

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
William B. Murphy, Patrick M. Meter, and Deborah A. Servitto

On appeal from the Michigan Tax Tribunal
Tribunal Judge Steven H. Lasher

SBC HEALTH MIDWEST, INC.

Petitioner-Appellee,

v

CITY OF KENTWOOD

Petitioner-Appellant.

Supreme Court No. 151524

Court of Appeals No. 319428

Michigan Tax Tribunal No. 416230

AMICUS CURIAE BRIEF OF THE MICHIGAN MANUFACTURERS ASSOCIATION

ORAL ARGUMENT NOT REQUESTED

Submitted by:

Stephanie A. Douglas (P70272)

Jessica R. Vartanian (P74213)

Bush Seyferth & Paige PLLC

3001 W. Big Beaver Road, Suite 600

Troy, MI 48084

(248) 822-7800

Attorneys for *Amicus Curiae* Michigan
Manufacturers Association

TABLE OF CONTENTS

TABLE OF CONTENTS i

INDEX OF AUTHORITIES..... ii

STATEMENT OF QUESTIONS PRESENTED..... v

STANDARD OF REVIEW 1

ARGUMENT..... 1

I. The proper interpretation of a tax exemption requires strict adherence to its unambiguous language..... 1

II. A constitutional requirement for exemption of one group does not preclude the Legislature from enacting an exemption for another. 6

CONCLUSION 9

INDEX OF AUTHORITIES

Cases

<i>Aroma Wines & Equip, Inc v Columbian Distribution Servs, Inc,</i> 497 Mich 337 (2015).....	2
<i>Bonner v City of Brighton,</i> 495 Mich 209 (2014).....	1
<i>Briggs Tax Serv, LLC v Detroit Pub Sch,</i> 48 Mich 69 (2010).....	1
<i>Citizens for Unif Taxation v Northport Pub Sch Dist,</i> 239 Mich App 284 (2000).....	8
<i>Coal of State Emp Unions v State,</i> 498 Mich 312 (2015).....	10
<i>Cowen v Dep't of Treasury,</i> 204 Mich App 428 (1994).....	5
<i>Dep't of Agric v Appletree Mktg, LLC,</i> 485 Mich 1 (2010).....	2
<i>Elias Bros Restaurants, Inc v Treasury Dep't,</i> 452 Mich 144 (1996).....	11
<i>Hudson Motor Car Co v City of Detroit,</i> 282 Mich 69 (1937).....	8
<i>In re Request for Advisory Opinion Regarding Constitutionality of 2005 Pa. 71,</i> 479 Mich 1 (2007).....	9
<i>In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38,</i> 490 Mich 295 (2011).....	8
<i>Koontz v Ameritech Servs, Inc,</i> 466 Mich 304 (2002).....	4
<i>Ladies Literary Club v City of Grand Rapids,</i> 409 Mich 748 (1980).....	7
<i>Mayor of City of Lansing v Mich Pub Serv Comm'n,</i> 470 Mich 154 (2004).....	3
<i>Mich United Conservation Clubs v Lansing Twp,</i> 423 Mich 661 (1985).....	5
<i>Michigan Dep't of Transp v Tomkins,</i> 481 Mich 184 (2008).....	10
<i>Mull v Equitable Life Assur Soc of US,</i> 444 Mich 508 (1994).....	3
<i>People v Schaefer,</i> 473 Mich 418 (2005).....	2
<i>People v Smith,</i> 423 Mich 427 (1985).....	4
<i>Phillips v Mirac, Inc,</i> 470 Mich 415 (2004).....	9
<i>Stone v Williamson,</i> 482 Mich 144 (2008).....	2
<i>Straus v Governor,</i> 459 Mich 526 (1999).....	10

<i>Tyler v Livonia Pub Sch</i> , 459 Mich 382 (1999).....	3
<i>US Fid Ins & Guar Co v Mich Catastrophic Claims Ass’n</i> , 484 Mich 1 (2009).....	5
<i>Voorhies v Faust</i> , 220 Mich 155 (1922).....	3
<i>W Mich Univ Bd of Control v Michigan</i> , 455 Mich 531 (1997).....	5
<i>Wayne Cnty v City of Detroit</i> , 17 Mich 390 (1868).....	9
<i>White v United States</i> , 305 US 281 (1938).....	5
<i>Woodward v Custer</i> , 476 Mich 545 (2006).....	4
Statutes	
MCL 205.94o.....	11
MCL 211.7n.....	3, 4, 5, 6
MCL 211.9.....	passim
Other Authorities	
Const 1963, art 9, § 4.....	7, 9, 10, 11
Const 1963, art. 9, § 1.....	8
Const 1963, art. 9, § 2.....	8
Const 1963, art. 9, § 3.....	8
Scalia & Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (St Paul Thomson—West, 2012).....	6

