were owned by small nonprofits, including recreation centers, churches, and at least ten volunteer fire departments. A board member of one small nonprofit complained to the *Post-Gazette*:

*I mean, this HUP test, who understands it? We’d have to hire a lawyer to defend us, and many small non-profits can’t afford that.*<sup>6</sup>

<sup>2</sup> See, e.g., “Mayor Ravenstahl Announces City to Challenge UPMC Status as Purely Public Charity,” March 20, 2013, <http://www.pittsburghpa.gov/rss/print.htm?mode=print&id=2119> (“Under the HUP test, an organization must establish that it . . . operates entirely free of profit motive.”)

<sup>3</sup> See, e.g., “Profit Motive: The City’s UPMC Suit Will Turn On One Key Factor,” March, 27, 2013, <http://www.post-gazette.com/opinion/editorials/2013/03/27/Profit-motive-The-city-s-UPMC-suit-will-turn-on-one-key-factor/stories/201303270128> (While UPMC “may have an easy time” meeting the first four legs of HUP, “meeting the fifth point of HUP – ‘operating entirely free from profit motive’ -- may pose more of a challenge.”); “Shaky Exemptions: The County’s Careful Review Serves All Taxpayers,” February 22, 2015, <http://www.post-gazette.com/opinion/editorials/2015/02/22/Shaky-exemptions-The-county-s-careful-review-serves-all-taxpayers/stories/201502280032> (The HUP test includes “operating entirely free of profit motive.”)

<sup>4</sup> Pennsylvania Department of the Auditor General, *A Review of Potential Lost Revenue Due to Property Tax Exemptions*, December 2014, <http://www>.

*paauditor.gov/Media/Default/Reports/RPT\_PropTaxExemptions\_12182014\_LGW2\_Final2.pdf, at page 2 (The HUP test has five elements, including that the IPPC “Operate entirely free from profit motive.”).*

*5 <http://www.post-gazette.com/local/region/2015/02/15/In-Allegheny-County-small-non-profit-groups-losing-property-tax-exemptions-in-first-wave-of-review/stories/201502150098>. 6 *Id.**

You can praise or condemn the HUP test, but when volunteer fire departments are throwing up their hands in surrender, change might be in order.

Let me conclude on two positive notes. First, after the court dismissed Mayor Ravenstahl’s lawsuit challenging UPMC’s status under HUP, newly-installed Mayor Bill Peduto did not appeal and instead seized “an opportunity for collaboration to replace courtroom theatrics.”<sup>7</sup> As a direct result of this “leap of faith,”<sup>8</sup> Mayor Peduto is now engaged in discussions with the area’s four largest nonprofits to help the City address its chronic financial problems.<sup>9</sup> The moral of this story, quite obviously, is that combative challenges to large nonprofits are less likely to generate good results for local taxing bodies than are invitations to collaboration. Remember that seven years ago UPMC engaged in just that sort of collaboration with local government to create the Pittsburgh Promise, a 10-year, \$100 million commitment to help students graduating from Pittsburgh Public Schools go on to college.

The second positive note relates to the cost of healthcare in this region. Two years ago the Auditor General challenged UPMC and Highmark to increase access to health care and to lower its cost.<sup>10</sup> Up to that time western Pennsylvania had one of the least competitive environments for health care in the country, with one dominant insurer, Highmark, and one increasingly dominant provider, UPMC. Today, we have one of the most competitive environments, with at least five major insurers, at least two major health systems, and numerous community hospitals striving to distinguish themselves by delivering the highest-value health care to as many of the region’s residents as possible.

As a result of this transformation the cost of health care in western Pennsylvania now ranks among the lowest in the country. A review in the last year of data compiled by the Federal Agency for Healthcare Research and Quality showed that among the 25 most populous metropolitan areas, Pittsburgh now has the lowest commercial health insurance costs.<sup>11</sup> In another indication of how far we’ve come, Pittsburgh now has the fourth-lowest priced “Silver” plan in the nation — and the lowest east of the Rockies — from among more than 36,000 health plans on the federal exchange at [healthcare.gov](http://healthcare.gov).<sup>12</sup> This silver plan — which is the most popular category for consumers — is being offered by UPMC Health Plan, proving that it is indeed possible to provide access to UPMC’s high-quality, sophisticated, world-class care at the lowest cost in western Pennsylvania and among the very lowest in the nation.

In sum, UPMC believes that a less complicated, more objective test for IPPC status would benefit smaller nonprofits, and particularly community hospitals, without depriving local taxing authorities of any revenue opportunities they might now think they have. As for UPMC itself, it is confident that it satisfies both HUP and Act 55 and looks forward to continued collaboration with local governments to advance the interests — and improve the health — of all the citizens of western Pennsylvania.

7 “Peduto talks about why city dropped UPMC lawsuit—and the way forward,” *Pittsburgh Business Times*, July 29, 2014, <http://www.bizjournals.com/pittsburgh/blog/the-pulse/2014/07/peduto-talks-about-why-city-dropped-upmc-lawsuit.html?page=all>.

8 *Id.*

9 “Nonprofits offer help with Pittsburgh pension problems, Peduto says,” *Pittsburgh Business Times*, March 4, 2015, <http://triblive.com/news/alleggheny/7899448-74/pension-peduto-pittsburgh#axzz3TdoqsbhT>.

10 <https://twitter.com/paauditorgen/status/332238005312028673>.

11 Henry Miller, “Pittsburgh Not Most Expensive for Health Care,” *Pittsburgh Business Times*, April 4, 2014, <http://www.bizjournals.com/pittsburgh/print-edition/2014/04/04/pittsburgh-not-most-expensive-for-health-care.html>.

12 <http://files.kff.org/attachment/analysis-of-2015-premium-changes-in-the-affordable-care-acts-health-insurance-marketplaces-tables>.

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## **COMMONWEALTH OF PENNSYLVANIA**

**Auditor General**

**March 12, 2015**

**Public Meeting on**

**Senate Bill 4**

**Held by Pennsylvania Auditor General Eugene DePasquale**

**Written Statement of**

**Anne L. Gingerich, Executive Director, Pennsylvania Association of Nonprofit Organizations**

Honorable Eugene DePasquale, Auditor General of Pennsylvania,

As the Executive Director of the Pennsylvania Association of Nonprofit Organizations (PANO), I am honored to testify about the implications that Senate Bill 4 may have on high valued organizations such as veterans groups, domestic violence prevention programs, churches, museums, hospitals, institutions of higher education, economic development organizations, land trusts, social service agencies, environmental organizations and many other organizations that play a significant economic role in Pennsylvania and enhance the high quality of life throughout our Commonwealth.

### **SENATE BILL 4**

Senate Bill 4 is a short, straight-forward piece of pending legislation that proposes a constitutional amendment giving the state legislature the authority to define a “purely public charity” in Pennsylvania.

### **PANO’S POSITION**

PANO represents all nonprofits in the Commonwealth of Pennsylvania, big and small, east, middle and west—whose interests sometimes conflict with each other. Because PANO believes that we together are better than any entity is separate, we find common ground whenever possible.

PANO has taken a neutral stance on Senate Bill 4. We support the year-long process for study and public hearings proposed for a “select committee” in a separate piece of pending legislation—Senate Resolution 28.

The nonprofit community unites around the following common, mutually desired outcomes regardless of the process followed to meet them.

1. We focus on the significant, positive role the nonprofits play in the wellbeing of communities. We are partners with public institutions in serving public needs. Nonprofits give rather than take resources from our communities.

