

STATE OF MICHIGAN  
IN THE SUPREME COURT

**BARUCH SLS, INC.,**

**Petitioner-Appellant,**

v.

**TOWNSHIP OF TITTABAWASSEE,**

**Respondent-Appellee.**

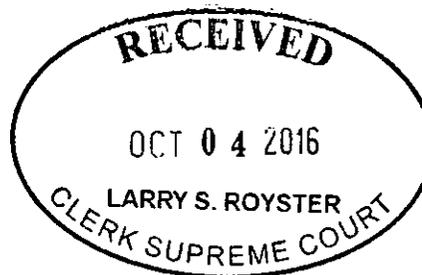
**Supreme Court No. 152047**

**Court of Appeals No. 319953**

**Michigan Tax Tribunal Nos.  
0395010, 0415093, 0395010,  
& 0415093**

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**AMICUS BRIEF**

**AND**

**BRIEF IN SUPPORT OF MOTIONS OF**

**AMICUS CURIAE TRINITY HEALTH MICHIGAN, INC.  
(D/B/A SAINT JOSEPH MERCY HEALTH SYSTEM)**

**FOR LEAVE TO FILE A BRIEF AMICUS CURIAE**

**AND**

**FOR LEAVE TO FILE OUT OF TIME**

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## INTRODUCTION

Without excuse or explanation, and without moving for leave to file out of time, the Michigan Township Association (“MTA”), joined by four other associations,<sup>1</sup> and the City of Dexter and the Dexter Downtown Authority (collectively “Dexter”)<sup>2</sup> moved for and were granted leave to file amicus briefs that were, respectively, 53 and 69 days out of time.

All seven of these late-filing amici represent taxing authorities. Dexter represents two of the three taxing authorities in the Chelsea Health & Wellness Foundation’s (the “Foundation”) appeal from the MTT. Dexter advances arguments that, because they were filed after the simultaneous filing deadlines of May 13 and June 3 provided by this Court’s April 1 order directing oral argument on Baruch’s application, were prepared with the benefit of reviewing the timely filed briefs of the parties and all other amici (including the Foundation). Sadly, Dexter’s arguments mischaracterize the Foundation’s position and contain factual assertions concerning the Foundation and its appeal in *Chelsea v Dexter* that are inaccurate and appear to be designed to inflame the Court against the Foundation’s meritorious claim for charitable exemption rather than to illuminate the questions that the April 1 Order directed the parties and amici to address. MTA and Dexter seek to have the last word, and thereby influence in their favor the outcome of Baruch’s appeal, because the decision here may influence the outcome on one of the two exemption claims involved in Foundation’s appeal: Both *Baruch* and the Foundation claim

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<sup>1</sup> In addition to the MTA, the Michigan Municipal League, the Michigan Association of Counties, the Michigan Association of School Boards, and the State Bar’s Public Corporation Law Section joined in the MTA amicus filing. All are referred to collectively as “MTA” for brevity’s sake.

<sup>2</sup> The City of Dexter and the Dexter Downtown Authority Dexter are two of the three taxing authorities involved as parties to the appeal of amicus Chelsea Health & Wellness Foundation (D/B/A Five Healthy Towns Foundation) in *Chelsea Health & Wellness Foundation v Scio Township and Interveners City of Dexter, Dexter DDA and Michigan Department of Treasury*, MTT Docket No. 14-001671, Court of Appeals Docket No. 332483.

exemption under MCL § 211.7o(1), and their arguments on appeal on that claim turn on the proper interpretation and application of Factor 3 of the test for charitable exemption under §7o(1) that this Court articulated in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

For the reasons outlined in paragraph 2 of its motion, which Trinity incorporates here by reference, Trinity, as the settlor of the trust that funds the Foundation's charitable efforts to promote the health and well-being of *all* of the residents of the communities it serves, is directly interested in and concerned with the outcome of the Foundation's appeal. For the same reasons, it is concerned with the outcome of Baruch's appeal, in which this Court will address one of the two controlling issues in the Foundation's appeal.