STATEMENT OF INTEREST OF *AMICUS CURIAE*

MMA is an association of private Michigan businesses, organized and existing to study matters of general interest to its members, promote the interests of Michigan businesses and the public in the proper administration of laws relating to its members, and otherwise promote the general business and economic climate of the State of Michigan. A significant aspect of MMA's activities involves representing the interests of its members before the courts, the United States Congress and Michigan Legislature, and state administrative agencies. Here, MMA represents approximately three thousand private business concerns, all of whom are potentially affected by the issues now before this Court.

This Court directed the parties to "address whether the tax exemptions set forth under MCL 211.9(1)(a) are available to a for-profit institution." MMA has an interest in the proper interpretation of MCL 211.9(1)(a) because the vast majority of its constituents are for-profit organizations. More broadly, MMA has an interest in having taxing statutes interpreted according to their unambiguous language. Any "stricter" scrutiny frustrates the ability of manufacturers and other businesses alike to forecast tax-related expenses and make appropriate budgeting decisions.

MMA's interests align with the interests of Michigan citizens. Given the importance of manufacturing to Michigan's job growth and economic output, the ability of manufacturers to claim tax exemptions with predictability presents an issue of utmost importance to the State's economic survival. Uncertainty will lead to increased litigation and frustrate the ability of Michigan manufacturers to compete in the regional, national, and global marketplaces and, ultimately, could drive manufacturers to markets other than Michigan.

STATEMENT OF QUESTIONS PRESENTED

The parties identify the issue on appeal as “whether the tax exemptions set forth under MCL 211.9(1)(a) are available to a for-profit educational institution.” MMA also believes this case presents an opportunity to address two questions concerning the constitutionality and proper interpretation of tax exemptions:

- I. Does the proper interpretation of a tax exemption require strict adherence to its unambiguous language?

Petitioner-Appellee Answers “Yes.”

Respondent-Appellant Answers “No.”

The Michigan Tax Tribunal Answered “No.”

The Court of Appeals Answered “Yes.”

MMA Answers “Yes.”

- II. Does a constitutional requirement that one group be exempt preclude the Legislature from enacting tax exemptions for other groups?

Petitioner-Appellee Answers “No.”

Respondent-Appellant Answers “Yes.”

The Michigan Tax Tribunal Answered “Yes.”

The Court of Appeals did not address this issue.

MMA Answers “No.”

STANDARD OF REVIEW

The proper interpretation of a tax exemption presents a question of law, which this Court reviews *de novo*. *Briggs Tax Serv, LLC v Detroit Pub Sch*, 48 Mich 69, 75, 78 (2010). This Court reviews questions of constitutional law *de novo*. *Bonner v City of Brighton*, 495 Mich 209, 221 (2014).

ARGUMENT

A statute means what it says. The often-cited notion that tax exemptions are to be “strictly construed” is not an invitation to misuse interpretive canons to bend and twist an exemption’s unambiguous scope. Nor should imagined constitutional conflicts lead the Court astray from the statutory language. To the extent tax exemptions require closer scrutiny than other statutes, the standard is meant to demand strict adherence to the text. The City of Kentwood’s strained construction of MCL 211.9(1)(a) threatens to undermine the Legislature’s tax power and turn tax exemptions into targets for statutory manipulation. To accept the City’s analysis would shift tax policy to the judiciary, render a significant portion of the Tax Code susceptible to legal challenge, and leave manufacturers and other taxpayers without needed predictability in the law. This Court should reject the City’s arguments, affirm the decision below, and provide guidance to lower courts and litigants regarding the constitutionality and proper interpretation of tax exemptions.

I. The proper interpretation of a tax exemption requires strict adherence to its unambiguous language.

Under MCL 211.9(1)(a), “[t]he personal property of charitable, educational, and scientific institutions” is “exempt from taxation.” This language does not contain a “non-profit” limitation. Not even the City suggests that this plainly crafted exemption is ambiguous on its face. Instead, in a backward fashion, the City declares MCL 211.9(1)(a) ambiguous only by

virtue of another tax exemption. The City then invites this Court to rewrite MCL 211.9(1)(a) using various presumptions and tools of construction.