2. Nonprofits should be exempt from certain types of business taxes paid by for-profit companies so they can more efficiently meet their missions.

3. The rules for these exemptions should be fair, consistent and predictable and should not vary from town-to-town or year-to-year.

4. We seek unity in an already divided community. Conversations around Senate Bill 4 may not only polarize the for-profit, government and nonprofit sectors, but divide the nonprofit sector itself. We are already defending our positions rather than focusing our efforts on what we (e.g. nonprofit, for-profit and government) can do together to move the quality of life forward throughout the Commonwealth.

5. We seek the highest possible awareness of the general public around this issue. Senate Bill 4 would move this issue to the voting public via a referendum—a public that may not understand the far-reaching effect of their decision on the quality of life in local communities. Those long-term effects are yet unknown, even to decision-makers.

### **SUPPORT FOR THE JOINT SELECT COMMITTEE (SENATE RESOLUTION 28)**

PANO needs more information to take a more definitive position on Senate Bill 4. Thus, PANO supports Senate Resolution 28, which recently passed the Senate in a unanimous vote and is now pending in the House. SR 28 seeks to establish a Joint Select Committee on Institutions of Purely Public Charity which would collect input from stakeholders, review the impact of purely public charities on local government, study the economic impact of nonprofit services to the residents of Pennsylvania in general and determine if revisions are needed in Commonwealth law to “achieve the appropriate balance between the cost of services provided by local governments and the protection of our public charities.”

### **PANO SEEKS CLARITY**

PANO recommends that policy proposals affecting the tax status of nonprofit organizations in Pennsylvania should be evaluated using the following five questions:

1. Does the proposal strengthen or undermine the capacity of the nonprofit sector to do good work benefiting individuals and families in need, local communities and the overall economy?

2. Does the proposal help to create a process that is fair, consistent and predictable in all communities?

3. Does the proposal contribute to a flexible process that can take into consideration the varying circumstances of a wide variety of nonprofit organizations with different sizes and different charitable fields?
4. Does the proposal facilitate the effective operation and smooth interaction of all branches of government, including local government, state government and the judicial system?
5. Is the proposal based on valid research, comprehensive data and practical experience over time, rather than reacting to isolated, exceptional circumstances?

PANO believes that SB 4 currently does not provide clear answers to these questions. SB 4 asks for constitutional approval of additional legislative authority to set standards. But because the bill itself does not actually contain those standards, PANO cannot really know whether or not SB 4 ultimately help to improve the environment for nonprofits or not. The select committee proposed by SR 28 would help to provide important answers and give communities an opportunity to become fully informed and engaged in the process.

The tables below describe PANO’s outstanding questions around Senate Bill 4.

**IF SENATE BILL 4 PASSES...**

PANO believes that the nonprofit sector could experience the following positive OR negative outcomes: **Possible POSITIVE Outcomes**

- ☐ Resulting legislation may provide clarity to the criteria needed to determine nonprofit tax exemption and result in uniform rulings in the court system.
- ☐ Nonprofits could have the ability to influence their local delegation to support their cause.
- ☐ Nonprofits would have an immediate opportunity to educate the public about the return on investment nonprofits bring to their local communities (due to the referendum).

**Possible NEGATIVE Outcomes**

- ☐ Resulting legislation may be less supportive of nonprofits than the criteria defined in Act 55.
- ☐ Resulting legislation may create separate classes of nonprofits, leading to more rather than less confusion about the definition of *purely public charities* pitting small nonprofits against large nonprofits.
- ☐ The public may not fully understand what they are voting on in the required referendum

**IF SENATE BILL 4 DOES NOT PASS...**

PANO believes that the nonprofit sector could experience the following positive OR negative outcomes: **Possible POSITIVE Outcomes**

**Possible NEGATIVE Outcomes**

☒ The courts would continue to have the authority to define a “purely public charity.” \*

☒ Nonprofits may have less influence over local and state judges than with their state senators and representatives.

☒ The court system would continue to make decisions on a case-by-case basis\* vs. a common set of standards—a situation which has led to inconsistency in some court rulings.

☒ Nonprofits currently being brought to court by local municipalities would have to prove their charitable status under two sets of criteria (e.g. first the criteria defined in the 1985 HUP Case AND then the criteria defined in Act 55).

☒ Small nonprofits may be pitted against large nonprofits in the court system as well as in the public.

*\*Note: The courts may follow the case law criteria established in the 1985 HUP Case front and center in determining whether or not a nonprofit meets the criteria for “purely public charity.”*

### **THE COMPLEXITY OF THE ISSUES**

The depth and breadth of the nonprofit sector create challenges whenever structure and funding issues come into play. Thus, PANO appreciates the opportunity to underscore the complexity of the issues—starting but not limited to the differing viewpoints and opinions expressed in the case law, constitutional terminology and statutes that form Senate Bill 4’s history. Adding to this complexity are the sheer numbers of stakeholders impacted by this issue:

- The 67 counties in our Commonwealth
- Our 500 school districts
- Our 2,562 municipalities
- Our 50 state senators
- Our 235 state representatives
- Our judges (90+) presiding in Pennsylvania’s Judicial System
- The estimated 19,430 nonprofits who hold properties valued at of \$100,000 or above.<sup>1</sup>

### **Nonprofits as Partners of Government**

With increasing levels of poverty and decreasing revenue and property values, local municipalities struggle to meet the needs of their constituents. And in doing so, they look to their long-time partners in meeting critical community needs—the nonprofit community. Nonprofits have historically played a significant role in carrying out the work that is also the responsibility of the government but beyond its means.

No one questions the importance of charitable work contributed by nonprofit organizations—anchor institutions in communities both large and small. Nonprofits tutor children, feed the hungry, care for the sick, shelter the victims and help the unemployed to find work. The real return on investment to the local economy is unquestioned.

Most individuals and entities also agree that the vast majority of nonprofits should be exempt from business taxes paid by for-profit corporations. Nonprofits provide crucial services and draw important federal and grant dollars with accompanying jobs into local communities. Nonprofits are organized solely to benefit the people they serve and are represented by volunteer boards of directors. Nonprofits give up their rights to profit, political engineering and privacy (e.g. nonprofits are the most transparent sector in the country).

### **Third-Largest Employer**

Many individuals understand the above mentioned public and community benefits that nonprofits bring to their communities—which provide an economic return on investment. However, they do not necessarily think about the additional economic benefit provided by this sector.

- Across the country, nonprofits employ **10.1%** of the total private workforce, making the nonprofit sector the third largest sector in the country.
- **18 times more** workers than the utility industry
- **15 times more** than the mining industry
- **10 times** more than agriculture
- **5.5 times** more than the real estate industry 2

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1 Kenyon, D. A., & Langley, A. H. (2011). The property tax exemption for nonprofits and revenue implications for cities. Urban Institute.

2 Salamon, L. M., Sokolowski, S.W. & Geller, S. (2012). Holding the fort: Nonprofit employment during a decade of turmoil. *Nonprofit Employment, Bulletin No. 39*. John Hopkins University.

- In Pennsylvania, according to the U.S. Bureau of Labor Statistics, **18,1483** nonprofits employed **775,248** employees who earned over **\$36 million** in wages. And this group includes only a portion of the **50,000+** nonprofits doing good work throughout the Commonwealth.