Trinity recognizes that the Court should have the benefit of argument by all interested parties when deciding questions as important as the one presented here. Trinity submits that, because the charitable purposes Trinity sought to advance by establishing and endowing the Foundation may be jeopardized if the inaccurate arguments and factual assertions in the MTA and Dexter amicus briefs go unchallenged, the Court should have the benefit of Trinity's response to them. MTA and Dexter mischaracterize facts central to the Foundation's case, and their arguments side-step the Foundation's argument that, as interpreted by the lower courts, the third and fifth *Wexford*<sup>3</sup> factors are in irreconcilable tension. Like the courts that have interpreted Factor 3, MTA and Dexter contend that unlimited service to the needy is the *sine qua non* of charitable exemption. This interpretation is incompatible with *Wexford's* clear requirement that "to qualify for a charitable or benevolent tax exemption, property must be used

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<sup>3</sup> *Wexford Med Grp v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006).

in such a way that it ‘benefit[s] the general public without restriction.’”<sup>4</sup> That both amici mischaracterize and fail to address the Foundation’s arguments on their merits is telling, and should inform this Court’s deliberations on the knotty issues stated in the Order of April 1.

## ARGUMENT

### I. ARGUMENTS ADVANCED BY SOME AMICI DO NOT ADDRESS THE DILEMMA THAT THE CURRENT INTERPRETATION OF *WEXFORD’S* FACTOR 3 POSES FOR CHARITABLE EXEMPTION CLAIMANTS.

The Foundation’s amicus brief argues that the current interpretation of *Wexford’s* Factor 3 poses a dilemma for charitable organizations seeking a property tax exemption under MCL § 211.7o: whenever a charitable organization devises a mechanism to meet the needs of low income members of the group it seeks to serve that falls short of unconditionally providing free services to an unlimited number of indigent persons, it will not pass muster under *Wexford’s* Factor 3 as it is currently interpreted. See Foundation Amicus Brief, at 4-5. Despite the ample opportunity to address that argument that waiting until two months after their briefs were due afforded them, the MTA and Dexter do not respond to it.<sup>5</sup> Instead, most of the MTA’s

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<sup>4</sup> *Wexford, supra*, 474 Mich at 206-207, 211, citing and quoting *Auditor General v R. B. Smith Mem. Hosp Ass’n*, 293 Mich 36, 38-39; 291 NW2d 213 (1940), *Michigan Baptist Homes & Dev. Co. v City of Ann Arbor*, 396 Mich 660, 671; 242 NW2d 749 (1976); *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc., v Sylvan Twp.*, 416 Mich 340, 348; 330 NW2d 682 (1982)

<sup>5</sup> MTA came close to acknowledging this dilemma, but evaded discussing it by claiming that it “misses the point,” because “[t]his Court’s Order did not direct briefing on that part [*Wexford* 5] of the test.” MTA Brief, at 13, and n3. Later, the MTA again skirted this argument, asserting that the Court need not concern itself with this dilemma because “[c]harities have continued to survive and thrive in the ten years since *Wexford Medical Group*.” *Id.* at 26. But, as the Foundation noted in its amicus brief, MTA’s glib assertion not only disregards the problem that prompted this Court’s April 1 Order to address the proper interpretation of Factor 3’s “discrimination” prohibition, it also ignores the obvious tension between Factor 3 and Factor 5 that causes the interpretational problem the Court directed the parties to address.

Similarly, though Dexter claims to have a “unique perspective and analysis” on the issue, it offers only the predictable point of view of taxing authorities that seek to reap revenue from

arguments in support of denying Baruch's Application actually highlight this dilemma, because they proceed from the implicit assumption – which has no support in the language of the statute – that if a charity is to be tax exempt it must be for the benefit of the needy, and must confer that benefit without limitation. This is the same incorrect assumption underlying the lower courts' interpretation of the meaning of "discriminatory" as it is used in Factor 3 of the *Wexford* test.

MTA insists that "charity should be conferred on an 'open access' or 'first-come, first-served' basis," citing the petitioner in *Wexford* as an illustration. MTA Brief, at 18. According to MTA, if the petitioner in *Wexford* "had offered unfettered health care access to patients who could pay, but imposed burdensome requirements on Medicare or Medicaid patients," this Court "likely" would have reached a different result. *Id.* Later, the MTA states that "a charity opens its doors to those who need it, on a first-come, first-served basis, like the taxpayer in *Wexford Medical Group.*" *Id.*, at 19.