The City's approach conflicts with one of the most basic principles of statutory construction: "If the statute is unambiguous on its face, [courts] presume that the Legislature intended the meaning expressed, and judicial construction is neither required nor permissible." *Stone v Williamson*, 482 Mich 144, 150 (2008). Words trump all else because "[t]he language of the statute is the most reliable evidence of [the Legislature's] intent." *Aroma Wines & Equip, Inc v Columbian Distribution Servs, Inc*, 497 Mich 337, 345 (2015). Intent cannot and should not be equated with "extra-textual judicial divinations of what the Legislature really meant." *People v Schaefer*, 473 Mich 418, 432 (2005) (internal quotation marks omitted). Nor can language be warped by applying a "contrary judicial gloss." *Dep't of Agric v Appletree Mktg, LLC*, 485 Mich 1, 8 (2010). In no event should courts "read words into a statute." *Byker v Mannes*, 465 Mich 637, 647 (2002).

These principles are so often repeated that they can begin to sound like rote recitations, but this Court should apply them here with vigor. After all, the City's position seeks to create ambiguity by muddling two separate statutes—MCL 211.9(1)(a) and MCL 211.7n—through an improper *in pari materia* analysis. Problems abound with that approach. For one, it creates ostensible ambiguity around every turn, when in reality "only a few provisions [of law] are truly ambiguous." *Mayor of City of Lansing v Mich Pub Serv Comm'n*, 470 Mich 154, 166 (2004). For another, "the interpretive aid of the doctrine of *in pari materia* can only be utilized in a situation where the section of the statute under examination is itself ambiguous." *Tyler v Livonia Pub Sch*, 459 Mich 382, 392 (1999); *see also Mull v Equitable Life Assur Soc of US*, 444 Mich 508, 522 n 14 (1994) ("The doctrine of *in pari materia* is simply an interpretative tool to be used

in determining the meaning of ambiguously worded statutes.”); *Voorhies v Faust*, 220 Mich 155, 157 (1922) (“The rule, in *pari materia*, cannot be invoked here, for the reason that the language of the statute is clear and unambiguous.”).

In addition to improperly invoking the doctrine, the City misapplies it by assuming that two statutes having any overlap should always be read together. Properly applied, however, statutes may be read *in pari materia* only if they relate to the same subject or share a common purpose. *Woodward v Custer*, 476 Mich 545, 611 (2006). Although two statutes may in practice have some overlap, they may not be read together if their scope and aim are distinct and unconnected. *Id.* Here, the City does not address the scopes and aims of the two separate tax exemptions, and SBC has correctly explained why they do not conflict. Simply put, because MCL 211.9(1) does not defeat the purpose of MCL 211.7n, they need not and should not be read together. *See People v Smith*, 423 Mich 427, 442 (1985).

This case demonstrates precisely why courts “do not apply preferential rules of statutory interpretation [absent] an ambiguity.” *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 319 (2002). Where “no ambiguity exists, the remedial rule of preference does not apply.” *Id.* Here, the words of MCL 211.9(1)(a) are clear. The first sentence exempts charitable, educational, and scientific institutions. The second sentence excludes “secret or fraternal societies” from the exemption, but then states that the personal property of certain institutions, including certain “nonprofit corporations,” is still exempt. Unambiguously, the first sentence of the statute, which defines the scope of the exemption, contains no non-profit limitation.

As a broader matter, were courts to so easily stray from the unambiguous language of a statute, this case (and many others) could easily devolve into a battle of the canons. For every canon that the City seeks to have applied, SBC could find its own. SBC could argue, for

instance, that the textual differences between MCL 211.9(1)(a) and MCL 211.7n must be given meaning—meaning that the City’s interpretation does not respect. *See US Fid Ins & Guar Co v Mich Catastrophic Claims Ass’n*, 484 Mich 1, 14 (2009) (“When the Legislature uses different words, the words are generally intended to connote different meanings.”). SBC could also argue that the City’s interpretation improperly renders one or the other statute superfluous. *See W Mich Univ Bd of Control v Michigan*, 455 Mich 531, 551–552 (1997). Strict adherence to the unambiguous text avoids this struggle entirely.