Nonprofit employers pay social security and Medicare taxes on the compensation they pay their employees. Their employees pay state and federal income and social security taxes on these earnings, as well as Medicare and unemployment taxes in most cases. These employees further use their earnings to buy goods, on which they also pay state sales tax and homes, on which they pay local real estate tax. Most of the income passing through the nonprofit sector is and has already been taxed. Most Pennsylvania-based nonprofits are not exempt from sales tax and thus pay a state sales tax on purchases made.

In addition, many nonprofits already make payments in lieu of property taxes to help defray the cost of police, fire and other services. They further open their facilities to community members and provide free services for area citizens.

## **NONPROFITS ARE NOT THE ONLY TAX-EXEMPT ENTITIES AT THE TABLE**

Government entities also play a critical role in community wellbeing and also do not pay taxes on the government buildings owned and used by the 67 counties, 500 school districts, 2,562 municipalities and the Commonwealth itself. If each entity owns a minimum of two (2) buildings, these properties encompass a minimum of over 6,200 tax-exempt properties throughout the state. In addition, for-profit developers are given tax breaks to build and bring business to struggling urban areas.

Thus, when the issues of meeting the bottom line arise in local jurisdictions, representatives from the government, for-profit and nonprofit sectors should all be at the table. We together truly are better at collectively solving problems than any entity is separate.

## **HOW OTHER STATES DEFINE PURELY PUBLIC CHARITIES**

The “separation of powers” question is treated differently in different states. The tests for which charitable nonprofits are exempt from property taxes and which are not, vary from state to state. Interpretations of state laws create variations in application from county to county and even from assessor to assessor. One thing that keeps nonprofit executives and board members awake at night is the uncertainty of how local political process will change their ability to meet needs of the people they serve. 4

**1. Every state exempts the property of charitable nonprofits from taxation.** As noted above, the tests vary by state for determining which type of nonprofit and which parcels of property are exempt from taxation. State exemption of charitable nonprofits from property tax is the norm.

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3 501-c-3s covered with unemployment insurance

4 Thompson, D.L. (2015). *Public Hearing on Purely Public Charities and Senate Bill 4 for Commonwealth of Pennsylvania’s Senate Finance Committee on February 4, 2015*. Written Testimony of David L. Thompson, Vice President of Public Policy. National Council of Nonprofits  
5 Bowman, W. & Fremont-Smith, M.R. (2006). *Nonprofits and state and local governments. Nonprofit and Government: Collaboration and Conflict*, 181,203.

**2. Every state limits exemption to properties that are both owned by a charitable nonprofit and used for the charitable purpose of the organization.** Ownership by the nonprofit is not enough; the property must be used to advance the nonprofit’s mission. Several states continue to apply the exemption when a nonprofit owner rents the facility to another charitable nonprofit, thus preserving the charitable use requirement. 6

**3. The source of authority for exempting the property of charitable nonprofits from taxation falls into three categories:**

- In 18 states, the exemption of charitable nonprofits is mandated in their state constitutions.
- Twenty-five (25) state constitutions (including Pennsylvania) grant the legislature the authority to exempt nonprofit properties from taxation.
- Seven (7) state constitutions have no provision for taxes or exemptions . 7

As PANO understands it, Senate Bill 4 seeks to extend the power of the state legislature to not only grant tax exemption to nonprofits but to define what makes a purely public charity. According to David L. Thompson from the National Council of Nonprofits, the tests established in Pennsylvania and particularly in Act 55, include the most restrictive criteria in the United States. Act 55 is one of the most detailed statutes in the country and provides relatively clear criteria for each of the five parts of the test for property tax exemption. Furthermore, Act 55 disqualifies far more nonprofits than any other state statute. 8

### **CONCLUSION**

In conclusion, I thank the Auditor General for this opportunity to review the potential impacts that Senate Bill 4 may have on the nonprofit sector. Our broad membership base holds differing viewpoints on the potential results. However, we generally seek the following common outcomes regardless of the process required to reach these outcomes:

- Nonprofits should be exempt from certain types of business taxes paid by for-profit companies so they can more efficiently meet their missions.
- The rules for these exemptions should be fair, consistent and predictable and should not vary from town-to-town or year-to-year.
- We seek unity in solving common community problems both within the nonprofit sector and among the nonprofit, government and for-profit sectors.

**We believe that we together are better than any one of us is separate.**

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6 Thompson, 2015

7 Brody, E. (2010). *All charities are property-tax exempt: Some are more exempt than others.* New England Law Review. New England School of Law.

8 Thompson, 2015

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**TO: The Honorable Eugene DePasquale  
Auditor General of Pennsylvania  
FROM: John W. Paul, President and CEO  
Allegheny Health Network  
DATE: March 9, 2015  
SUBJECT: Support Senate Bill 4**

I am writing to express Allegheny Health Network's support for Senate Bill 4, legislation that would amend the state Constitution to clarify that it is the exclusive role of the legislature to write laws establishing the qualifications of institutions of purely public charity. The Allegheny Health Network is a unified system dedicated to providing affordable, exceptional care to people in our communities. AHN was formed in 2013 and serves 29 Pennsylvania counties and portions

of New York, Ohio and West Virginia through 8 hospitals, 6 Surgery Centers and thousands of dedicated employees and physicians.

We join other nonprofit organizations - health care, educational, and other charitable organizations - in seeking this constitutional amendment so that the legislature can maintain certainty and uniformity across the state, rather than allowing the standards to be built one court decision at a time.

For decades, Pennsylvania law allowed charitable nonprofits that met strict criteria to receive relief from paying certain taxes. This relief enabled charitable nonprofits to use their limited financial resources to educate, treat, care for and support our fellow Pennsylvanians.

Unfortunately, a 2012 Supreme Court ruling has distracted our organizations from doing the charitable works people rely on them to do. This ruling has compelled charitable nonprofits to find new funds to protect against legal challenges to their tax-exempt status - funds that these organizations use to provide the very programs and other services that our communities need and depend upon.

This bill simply aims to provide a law that will create a singular set of criteria, by which nonprofits can use to clearly determine if they need to pay taxes or provide community services.

Without a strong set of standards set by the legislature, nonprofit tax-exemption decisions will be made on a costly, case-by-case basis, with different judges and different opinions, and return the state to a time of confusion, inefficiency, and conflicting decisions.

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If entities have issues with the detailed provisions of the Pennsylvania Institutions of Purely Public Charity Act (Act 55 of 1997), then a thorough examination of that law can be made by the General Assembly. However, this examination cannot occur until a constitutional amendment is passed and it is clear that the legislature has the exclusive role to write laws providing for the qualifications of public charities.

AHN strongly supports Senate Bill 4 and the resulting "Charities Amendment" to be placed on the November ballot. Passage would ensure that charitable nonprofit organizations can keep their focus on critical programs and services instead of paying for costly legal challenges.

Thank you for considering our position.

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#### **GPNP Statement Senate Bill 4**

Senate Bill 4 is a proposed *constitutional amendment* that will have deep and significant impact on the nonprofit sector and the delivery of important services to our communities.

#### **GPNP believes that:**

1) Act 55 is a good basis for determining purely public charity status. The nonprofit sector relieves the burden of the government, provides charitable services, and advances charitable missions. Nonprofits exist on a compilation of varied revenue sources, one of which includes

significant public dollars and as such, many nonprofits are appropriately eligible for property tax exemption as a purely public charity under the Act 55 definitions.

