[J-73-2011][M.O. – Eakin, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
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.[1] 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

[1] 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.[2] 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

[2] 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.