It makes no difference that this case concerns a tax exemption. *See White v United States*, 305 US 281, 292 (1938) (explaining that the “function and duty of courts to resolve doubts” should not be “abdicated in a tax case” by blindly relying on presumptions). Although it is said that tax exemptions “must be strictly construed in favor of the taxing authority,” this rule does not permit “a strained construction” that is contrary to the Legislature’s intent. *Mich United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664 (1985). Just like other statutes, tax exemptions should be “interpreted according to ordinary rules of statutory construction.” *Cowen v Dep’t of Treasury*, 204 Mich App 428, 431 (1994). Indeed, Justice Antonin Scalia and Bryan Garner provide a compelling argument for dispensing with strict constructionism altogether. *See Scalia & Garner, Reading Law: The Interpretation of Legal Texts* (St Paul Thomson—West, 2012), p 356 (“Strict constructionism, as opposed to fair-reading textualism, is not a doctrine to be taken seriously.”).

Here, MCL 211.9(1)(a) provides an unambiguous categorical exemption for “charitable, educational, and scientific institutions.” When the Legislature wishes to limit an unambiguous categorical exemption by importing words from another statute, it “must be clear.” *Scalia & Garner*, p 362. But the Legislature has made no clear indication that the failure to qualify for an

exemption under MCL 211.7n, which is arguably limited to non-profit organizations, somehow *disqualifies* a taxpayer from an entirely separate exemption under MCL 211.9(1)(a), which is not limited to non-profit organizations. Because the Legislature has not clearly imported the words “non-profit” from MCL 211.7n into MCL 211.9(1)(a), this Court may not either.

Clarity is especially important in the tax context. Loosely applied canons of construction leave manufacturers and other taxpayers without this needed clarity. If the City convinces this Court to engraft limits that are contrary to the statutory language of MCL 211.9(1)(a), then perhaps other exemptions could be deemed narrower than their text suggests. The text would no longer provide useful guidance for determining when an exemption applies. Consequently, manufacturers would be unable to forecast tax-related expenses and make appropriate budgeting decisions. If accepted, the City’s approach could open doors for taxing units to apply exemptions inconsistently, creating varying tax burdens depending on the local unit involved (or even from year to year). Perhaps worst of all, the intent of the Legislature would be decidedly frustrated. The Legislature passes exemptions because it believes that a tax unit’s budget should bear the weight of lost revenue, usually because some other benefit will be encouraged by declining to tax the exempted activity. If taxpayers believe that they are unlikely to benefit from the exemption, then they may be less likely to direct their efforts to the exempted activity. The exemption’s purpose would be diminished. *See Ladies Literary Club v City of Grand Rapids*, 409 Mich 748, 762 (1980).

In short, the Court of Appeals properly construed MCL 211.9(1)(a) as written. This Court should affirm the decision below and provide guidance to lower courts and litigants regarding the proper interpretation of tax exemptions.

II. A constitutional requirement for exemption of one group does not preclude the Legislature from enacting an exemption for another.

The City's second extra-textual source for narrowing MCL 211.9(1)(a) is the Michigan Constitution, which requires exemption from taxation of "[p]roperty owned and occupied by *non-profit* religious or educational organizations and used exclusively for religious or educational purposes." Const 1963, art 9, § 4 (emphasis added). The City argues that this constitutional exemption for *non-profit* educational organizations precludes the Legislature from exempting *for-profit* educational organizations. It does not. Just as there is no ambiguity to justify reading MCL 211.9(1) *in pari materia* with another statute, there is no constitutional conflict that requires saving.

The power to tax is vested in the Legislature. *See* Const 1963, art. 9, § 1 ("The legislature shall impose taxes sufficient with other resources to pay the expenses of state government."), § 2 ("The power of taxation shall never be surrendered, suspended, or contracted away."), § 3 ("The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law[.]"). Given this broad and exclusive grant of authority over the subject of taxation, limitations on the Legislature's tax power cannot be inferred. *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 312-313 (2011) (reasoning that, when the ratifiers of the Constitution intended to limit the Legislature's authority to tax, it did so expressly); *Hudson Motor Car Co v City of Detroit*, 282 Mich 69, 79 (1937) ("Within constitutional limits, the Legislature has full control over the subject of taxation."). Logically, this broad power to tax carries an attendant—and equally broad—power to exempt.