2) If the intention of the bill is to reinstate Act 55, there is there no need to transfer the power from the judiciary to the general assembly. This transfer of power raises the question of why? The transfer of power from the courts to the general assembly is concerning and seems to offer:

- a. Higher degree of uncertainty from one legislative session to the next,
- b. Increased possibility for government overreach

3) Nonprofit organizations as a whole function best when in partnership with the public sector as community problem solvers.

**GNP:** The Greater Pittsburgh Nonprofit Partnership is a committed advocate for the nonprofit sector in its entirety. The nonprofit sector represents large scale service providers to small grassroots organizations. The sector provides invaluable services in the community that otherwise would not be available or affordable through the private or public sectors.

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**Hospital Council of Western Pennsylvania  
Testimony Presented at Public Meeting on Senate Bill 4  
Held by Auditor General Eugene DePasquale  
March 12th, Pittsburgh, PA  
Testimony Submitted by: Patricia J. Raffaele  
Vice President, Professional Services  
Hospital Council of Western Pennsylvania**

Good morning. First, I want to thank the Auditor General for providing this opportunity to comment on Senate Bill 4 and tax exempt criteria for institutions of purely public charity. My name is Pat Raffaele and I am the vice president of Professional Services at Hospital Council of Western Pennsylvania. I am here today representing Hospital Council and our members. Hospital Council of Western Pennsylvania is a non-profit, 501(c)(3), independent association representing 65 health care entities in 30 counties of the Commonwealth. Our members are diverse: we represent acute care hospitals, ranging from small rural hospitals, independent community hospitals and multiple-hospital systems. We also represent long-term care facilities including nursing homes and assisted living facilities. And, we represent some special providers such as The Children's Institute in Pittsburgh. The reason I provided that level of detail about our membership is that these healthcare providers and the people who work in them have had great impact on the state, the region and their communities. And, of even greater importance, these healthcare entities, large and small, have had their greatest impact on the people who rely on these healthcare providers every day, 24 hours a day.

Senate Bill 4 is of vital importance not only to our members, but to the individuals living throughout the state and the region. First of all, these non-profit healthcare providers need

clear, concise and consistent criteria outlined and defined through state law. The current law, determined through the courts, does not do this. The current scenario – different courts rendering different opinions – is a barrier to clarity and consistency. We agree that constitutional amendments are not to be taken lightly, but in this case it is of utmost importance that all nonprofits have legislation defining the criteria that earns them tax-exemption. This solid approach will eliminate the need for courts to make decisions on tax-exemption using criteria that has been applied and will continue to be applied inconsistently across the state.

Why do our healthcare providers need this consistency? Costly court cases, inconsistent decisions and the possibility of paying taxes will lead to continued erosion of our already financially fragile providers, especially in the rural areas of our region. Increased costs to any healthcare provider can and will lead to lost jobs and reduced community services and benefits relied on by many individuals and their families. First, hospitals and other healthcare providers, particularly in western Pennsylvania, are THE major employers and economic drivers in their communities. This is true in Pittsburgh, where we are held as a shining example to the rest of the country of moving our economy from a “rust belt” economy to an economy based on what we call “eds and meds”... education and healthcare. And, in towns all across rural western Pennsylvania, like DuBois, Indiana, Meadville and Uniontown, to name a few, healthcare is the major employer. Their employees pay taxes. It is a simple equation: if healthcare providers pay more taxes or have to pay more for unwarranted legal costs, they will have to cut expenses, which will lead to tax-paying individuals losing their jobs.

We have already seen major job erosion among the region’s hospitals. Based on recent data from Hospital Council’s Flash Survey, we saw the largest erosion in loss of full-time equivalent employees since we have been collecting the data. Approximately two-thirds of the region’s hospitals reported a reduction in full-time equivalent employees. In real numbers, our hospitals lost more than 1,700 full-time equivalents in the past fiscal year. Additional financial pressure will only cause this number to grow.

Secondly, we want to address the issue of contributions by the region’s hospitals. Hospitals provide care to the most vulnerable populations. In western Pennsylvania, our hospitals provided more than \$277 million in uncompensated care in the past fiscal year. Our region’s hospitals are THE safety net for those that cannot pay for their care, for those patients who need help any time of the day or night including, the elderly, the disabled and the frail. Pennsylvania does not have any government-owned hospitals – there is no other safety net for any person to access care at any given time.

At the same time, many of the region’s hospitals are operating in the red. Approximately 65 percent of our hospitals’ payments are controlled by Medicare and Medicaid, which pay less than cost. More than 36 percent of the hospitals are showing a loss from operations. Of the 58 hospitals from 30 counties which report data to Hospital Council, 40 percent, or 22 of these hospitals, have less than 100 beds. These, our smallest hospitals, are showing an operating margin loss of almost 2 percent.

So, while our hospitals are the safety net for every person in their communities, and are operating on negative to thin margins, they continue to provide healthcare services that are beyond the basics. Just to name a few, hospitals provide community health and wellness programs, they assist with hunger, mental illness and some contribute through research and

education. Hospitals are trusted entities in their communities and in times of disaster, hospitals are the places people turn to with an expectation that they can be fully cared for.

What will happen if our region's hospitals have to battle unwarranted legal challenges in court and/or pay taxes? The financial picture will be bleak. A loss of these financial resources, combined with a new tax bill can lead to job elimination which will lead to less taxes paid by individuals. Community services will be cut-back or totally eliminated and some smaller hospitals face very uncertain futures. Patients, especially the most vulnerable, may not be able to get access to the care they need and hospitals will not be able to support their communities to the fullest.

We support Senate Bill 4 and ask for your support as well.

Thank you again for giving Hospital Council the opportunity to provide information to you. I would be happy to respond to questions.

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Testimony: **Barney Oursler, Executive Director Pittsburgh UNITED**  
Auditor General informational meetings on "Purely Public Charities"  
March 12, 2015

Thank you, Mr. DePasquale for your time today and allowing me to speak on behalf of Pittsburgh UNITED and our coalition partners.

The faith based, low income, community, environmental and labor organizations in our coalition see the issues raised by SB4 as critically important to the future of our communities. We appreciate your report on tax-exempt properties around Pennsylvania, which has contributed significantly to this important conversation.

You may know that Pittsburgh United was one of the first organizations to call attention to the scope of tax exemptions in Pittsburgh, in a report called "Hidden in plain sight: the cost of UPMC tax exemptions." In that report we called attention to UPMC, the largest not-for-profit in our area, which today has a \$2.1 billion in total assessed property value, with nearly \$48 million in property tax breaks alone.

That leaves a large hole in local revenue for other taxpayers – citizens and for-profit businesses – to fill. We believe that that entitles us to demand a high level of scrutiny and accountability for our charitable organizations.

In the case of UPMC, many in our community are not sure whether a charitable mission is being met. Many people in our area believe that UPMC takes advantage of its tax breaks in ways that harm rather than support our communities.

Pittsburgh United, elected leaders, taxpayers and patients have worried that our subsidies are used by UPMC executives to dominate healthcare markets, to buy up hospitals all over Western Pennsylvania, to monopolize the insurance industry by cutting off patients who use a competing insurance carrier, with the result that we are all familiar with the elevated cost of healthcare in our region while that care is, inexplicably, worse than what is available in other parts of the country.