Trinity submits that this is *exactly* the Hobson's choice confronting charities under the current interpretation of *Wexford's* Factor 3: to qualify for exemption under the interpretation of the courts below and supported by MTA and Dexter, an applicant (a) may not identify or verify low income eligibility for free or reduced-charge access to a fee-based charity program, and (b) must provide free charitable services to all who need and demand them, regardless of whether

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the Foundation's \$4 million investment in its Dexter Facility by depriving it of the charitable exemption the Scio Township assessor agreed would be appropriate before the Foundation made that investment. Not only is Dexter's argument not "unique," it actually highlights the flaw in the lower courts' interpretation of *Wexford* that has posed such a substantial obstacle to charitable tax exemption, that is, the notion that, to be considered a "charitable institution" eligible for exemption under MCL 211.7o, the claimant must exist and operate solely, or at least primarily, to serve the needy, and that any limitation upon the service available to the needy, or, indeed, any effort even to identify them in order to accommodate them, constitutes "discrimination" that will disqualify a claimant from charitable tax exemption. Thus, Dexter states that "if only 10% of the persons purportedly being served are receiving 'charity,' then a tax exemption would really benefit the other 90% of persons being served." Dexter Brief, at 14.

the charity can afford to serve them all. Short of divine intervention, this “loaves and fishes” interpretation of Factor 3’s prohibition against “discrimination” requires the impossible of charities with limited means. Yet both Dexter and MTA contend that if the charity fails to meet either of these conditions, it fails Factor 3 of the *Wexford* test and is ineligible for exemption under MCL § 211.7o, on the ground that it “discriminates” against those who cannot afford to pay for the benefit. Neither MTA nor Dexter provides any analysis of how reviewing courts are to harmonize the competing directives of *Wexford* 3 and *Wexford* 5.

Especially unpersuasive and unilluminating is MTA’s doomsday forecast that “[i]f this [requirement] were not included, then any non-profit organization could provide ‘charity’ to a select few individuals of its choosing, without offering those benefits to anyone else, and claim a property tax exemption.” MTA Brief, at 18. Dexter’s assertion that “if only 10% of the persons purportedly being served are receiving ‘charity,’ then a tax exemption would really benefit the other 90% of persons being served,” Dexter Brief, at 14, echoes the same superficial view. MTA purports to illustrate the “danger” it describes with a hypothetical that actually highlights why its argument is incorrect. In MTA’s hypothetical, a nonprofit sorority claims exemption on the ground that it provides free tutoring to its members. MTA mistakenly asserts that, under the Foundation’s interpretation of Factor 3, the sorority would be exempt from property taxation by virtue of offering this “charitable” service to its own members. *Id.*

MTA and Dexter both overlook that, *as the Foundation’s argument stresses*, (1) the *Wexford* test has *six* parts, and (2) any exemption claim based on the hypotheticals they posit would fail because they do not satisfy the other five *Wexford* factors that their facile analysis ignores. MTA’s hypothetical sorority could qualify for a property tax exemption under MCL § 211.7o only if it also proved under Factor 2 that it was “organized chiefly if not solely for

charity;” that it provided a gift of the type required by Factor 4; that it charged no more than necessary for its successful maintenance, as Factor 5 requires; and that it occupied its sorority house “solely for the charitable purposes for which it is organized,” as the third component of MCL 211.7o requires. Even if the MTA or Dexter could shoehorn their absurd and patently non-exempt “hypotheticals” into their inaccurate portrayal of the Foundation’s view of the correct operation and application of Factor 3, they would still fail to satisfy the other *Wexford* factors. Their “hypotheticals” are merely caricatures, “straw men” set up only to be knocked down. Certainly they contribute nothing to analyzing the problems this Court directed the parties and amici to address, which the Foundation has articulated and analyzed by reference to the authorities cited, and the reasoning employed, in this Court’s opinion in *Wexford*, which Dexter and MTA have essentially ignored. Their hypotheticals are useless as analytical tools, because they ignore that an exemption claimant must satisfy *all six* factors of the *Wexford* test, as well as the requirement that the charitable institution occupy the subject property solely for the charitable purposes for which it is organized. The arguments Dexter and MTA advance are merely *in terrorem*, and collapse upon close examination.