UPMC is also the nonprofit that closed a community hospital in Braddock, forcing patients in an already distressed community to travel farther to receive care, only to spend millions on a new hospital in an affluent suburb to compete with another hospital system. And UPMC, the largest

employer in the state, is the nonprofit that collectively pays more than 30 executives tens of millions, but poverty wages to thousands of its workers, further draining taxpayers. It's no secret the real movers behind amending the constitution to remove judicial oversight of purely public charities are not soup kitchens and small non-profits of the sort that are in my coalition. The real movers are the mega-charities who fear, perhaps with reason, that some of their practices are threatened in a regulatory environment that asserts the HUP test as the qualification for tax exemptions, and not the more lax standards set out by Act 55. But that's not in the best interests of our communities. Mr. Auditor General, your report helped people to understand the staggering scope of not-for-profit tax breaks in communities outside of Pennsylvania. That's why we should be moving in the direction of calling for more oversight and more accountability, not less.

And to legislators who have moved to put this amendment on the ballot behind the argument that we NEED to amend the Constitution so that we can amend the lax standards of Act 55 and install a stricter legislative standard: I say "prove it." Show that your recent tough talk about rogue mega-charities isn't just talk and propose that legislation.

The Duquesne tax law professor here today, Mr Nick Cafardi, has said that absolutely nothing impedes your legislating for stricter accountability right now. Do that, and we may be less suspicious of an amendment that today strikes me and many others in our community as a constitutionally guaranteed loophole for a few giant not-for-profits.

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**TESTIMONY OF MICHAEL LAMB**  
**PITTSBURGH CITY CONTROLLER**  
AUDITOR GENERAL'S PUBLIC MEETING  
ON PENNSYLVANIA PURELY PUBLIC CHARITIES  
March 12, 2015

Should the legislature have "sole" authority to define purely public charities? It sounds like such a dull and dreary discussion and yet it's actually about money and power, whether large institutions can live by their own rules and whether Pennsylvania communities can pay their bills.

Here in Pittsburgh, we have a very large, vibrant, non-profit community that provides quality healthcare and social and human services, does ground breaking research, and educates the world's top scholars. In the process, they provide a lot of jobs to our region and have been valuable corporate and civic partners.

That partnership was probably best demonstrated 30 years ago when local leaders of our large non-profits, our corporate community and our local government crafted the plan that became known as Strategy 21. That lobbying effort in Harrisburg and DC led to creation of the Pittsburgh Technology Center, the Software Engineering Institute, and the start of much of the bio-medical research that continues to expand in our city today.

The success is plain to see. In the wake of the collapse of basic manufacturing in our regional private sector, new jobs were being born in the non-profit sector. That growth continues to this day.

Unfortunately, as our large non-profits continue to grow, our city's population continues to shrink. That's a real problem because Pittsburgh, receives the bulk of its revenue from the people who live here. If there are fewer people calling the city home, it makes it very difficult to provide the services necessary to keep people safe and keep neighborhoods clean. We continue to be the hub of this region for employment, education, health care and culture. Every day we grow significantly beyond our population yet the burden of providing services to our daily visitors is unduly borne by the residents of the City of Pittsburgh. That is why we need the help of our large non-profits who contribute significantly to our quality of life here in Pittsburgh, but not so much to our fiscal bottom line.

Prior to Strategy 21, an abandoned J and L mill stood on Second Avenue, Pitt and CMU were not the research giants they are today, and the Pitt Medical School was discussing new opportunities of collaboration with the Presbyterian University Hospital. Times have changed. Pittsburgh is now home to mega non-profits that look more like corporate empires than social service providers. And in many cases, they have acted like corporate empires rather than the charities by which they are defined. In a city whose biggest source of revenue is the property tax, 40% of our property is exempt from taxation. One large non-profit is our largest landowner and in the seven years that I have been City Controller that non-profit has not participated in any Payment in Lieu of Taxes arrangement.

If it were up to me, instead of forcing through a constitutional amendment on "who" can define a charity we would be working to expand the existing non-profit definition to distinguish between the types of non-profits. There is a big difference between the community food bank that's working to keep people off of the streets and the corporate land bank that continues to take properties off of our tax rolls.

Today, the only way that local government can get its fair share from our large non-profits is through a negotiation. Prior to the 2012 *Bobov* ruling, that negotiation was basically a hat in hand begging exercise. Thankfully, even then, some of our non-profits responded. But some didn't. As a matter of tax fairness, having a more equal footing in this negotiation as provided in the *Bobov* ruling has helped municipalities across the state. It has given leverage where there was none before.

From the time of Strategy 21 and even before that, this community has stepped up to build these community assets. Despite the rhetoric we here from some non-profit leaders, these institutions were built by the hard work of people in this community not by the egos of their corporate leadership.

Negotiation and collaboration between our non-profits and the community have led to great things. But this has always been a local negotiation. Unfortunately, instead of taking the opportunity to talk locally or legislate wisely, we are now moving to amend the Constitution to protect a way of operating that only exacerbates our city's fiscal strains. Some of our large non-profits apparently prefer the hat in hand approach. They see the city as a charity case begging for what it chooses to give rather than having the legal ability to demand what is fair.

I hope that taxpayers here and across the Commonwealth will understand that the Purely Public Charity Amendment is not an arcane exercise in the separation of powers but is instead the latest – and most dangerous – move on the part of mega-charities to engineer a profoundly

unfair and unequal relationship between themselves and their host communities. They, and we, should oppose it vigorously.

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Comments on Purely Public Charities

Marlene Hughes, Executive Director

March 12, 2015

My name is Marlene Hughes and I serve as the executive director of Metro Community Health which has provided primary health services within a medically underserved area since 1999. On behalf of my health center and the Pennsylvania Association of Community Health Centers (PACHC), I thank you for the opportunity to speak with you today about the work we provide our communities and how the issue before you today – tax fairness for non-profit organizations affects Community Health Centers like us.

Before commenting on the issue before you today, please allow me to provide a background on our organizations as it is crucial to understand in a discussion about non-profit organizations and the benefits that we each provide to our communities. PACHC has 50 member organizations that include Federally Qualified Health Centers (FQHCs), FQHC Look-Alikes and Rural Health Centers each with a commitment to their community to provide high quality primary medical, dental and behavioral health care services to their patients. As of today, these Community Health Centers comprise the largest network of primary care providers, with locations in 49 counties of our Commonwealth. Within our collective communities, 92 percent of our patients have incomes at or below 200 percent of the federal poverty level and 25 percent are uninsured. Furthermore, by federal law, health centers may only be established in areas determined to be Medically Underserved Areas or Health Professional Shortage Areas, meaning ***they can only locate in and serve patients in communities that sorely lack access to health care.***

Pennsylvania is fortunate to have the network of health centers that exist today as there are now over 250 Community Health Center sites across the state serving more than 700,000 Pennsylvanians annually in underserved rural and urban areas. Nationally, more than 23 million people are served by health centers that curb the rising cost of health care in the nation. Community Health Centers have enjoyed bipartisan support both at the state and national level since their inception 50 years ago because of the direct impact and positive outcomes they have on health, healthcare costs and economic revitalization. In fact, a nonpartisan study conducted by George Washington University found that health centers on average save taxpayers and the health system \$1,263 per patient per year. In Pennsylvania, that translates into nearly \$880 million in savings because health centers help individuals get well and stay well by providing vulnerable Pennsylvanians a quality “medical home” for their primary medical, dental and behavioral health needs, thereby decreasing the need for costly inpatient and emergency care.

Unfortunately, since 2012’s *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeals* court decision, several of my colleagues have been in situations where their non-profit status is challenged despite the positive impacts they provide their

communities and 2 patients. This is an alarming trend of health centers becoming the targets for arbitrary and inconsistent property taxes. To date, three health centers in different regions of the state – Butler, Fulton and Franklin counties – have been adversely impacted by the issue you are seeking input on today.

At the beginning of this process, each health center is forced pay expensive legal fees in order to understand the tax bill they receive and their options. After legal consultation for this sudden tax assessment, their options (all of which are costly) are to accept the assessment, to fight it, or to agree to payments or services in lieu of taxes. The costs of this tax must come out of operations – meaning cuts in jobs, services and/or the number of people served—and taxpayers and local governments and communities will pay the price. For Community Health Centers in particular, the unexpected and significant financial impact of the costs directly related to challenging purely public charities are difficult to absorb with their limited resources and create potential challenges for patients as there will be fewer dollars available to provide access to care. It also contradicts the purpose of non-profits as they offer services to those in need, reducing the burden on local government and improving the health of local communities. Furthermore, each local government entity – county, municipality, and school district have their own perspective of which organization they choose to tax and the rate of the tax. This interpretation varies from each community. The tax applied in one community will not be the same within that county, neighboring county or across the state. This is an inconsistent and arbitrary policy that requires further consideration.

For the Community Health Center sites that have been affected by this environment, the taxes sought by local governments are over \$473,000. However, using the before-mentioned George Washington University study, we believe had these dollars stayed in the Community Health Centers, they could have saved patients and residents in those counties up to \$44 million by managing chronic health conditions and diverting the use of hospital emergency departments as a form of primary care. We simply do not believe that the status quo is a prudent or effective system as it limits quality services that could be offered to our communities.

We were pleased with the clarity provided by the Institutions of Purely Public Charity Act (Act 55 of 1997), and were disappointed when the Pennsylvania Supreme Court decision recreated uncertainty and instability on this issue. Act 55's largest contribution was codifying the Hospital Utilization Project (HUP) test. As you know, the HUP test itself states that charities must meet the following criteria:

- 1) advances a charitable purpose,
- 2) donates or renders gratuitously a substantial portion of its services,
- 3) benefits a substantial and indefinite class of persons who are legitimate subjects of charity,
- 4) relieves the government of some of its burden, and
- 5) operates entirely free from private profit motive.

We argue that Community Health Centers meet all of these objectives. As I understand it, unfortunately, the property tax exemptions to date have been based on the challenge that they do not relieve government of some of its burden. My colleagues and I are simply shocked by this

assertion and disagree with it but that is part of the confusion and inconsistency that the current climate allows.

For these reasons, we have urged passage of Senate Bill 4 in its current form as it moves forward in the legislative process. Community Health Centers NEED a resolution to this problem and believe that state lawmakers should be responsible for creating our laws. Upon passage of SB 4 this session, as the second consecutive session in the Constitutional amendment process, the voting public will be empowered to decide whether the courts or the General Assembly has the authority to govern the laws affecting non-profit organizations such as our health centers. Should the electorate agree with us at that point in time, and then we will be able to further build on today's dialogue. Until that time, non-profit organizations such as our community health centers will continue to face the financial hardship these new taxes create for organizations such as our members that provide a public service.

A vote for SB 4 is not a vote for the status quo—it is a vote for a democratic process that ensures fairness in treatment of local charitable organizations across the Commonwealth and that moves us toward clarity, consistency and predictability for organizations that don't have the financial resources to survive with anything less. A vote for SB 4 is a vote to let the voters decide.

I thank you for your time and for your interest and welcome any questions that I may be able to answer.

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## **Pennsylvania State Alliance of YMCAs**

### **Testimony – Tax Exemption for Charitable Organizations (Senate Bill 4)**

#### **The Honorable Eugene DePasquale, Auditor General of the Commonwealth**

The Pennsylvania State Alliance of YMCAs is pleased to present this testimony to Auditor General Eugene DePasquale on tax exemption for charitable organizations and the impact of Senate Bill 4.

The State Alliance is comprised of the 65 YMCA associations and 112 branch locations across the Commonwealth. Pennsylvania is blessed to have more YMCAs than any other state in the nation. In fact, 6.6 percent of all Pennsylvanians live within three miles of a YMCA.

For 164 years, the YMCA has been a fixture in communities across the United States and Pennsylvania. Founded by George Williams in London as a refuge for Bible study and prayer for young men to escape the hazards of life on the street, the YMCA has historically sought to meet the social needs of citizens in their communities.

The YMCA has been a source of housing for men since the 1860's to help provide a way for men to get back on their feet after enduring hardships of many kinds. Among those who have called the YMCA home include: Dr. Martin Luther King, Jr, Andy Rooney, Dan Rather, novelist Jack Kerouac and former UN Ambassador Andrew Young. Today, housing for homeless and transient men and women remains an affordable option at YMCAs, such as those in Bethlehem, Harrisburg, Reading and York, and right here in Pittsburgh.

In 1936, the YMCA Youth and Government program was started in New York state to teach youth about the roles and functions of government and to encourage their participation in it. Pennsylvania's Youth and Government program is in its 69th year as a teen leadership and civic

engagement program. Its graduates have gone on to successful careers as leaders in government, business, health care and many others where they display the YMCA core values of honesty, caring, respect and responsibility. State Representative Brian Ellis (R-Butler), a member of the House Republican Leadership, is an alum of Pennsylvania's YMCA Youth and Government program.

Today, the YMCA in the Commonwealth is a broad-based, community-serving charitable organization whose mission is to put Christian principles into practice through programs that help build healthy, spirit, mind and body for all. The Y is available to all regardless of whether they can afford to pay for the programs and services.

Across Pennsylvania in 2013, YMCAs serve 1,018,239 members and registered participants. In other words, 1 out of every 12 Pennsylvanians is either a member of the Y or a program participant.

Volunteers of all ages, teens through seniors, enrich their communities by donating their time and energy as child care aides, swim instructors, tutors, mentors, coaches, chaperones, etc. Pennsylvania YMCAs are blessed by the services of more than 31,000 volunteers whose donated time is valued in excess of \$710,000. ***Last year at the Sewickley Valley YMCA, 210 volunteers contributed over 5,000 hours of service in our communities as coaches, volunteer drivers for the elderly, readers and community event organizers.***

YMCAs are also the largest provider of child care services in the Commonwealth, providing preschool, before and after school care, and summer day and resident camp programs. One in every five children served by Pennsylvania YMCAs receive subsidized care valued in excess of \$12.8 million. Without this support through the Y, parents may not be able to go to school or work and children would be at home, without supervision, in those critical after school hours. So how do YMCAs in Pennsylvania ensure that no one is denied the opportunity to participate in programs, child care, camp or membership due to economic hardship? Ys have the tremendous support of their communities as demonstrated through a variety of contributed support measures. In 2013, Pennsylvania YMCAs received \$11,303,744 in Annual Support contributions; \$447,227 from partnerships with the United Way; \$685,043 in bequests and legacies from those for whom the Y has had a lasting impact; and, \$3,997,683 in contributions for capital projects. As you can see, Pennsylvanians value the work of the YMCA as a charitable organization in the community.