MTA’s “sorority” hypothetical also highlights why its claim is incorrect that, because this Court’s April 1 order did not direct the parties to discuss Factor 5, the Foundation’s argument that the current interpretation of Factor 3 cannot be reconciled with Factor 5 “missed the point”: the six *Wexford* factors necessarily operate *together* to produce an answer to whether a claimant is a charitable institution, so all must be considered in determining whether Factor 3 has been properly interpreted. Because all six factors necessarily *interact*, Factor 3 cannot be analyzed in isolation, without reference to the other 5. The hypotheticals Dexter and MTA posit are useful only to illustrate that fundamental point, which neither seems to grasp. That Factor 5 entitles an

exemption claimant to impose on those who can afford it a reasonable charge equal to the cost of rendering the charitable service it provides *necessarily* qualifies Factor 3's prohibition against discrimination to preclude a finding that a charity's effort to identify and assist a recipient who *cannot* afford that charge is guilty of discrimination. It is actually MTA that "missed the point": Factor 3 cannot be analyzed or applied by itself, because it operates in conjunction with the other five factors to test a claim for exemption.

**II. THE COURT SHOULD NOT BE DIVERTED FROM EXAMINING THE SUGGESTIONS THE FOUNDATION OFFERED IN RESPONSE TO THE ORDER OF APRIL 1 FOR DEVISING A PROPER INTERPRETATION OF FACTOR 3.**

After side-stepping one of the Foundation's primary arguments, MTA mischaracterized another, claiming that the Foundation "advocates a reading of 'discrimination' that would allow charities to discriminate against the poor." *Id.* Dexter's Brief echoes that claim, at pages 13-15. Disappointingly, the MTA goes so far as to accuse the Foundation of "endors[ing] discrimination against the poor." *Id.* at 20. To the same effect is Dexter's assertion that the Foundation seeks to "reap an advantage" for the "benefit the other 90% of persons being served who are not needy by discriminating against the 10 % who are." Dexter Brief, at 14.

The Foundation certainly does not advocate or engage in discriminating against poor people. The Foundation actually argues that, although Factor 3's anti-discrimination requirement is not the proper test to apply to determine whether a charity adequately provides services to the low-income members of the general public that every charity must serve, *that does not mean* that a charity is relieved of its burden to serve those individuals. Rather, other *Wexford* factors, clearly including factors 2, 4 and 6, may be used to determine whether a charity adequately serves the needs of the poor. See Foundation Brief, at 9, 17-18. In addition, the Court might consider adding a new "Factor 7" that specifically obligates a charitable

organization to consider whether the poor are adequately represented among those benefited by the charitable services it provides, “*as they undoubtedly must be.*” *Id.* at 18.

At *no point* does the Foundation advocate a holding that “endorses” discrimination against the poor; such a suggestion seems designed only to inflame the Court and divert it from analyzing dispassionately the questions posed in its Order of April 1. The Foundation advocates only a common-sense reading of *Wexford* that will enable those who, like Trinity and the Foundation, plan, create, and administer tax-exempt charitable institutions, and the courts that evaluate the claims of those charitable institutions for charitable exemption, to determine reliably, in advance, whether they adequately address the needs of the indigent, *consistent with the limited resources available to carry out their charitable mission and the plainly stated requirement that “to qualify for a charitable or benevolent tax exemption, property must be used in such a way that it ‘benefit[s] the general public without restriction.’”* *Wexford, supra*, 474 Mich at 206-207, 211 (emphasis added).

**III. FOCUSING FACTOR 3’S PROHIBITION ON THE PROTECTION OF ALL “SUSPECT CLASSES,” RATHER THAN SOLELY ON THE NEEDY, IS CONSISTENT WITH WEXFORD’S REQUIREMENT THAT EXEMPT PROPERTY MUST BE USED TO ‘BENEFIT THE GENERAL PUBLIC WITHOUT RESTRICTION.’”**

MTA and Dexter say that the Foundation advocates discrimination against the poor, and argues that “a ‘charitable organization’ should be allowed to discriminate against *anyone*, as long as it does not discriminate against members of a ‘suspect class.’” MTA Brief, at 23.<sup>6</sup> Trinity submits that such assertions reflect a complete misunderstanding of the Foundation’s argument. The Foundation does not advocate discrimination in any form. Rather, the Foundation contends only that *Wexford’s* prohibition against “discrimination” is best understood in the context of

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<sup>6</sup> Dexter’s Brief is essentially silent on this aspect of the Foundation’s argument, because it does not even acknowledge what the Foundation actually argued, instead mischaracterizing the Foundation’s argument, as described above.