***At the Sewickley Valley YMCA, more than 1,200 families and individuals received a total of \$400,000 in financial assistance for affordable child care services, summer camp and access to health and wellness programming and facilities last year.***

***Beyond direct financial assistance, the Sewickley Valley YMCA provided 1,400 free trips for 540 seniors who needed transportation to doctor appointments and medical treatments right in our community. We also provided free swim lessons for 136 children who are diagnosed as being on the Autism spectrum. Our Youth and Teen Center is open and free to all middle and high school students in our community who need a safe place in the after school hours where they connect with caring adults, are provided free healthy snacks, receive homework help and stay active and engaged, rather than being in situations where they might find themselves exposed to risky behaviors. Last year, 273 children participated in this free after-school program.***

***We work with our local nonprofit partners to broaden our reach and share our resources to fulfill our missions of meeting community needs. We continue to work with the MoonCrest community in Moon Township and Center for Hope in Ambridge to offer free youth programming, swim lessons and summer camp for impoverished children who live in at-risk communities. Last year, 75 children from these communities came to summer camp for free, and received free swim lessons at our Y. It's a privilege and an honor for us to be able to deliver on our mission in ways that make meaningful differences in the lives of children. Our YMCA has also become the de facto senior center in our community where older adults can gather for a wide range of social, physical and educational activities. Last year, our Sterling Circle older adults group offered free activities and events for its 249 members.***

Unfortunately, the Pennsylvania Supreme Court changed the landscape for charitable organizations, including the Y, in the 2012 Pike County case *Mesivtah Eitz Chaim of Bobov, Inc v. Pike County Board of Assessment Appeals*.

In the *Mesivtah* case, a deeply divided court ruled that the five criteria established by the court in 1985 (often referred to as the HUP test) were a constitutional minimum in determining whether an entity was a purely public charity. It stated that these criteria must be met before the provisions of Act 55 of 1997 (Institutions of Purely Public Charity Act) could even be applied. Charitable organizations knew immediately that this decision would result in tax challenges by governmental entities seeking to replenish their coffers at the expense of local charities.

Shortly after the 2012 Supreme Court decision, circumstances changed dramatically for the Warren County YMCA in rural Warren County, Pennsylvania. Without warning, the Y received notice from the county that their property tax exemption was being revoked on four separate parcels of land, including their main building. The tax bill they received was in excess of \$170,000. Recognizing the damaging impact this tax assessment would have on their ability to serve the community, the Y appealed to the Board of Assessment Appeals. They were denied and immediately filed an appeal in the Warren County Court of Common Pleas.

In the interim, as they await their court date, the Warren County Y has spent tens of thousands of dollars on legal fees preparing to defend their charitable status. As a result, these are dollars not being spent on child care, teen and senior programs and other services the Y provides for the citizens of Warren County.

The community recently rallied behind the Warren County YMCA by packing a county commissioners' meeting and urging the commissioners to drop the challenge. Community members in Warren understand the value of the programs and services the Y offers at affordable costs and recognize that, if the Y is forced to close its doors as a result of a successful challenge, the community will suffer and the county will be forced to bear the burden of paying for these programs and services.

The inconsistency with which courts interpreted the 1985 HUP test was the genesis for the enactment of the Institutions of Purely Public Charity Act in 1997. The General Assembly, in a bipartisan manner, worked with governmental

associations and charitable organizations to craft a law all parties were satisfied would protect the ability of charities to engage in their community work while protecting the fiscal interests of local governments.

For the last 18 years, Act 55 has been the benchmark for determining whether an entity warrants tax exempt status as a purely public charity. The 2012 Mesivtah case has unraveled the work done to enact Act 55 and has essentially rendered the law moot unless a charity can fully document how it meets the 5-prong HUP test. It has created a tremendous sense of uncertainty in the nonprofit community about whether a local government will seek new revenue by revoking long-standing tax exemptions of successful and community-dependent charities.

Make no mistake, the YMCA understands and appreciates the fiscal challenges facing our counties, municipalities and school districts across the Commonwealth. This is why the YMCA and other charitable organizations frequently reach out to local governments to build relationships and partnerships to provide programming.

For example, both the Lebanon Valley Family YMCA and the Central Bucks Family YMCA have worked with neighboring schools to offer **free** afterschool programs for their students. The Clearfield YMCA provides **free** swim lessons for every 3rd grader in their community thanks to a partnership with the school district. These partnerships relieve these school entities of the burden of paying for such programs. Instead, the YMCA provides a safe, nurturing environment for children and absorbs the costs associated with the programs.

The constitutional amendment proposed in Senate Bill 4 would give the General Assembly, the elected representatives of the taxpayers, the final authority to *“Establish uniform standards and qualifications which shall be the criteria to determine qualification as institutions of purely public charity...”* As explained in a legal opinion of the Legislative Reference Bureau, Senate Bill 4 would *“place the authority to define “institution of purely public charity” squarely in the hands of the General Assembly.”* Although some legal scholars have questioned the efficacy of Senate Bill 4, the Reference Bureau states that Senate Bill 4 *“clearly and unequivocally”* provides the final authority to the General Assembly.

It is our belief that Senate Bill 4 will restore the clarity and consistency in determining whether an entity qualifies as a public charity, thus eligible for tax exempt status. The 65 YMCAs in Pennsylvania need this clarity and consistency to continue functioning as they have for 164 years.

The State Alliance supports Senate Bill 4, urges its passage by the Pennsylvania House of Representatives and approval of the voters in November. The Alliance thanks Auditor General Eugene DePasquale for convening these hearings and inviting Pennsylvania YMCAs to participate.

Respectfully submitted,

Trish Hooper

Chief Executive Officer

Sewickley Valley YMCA

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**Pennsylvania Interfaith Impact Network**

## Hearing on the Purely Public Charities Constitutional Amendment March 12, 2015

- Thank you, Mr. DePasquale, for holding this important discussion and allowing me to speak on behalf of the Pennsylvania Interfaith Impact Network.
- My name is Lois Campbell and I am the Executive director of PIIN. The PA Interfaith Impact Network is an organization of congregations of all faiths and denominations from across the state. PIIN draws on our diverse religious traditions to advocate for strong and healthy communities. We are leaders in the effort to ensure that every child can attend a great school, that every job pays a living wage and gives workers a voice on the job, that every family has decent affordable housing, that everyone has access to reliable public transit, and that no matter what neighborhood they reside in, Pennsylvania's families are not only safe from gun violence, but afforded the opportunity and services they need to thrive as human beings.
- The fiscal crises of many of our cities and towns have made these goals more elusive over the years. Budgets for vital public services are increasingly strained at a time when income inequality makes assistance all the more important. Rising taxes have made it still more difficult for families to make ends meet. And as the Auditor General's report makes clear, the rapid growth of not-for-profits – and especially the growth of so-called mega-charities like UPMC – play an important role in these problems.
- This is the context in which we are called to consider the purely public charity constitutional amendment. Essentially this amendment asks us to consider whether or not we should set aside the court's HUP test in order to give the legislature, and only the legislature, the power to determine what is a purely public charity. And while that may sound innocuous, the intent and effect of the amendment is clear: to reduce accountability for mega-charities like UPMC.
- As people in Pittsburgh are aware, the leaders of my organization have been at the front of our city's work to make UPMC more accountable. Frankly, we don't believe that Pittsburgh can be a place where people have good jobs, great schools, excellent transit and so on unless UPMC acts like a real charity. Can any of our towns and cities deliver these things if our largest employers and landowners are not held to the highest of standards and accountable to the communities that subsidize them?
- For this reason, the leaders of PIIN don't think this amendment serves Pennsylvania well at all. Charities must be held to a high standard because when they are not, they burden people instead of lightening their load. I want to repeat that. When charities do not relieve government of burden, when they do not offer a significant portion of their services without charge, when they do not benefit everyone and do not operate entirely free of the private profit motive, when, in short, they do not meet the HUP test, they create more problems than they solve.

- I know that there are many small, excellent charities that are anxious about the HUP test. PANO, the organization of nonprofits in PA, has advocated for the amendment on the grounds that by returning us to the more lax regulatory environment of Act 55, charities are better shielded from challenge and accountability. I think this is true. But it is far from right. If we know, and we do, that we need to address the problem of mega-charities, then we can't support this amendment simply because it also makes our lives more comfortable. We should not help to squelch a much-needed discussion about corporate jets, multi-million dollar salaries, cutting patients off from care, and abuse of workers' rights because we don't want scrutiny ourselves. Are we not in fact called upon to participate in the discussion, and to help address the legitimate and urgent concerns of our cities, townships, municipalities and public service providers, all of whom have publicly opposed this amendment?
- For these reasons PIIN's leadership opposes the purely public charity amendment and calls upon not-for-profit organizations to do the same. We should partner with our host communities and address the problems that we create, not just praise ourselves for fixing the problems we choose to solve. The high standards of the HUP test are about creating a necessary dialogue between charities and their host communities. We ought not to dodge that conversation by seeking instead to enshrine constitutional protections only for ourselves.

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**Testimony of Dean Emeritus Nicholas P. Cafardi**  
**Professor of Law, Duquesne University School of Law**  
**Before the Special Hearing of the Auditor General of Pennsylvania**  
**The Honorable Eugene DePasquale**  
**March 12, 2015**  
**Allegheny County Courthouse**  
**Pittsburgh, PA**

Auditor General DePasquale,

It is an honor to be here today to participate in this Special Hearing on the tax exemption of institutions of purely public charity in the Commonwealth of Pennsylvania.

As Oliver Wendell Holmes, Jr., said, "Taxes are the price we pay for a civilized society." The Uniformity Clause of the Pennsylvania Constitution adds that the burden of paying taxes should fall equally on us all. Accordingly, tax exemption is a privilege, not a right. When some of us do not pay taxes, the rest of us must pay more. So those who seek the privilege of tax exemption must merit it. They must meet the conditions that come with their tax exempt status. And it is certainly a reasonable condition that a tax exempt organization must operate for the benefit of the public. Because after all, in receiving an exemption from taxation, they are being subsidized by the rest of us with the additional taxes that we pay so that they can pay none.

To qualify for a charitable exemption from state or local taxes, an entity must first prove that it is an “institution of purely public charity” under Article VIII, Section 2(a)(v) of the Pennsylvania Constitution. There is currently a dispute in Pennsylvania over who should have the authority to decide what an “institution of purely public charity” is. That is, who should decide what the conditions of tax exemption are.

That authority has historically resided with our state’s Supreme Court, as the interpreter of the Pennsylvania Constitution. The General Assembly, however, would like to change the status quo and become the sole arbiter in this case. It would like to set the conditions of tax exemption and say which institutions meet them, with no interference from the courts, and no review by the courts of their actions. That is what Senate Bill 4, which will be before the voters of Pennsylvania as an amendment to our state constitution this coming November, will arguably do, or what the General Assembly believes it will do.

I think that result would be contrary to the basic principles of our state government. In our constitutional democracy, there is no such thing as a legislative act that is not able to be interpreted or reviewed by the third branch of government, the judiciary. Nor is there a phrase in the Pennsylvania Constitution that the judiciary cannot interpret. That is the source of the General Assembly’s problem. The Pennsylvania Supreme Court has interpreted the phrase “institutions of purely public charity” in our state constitution in a way that the General Assembly finds too narrow. But tax exemptions should be narrow. They should not be broad. Again, they are a privilege that must be merited, not a right. Tax exempt organizations should be required to prove that they are providing a benefit to the citizens of the community whose taxes they are not paying—a quid pro quo whereby they earn their tax exempt status.

In its decision in *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (Pa.1985), the Pennsylvania Supreme Court, based on more than a century of judicial precedent, elaborated the criteria an institution must meet to be deemed a “purely public charity.” That interpretation provides that institutions of purely public charity must: (1) advance a charitable purpose, (2) donate or render gratuitously a substantial portion of its services, (3) benefit persons who are legitimate subjects of charity, (4) relieve the government of some of its burden and (5) operate entirely free from a private profit motive. That standard is nothing more than the common law of charities. It clearly and carefully explains what an organization that calls itself a public charity must do to benefit the citizens of the community, and in doing so deserve the privilege of tax exemption. It is how the courts have defined purely public charities—the phrase used in our state constitution—for more than a century.

The General Assembly has already tried once to weaken or water down the Supreme Court’s standard with Act 55, passed in 1997. Act 55, which is widely known to have been written by lobbyists for the industrialized charity sector, was purportedly meant to codify the HUP case, but was really an attempt to loosen the Supreme Court’s definition of purely public charity by including new terms and provisions. One glaring example of the General Assembly’s attempt to broaden the definition of purely public charity and confer tax exempt status to a group not deserving the privilege can be found in the Act 55 provision concerning whether an organization “operates entirely free from a private profit motive.” That section provides that an organization operates entirely free from a private profit motive as long as “Compensation, including benefits, of any director, officer or employee is not based primarily upon the financial performance of the institution.” Did you catch the modifying word “primarily”? That one word

allows huge industrialized charities to pay bonuses to their executives based on their profits, an act generally considered to be a clear indication of a private profit motive, as long as the bonus is not the biggest part of their compensation. In other words, as long as the executives' regular salary is bigger than their bonus, it is acceptable. This is the exact opposite of what a charity is supposed to do. Any profits that a charity makes must stay with the charity to further the organization's charitable works, not go to enrich its executives. The Supreme Court subsequently ruled that HUP was the definition by which organizations must be measured for purposes of determining whether they are a "purely public charity," without regard to the provisions of Act 55; once an organization establishes that it meets the HUP test, it can then show that it meets the requirements of Act 55. In the same ruling, the Supreme Court reasoned that Article VIII, Section 2 of the Pennsylvania Constitution "was designed not to grant, but limit, legislative authority to create tax exemptions." That brings us to the present day and the General Assembly's efforts to amend our state constitution to obtain authority it was not ever meant to have.

The enactment of Act 55 is just one example of what the General Assembly has tried to do in its attempts to satisfy the industrialized charity sector. And Act 55 was enacted with the current Supreme Court definition of purely public charities in place. Imagine what the General Assembly would do if the proposed amendment in Senate Bill 4 passes, and they succeed in displacing the Pennsylvania Supreme Court as the arbiter of what the words "purely public charity" in our state constitution mean? If local municipalities believe that their tax dollars are short due to the unconscionable expansion of the concept of purely public charity as it stands now, then they are in for a brave new world that is much worse if the General Assembly gets the power that it seeks with this amendment to our state constitution. The resulting contraction of the tax base will significantly affect all Pennsylvania tax payers and governmental entities, and benefit few others than the industrialized charity sector.

In summary, tax exemption is a privilege, which needs to be earned. Our state constitution provides that "institutions of purely public charity" may be exempted from taxation. The Pennsylvania Supreme Court has interpreted what it means to be an "institution of purely public charity" with reference to the manner in which the organization in question benefits the public. The General Assembly believes the Supreme Court's standard is too narrow but there is nothing wrong or inconsistent with the standards for exemption being narrow. These standards should demand that an organization not paying taxes provide the benefits that the Supreme Court describes for the rest of us who are paying our taxes. That is a simple, and reasonable, quid pro quo.

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