*Wexford's* statements repeatedly emphasizing that an exempt charitable purpose must promote "the general welfare of the public," without discrimination against any segment of the general public forbidden by law. That prohibition against discrimination necessarily extends to members of the general public who are *both* indigent *and* included within any category against which discrimination is forbidden, and to whom the charitable service is offered. If that means that they must be assisted financially to ensure that they have access, it is because they are members of a class against which discrimination is prohibited by law (Factor 3), Foundation Brief, at 9, as well as because they are members of the class for whose benefit the charity was established, because the charity is operated chiefly, if not solely for charity (Factor 2), and because an exempt charity must be operated to lessen the burdens of government, for the benefit of the "the general public without restriction" (Factor 4). See *Wexford*, 474 Mich at 211, 215; Foundation Brief, at 17.

The only two reasons MTA cites to support its contention that the discrimination prohibited under *Wexford's* Factor 3 cannot apply only to recognized suspect classes, and must also extend to the poor as a separate class, do not withstand scrutiny.

First, MTA argues that the Foundation's interpretation fails because "discrimination against suspect classes is already prohibited under the law," citing the Elliot-Larsen Civil Rights Act ("ELCRA"), Act 453 of 1976, MCL 37.2101, *et seq.*, and the prohibition against racial discrimination in § 501(C)(3) of the Internal Revenue Code. MTA Brief, at 24.

With respect to its ELCRA argument, the MTA's rhetorical question ("If discrimination against protected classes is already prohibited, why would this Court *add* nondiscrimination as a discrete factor?"), at page 24-25 of its Brief, overlooks two things: First, the judicially

articulated<sup>7</sup> prohibition against discrimination embodied in Factor 3 of *Wexford's* six-factor test antedates the subsequent legislative prohibitions against discrimination that the MTA cites. The *Wexford* Court traced Factor 3's prohibition of discrimination to a decision announced in 1940, more than 35 years before ELCRA's enactment. See *Auditor General v R B Smith Mem Hosp Ass'n*, 293 Mich 36, 38; 291 NW 213 (1940) ("In general, it may be said that any body not organized for profit, which has for its purpose the promotion of the general welfare of the public, expending its benefits without discrimination as to *race, color or creed*, is a charitable or benevolent organization within the meaning of the tax exemption statutes."). See Foundation Brief at 8-9.

Second, because an otherwise charitable organization may not be a place of "public accommodation"<sup>8</sup> within the meaning of ELCRA, it makes sense to recognize a separate prohibition against discrimination extending to the same suspect classes it recognizes, to ensure that an applicant for a charitable property tax exemption that falls outside ELCRA's protection, but that discriminates against a suspect class, will be ineligible for tax exemption. Therefore, it is

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<sup>7</sup> Section 7o contains no expressed prohibition against "discrimination."

<sup>8</sup> MCL 37.2301(a) defines a "place of public accommodation" to "mean[] a business, or an educational, refreshment, entertainment, recreation, health, or transportation facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public." By contrast, a charitable institution is permitted to limit the services it provides to a specific, selected segment of the general public in need of the particular charitable service it offers. A charity that provides prostheses to amputees does not discriminate when it does not offer them to persons fortunate enough to have all of their limbs.

Similarly unpersuasive is the MTA's reliance on IRC § 501(C)(3), which prohibits only racial discrimination, and thus affords no protection against discrimination to the 6 other classes protected by ELCRA § 302(a), which extends its protections to "religion, race, color, national origin, age, sex, or marital status." It is entirely understandable, then, that in formulating its test, the *Wexford* Court would choose to carry forward, in modern form and extent, the prohibition against "discrimination" this Court first enunciated in a more rudimentary form in 1940, and thereby afford protection to the additional suspect classes to which the Legislature has since extended protection, who are unprotected by the IRC's simpler, and far narrower, prohibition against racial discrimination.

entirely appropriate to interpret Factor 3's prohibition against discrimination as applying only to *recognized* suspect classes, rather than judicially recognizing, and engrafting into the judicially articulated prohibition against "discrimination," a new suspect class (the needy) to which the legislature has not chosen to extend ELCRA's protections, and then applying that factor primarily, indeed, almost exclusively, for their benefit.

In any case, MTA cites no authority for the proposition that, in designing the charitable exemption, the Legislature either expressly provided or implicitly intended that the indigent would constitute a separate suspect class, *or that it would be deemed "discrimination" against that class to identify its members so that they could be accommodated*, as the MTT held in the Foundation's case.

Finally, MTA argues that, because the *Wexford* Court "made no mention of race, color, or creed when discussing petitioner's policies," the "discriminatory basis" factor includes more than just legislatively recognized "suspect classes." MTA Brief, at 25.

Not so. *Wexford's* "open-access" policy is explicitly rooted in its discussion of and reliance upon the holdings in *Michigan Baptist Homes & Dev Co v City of Ann Arbor*, 396 Mich 660; 242 NW2d 749 (1976), and *Retirement Homes of Detroit Annual Conference of United Methodist Church, Inc v Sylvan Twp, Washtenaw Cty*, 416 Mich 340; 330 NW2d 682 (1982). Those cases, in turn, rested their holdings on different considerations, *not on a stand-alone non-discrimination requirement*.

For example, in *Michigan Baptist*, after concluding that exempt property must be used in such a way that it "benefits *the general public* without restriction" (emphasis added), the Court held that the plaintiff was not entitled to a property tax exemption *because it did not occupy the subject property solely for the purposes for which it was incorporated*. *Id.* at 671 ("We are of the

opinion that Hillside Terrace was not occupied for what would traditionally be called charitable or benevolent objectives during the years in question.”). This is a straightforward application of the requirement embodied in Factor 2 of the *Wexford* test, which requires that a “charitable institution” is one that is organized chiefly, if not solely, for charity.” *Wexford, supra*, 474 Mich at 215.

Later, the *Retirement Homes* Court found “*Michigan Baptist Homes* [] controlling,” and similarly held that the plaintiff did not occupy the subject property solely for the purposes for which it was incorporated, *because it did not provide “a gift for the benefit of the general public.”* *Id.* at 349 (emphasis added).

Again, the analysis in the cases on which *Wexford* relies reflects application of at least three of the *Wexford* factors,<sup>9</sup> so the *Wexford* Court’s holding, and its reliance upon these cases, is consistent with the Foundation’s argument that *Wexford* Factor 3 is properly understood as precluding discrimination against suspect classes, and that accommodations for the poor can be properly assured by reference to the other *Wexford* factors, or at least by clarifying the meaning of Factor 3 to allow a charity to accommodate the needs of the poor it serves in a manner consistent with limitations imposed by its resources, *as Factor 5 explicitly allows.*

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

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

(4) A “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.” *Wexford*, 474 Mich at 215.

Contrary to the interpretation that MTA and Dexter urge, and contrary to the view the MTT and courts below have embraced and enforced by denying exemption, this Court stated expressly in *Wexford* that *Factor 3's prohibition against discrimination cannot be equated with a requirement that a charity must serve all who require, desire, or need the charitable service offered:*

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

*From these precepts, it naturally follows that each case is unique and deserving of separate examination. Consequently, there can be no threshold imposed under the statute. The Legislature provided no measuring device with which to gauge an institution's charitable composition, and we cannot presuppose the existence of one. To say that an institution must devote a certain percentage of its time or resources to charity before it merits a tax exemption places an artificial parameter on the charitable institution statute that is unsanctioned by the Legislature. [*Wexford*, 474 Mich at 213 (emphasis added).]*

It follows from this Court's own explication of the meaning of "discrimination" that the reading of *Wexford* for which amici advocate does not take fully into account the analysis contained in this Court's opinion in *Wexford*.

**IV. CHARACTERIZATIONS OF THE FOUNDATION'S POLICIES FOR EXTENDING ITS SERVICES TO THE INDIGENT AS "DISCRIMINATORY" ARE BOTH INCORRECT AND NEEDLESSLY INFLAMMATORY.**

Certain amicus arguments mischaracterize Foundation policies that implement the charitable purposes for which Trinity created and funded the Foundation. These impel Trinity to offer a short response.

First, The MTA inaccurately claims that "additional requirements" imposed on "individuals who cannot afford the \$185/month membership fee . . . makes (sic) it harder for the poor to receive the benefits of [the wellness center]." MTA Brief at 21. In fact, a membership at the Dexter Wellness Center is \$69 per month, and undisputed testimony established that (1) any participant who showed a continuing financial hardship may obtain an indefinite 50% dues reduction, and (2) no scholarship applicant who could not afford even that reduced rate had *ever* been turned away.<sup>10</sup> The MTT Opinion attached to the Foundation's amicus brief recites these undisputed facts.<sup>11</sup>

Factual inaccuracies in Dexter's argument are especially troubling. Dexter scoffs at the notion that any tension results from the current interpretation of *Wexford* Factors 3 and 5, or that

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<sup>10</sup> On January 11, 2016, Brian Hummert testified that the average monthly rate at the Foundation's Dexter Facility was \$57 for the month sampled; the average rate varied by month in a range from \$52-\$57. Tr, 226.

<sup>11</sup> Nor do scholarship members who do not use the wellness center twice a week lose their scholarship: the unrefuted testimony at the hearing also established that the usage requirement has never been used to terminate a scholarship. In fact, consistent with Trinity's goal in establishing the Foundation of enhancing the health and wellness of all members of the communities it serves, the testimony showed that the Foundation actively promotes its scholarship program and that, after a slow start, scholarship awards have increased annually as the program has been publicized and made known to community members. MTT Opinion, at 42-45. The MTT nevertheless denied exemption, on the ground that the Foundation, "failed to meet its burden in [sic] proving that Petitioner *serves any person who needs the particular type of charity being offered,*" even while acknowledging that the taxing authorities had "failed to show a single case in which a potential member was turned down or terminated for lack of payment." *Id.*, at 45 (emphasis in original).

this tension poses any financial peril for charities, referring to such a claim as “sophistry,” and asserting that “there are no facts to support this claim.” Brief, at p. 15. Dexter itself introduced audited financial statements reflecting the millions the Foundation lost during the tax periods at issue. Such misstatements<sup>12</sup> detract from the accuracy of the presentation that an amicus ought to provide to assist this Court in answering the questions it posed in its April 1 Order.

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<sup>12</sup> Dexter several times mischaracterizes the Foundation’s Dexter Facility as a “fitness center,” and a “large, high-end, fitness center facility.” Brief, pp 2, 4. The MTT specifically rejected this contention. MTT Opinion, at 37 (“Petitioner has shown that the subject is a medically integrated wellness center, certified by the Medical Fitness Association (“MFA”).”). Not only does Dexter persist in this meritless vein, despite the MTT’s complete rejection of that contention, in a puzzling *non sequitur*, Dexter purports to “support” it by asserting that “no medical services were provided at the fitness center, including no physical therapists, occupational therapists, doctors, or nurses.” *Id.* at 4. The Foundation has never contended that its facility offers *medical services*, or that it should be exempt from taxation on that ground. It contributes nothing to this Court’s consideration of the questions it posed in its Order of April 1 to introduce such inaccuracy into the discussion.

Trinity endowed and established the Foundation to promote the health and well-being of the residents of the communities it serves by promoting exercise, proper diet, and restorative programs that advance those goals. It is *undisputed* that the Foundation’s Facility is certified by the Medical Fitness Association (“MFA”) as a *medically-integrated health and wellness facility*; that *all of its staff are degreed and certified*, most by the American College of Sports Medicine (“ACSM”); that MFA certification requires fitness specialists on staff to have at least a bachelor's degree in *exercise science, kinesiology, or another health-related field*; and that the majority are ACSM-certified.

To be certified by the MFA, *a wellness center must have, among other things, at least three clinical fitness programs for people with chronic medical conditions, such as heart disease, pulmonary disease, cancer, chronic pain, orthopedic and/or neurological problems, cerebrovascular disease “stroke,” sports injury prevention, and rehabilitation neutral counseling*, among others. *It must offer preventive programs not only to members, but to the community at large, especially the disabled population.* It also must offer certain types of programming for people with chronic illnesses and other health conditions. *A certified medically integrated wellness center also is required to maintain a relationship with a hospital or a health system and an open line of communication with referring physicians and other healthcare providers.*

All of this evidence is undisputed. Trinity offers these comments only to ensure that this Court will not be deflected from considering the Foundation’s arguments by apparent efforts to discredit the Foundation by characterizing its Facility as a “large, high-end, fitness center.” Such an assertion is not merely unsupported by the record, it unfairly diminishes and disparages the important charitable objective of promoting the health and well-being of the communities it serves that Trinity set for the Foundation when it established and endowed it.

**CONCLUSION AND RELIEF**

The late-filed amicus briefs contain several flaws, the foremost their failure to address the Foundation's argument that the current interpretation of the third and fifth *Wexford* factors results in irreconcilable demands upon charitable organizations seeking tax exemption under MCL § 211.7o. Most fundamentally, because these amici offer no valid reason for denying leave to appeal, Trinity urges the Court to grant Baruch SLS, Inc.'s application, and to use this case to clarify for the courts and the Tax Tribunal how to apply the factors described in *Wexford* in a way that eliminates the tension that now exists between Factors 3 and 5.

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