Tax exemptions, like other statutes, "are presumed constitutional and courts have a duty to construe a statute as constitutional unless unconstitutionality is clearly apparent." *Citizens for*

Unif Taxation v Northport Pub Sch Dist, 239 Mich App 284, 287 (2000). “Every reasonable presumption or intendment must be indulged in favor of the validity of an act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity.” *Phillips v Mirac, Inc*, 470 Mich 415, 423 (2004) (internal quotation marks omitted). Courts shall not exercise the power to declare a law unconstitutional “where serious doubt exists with regard to the conflict.” *Id.* at 42. Accordingly, the party challenging a statute as unconstitutional bears a heavy burden. *See In re Request for Advisory Opinion Regarding Constitutionality of 2005 Pa. 71*, 479 Mich 1, 11 (2007).

The City has not met its burden, as MCL 211.9(1)(a) does not run afoul of Article 9, § 4. While the Constitution plainly *requires* an exemption for non-profit religious and educational institutions, it does not *prohibit* any other exemptions. To accept the City’s interpretation, this Court would have to rewrite Article 9, § 4 to read that “[p]roperty owned and occupied by non-profit religious or educational organizations . . . shall be exempt *and no other group may be exempt.*” Of course, this Court may not rewrite the Constitution. *See Wayne Cnty v City of Detroit*, 17 Mich 390, 400 (1868) (rejecting an interpretation of the Constitution that required the Court to add “qualifying words of [its] own”).

In short, because Article 9, § 4 lacks any prohibition, limit, or restriction on any power of the Legislature, the City cannot use that provision to strike at duly enacted legislative acts such as MCL 211.9(1)(a). *Coal of State Emp Unions v State*, 498 Mich 312, 331-32 (2015) (“[T]he legislative authority of the state can do anything which it is not prohibited from doing by the people through the Constitution of the State or the United States.”); *Michigan Dep’t of Transp v*

Tomkins, 481 Mich 184, 212 (2008) (“When the constitution places no limit on legislative prerogative, our Legislature is free to act to effectuate the policy of this state.”).

Moreover, the City fails to appreciate the big-picture consequences of its interpretation. First, rewriting Article 9, § 4 would create a conflict within the Constitution itself, which violates the rule that when two constitutional provisions potentially collide, courts “must seek a construction that harmonizes them both.” *Straus v Governor*, 459 Mich 526, 533 (1999). Specifically, the City’s interpretation improperly conflicts with the Legislature’s broad power to promulgate tax exemptions under Article 9, § 3. *See id.* (“[H]aving been adopted simultaneously, neither [constitutional provision] can logically trump the other.”).

Second, if the Legislature is *only* permitted to exempt “[p]roperty owned and occupied by non-profit religious or educational organizations,” which are already exempted under Article 9, § 4, then every legislatively-created exemption on the books would be either constitutionally invalid or superfluous. The only groups who could ever claim an exemption would be non-profit religious and educational institutions. Manufacturers and most other taxpayers would have no exemptions to claim.

As just one example, manufacturers would not be entitled to an exemption under MCL 205.94o(1)(b) for personal property “used in industrial processing by an industrial processor.” This exemption has an important objective: “to avoid double taxation of the end product offered for retail sale [and] avoid ‘pyramiding the use and sales tax.’” *Elias Bros Restaurants, Inc v Treasury Dep’t*, 452 Mich 144, 152 (1996). The industrial-processing exemption thus encourages manufacturers to do business in this State. As such, in addition to the immediate financial harm that taxpayers would suffer, accepting the City’s position would leave the

Legislature helpless to offer this and other beneficial incentives designed to stimulate economic growth.

In sum, Article 9, § 4 and MCL 211.9(1)(a) are not in conflict. By fabricating a conflict to be “saved,” the City asks this Court to turn the presumption of constitutionality into a quest for unconstitutionality, and to all but eviscerate the Legislature’s authority to tax. This Court should reject the City’s position and affirm.

CONCLUSION

The City asks this Court to wield tools meant for resolving ambiguity in a case where no ambiguity exists. Alternatively, it proposes that this Court run from the specter of “unconstitutionality” in the face of a validly enacted and entirely constitutional statute. This Court should not be distracted by these dalliances. In reality, this Court is charged with a rather straightforward task: to read the language of MCL 211.9(1)(a) and apply it as written. For these reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

Bush Seyferth & Paige PLLC

Date: April 13, 2016

By: /s/ Stephanie A. Douglas

Stephanie A. Douglas (P70272)

Jessica R. Vartanian (P74213)

3001 W. Big Beaver Road, Suite 600

Troy, MI 48084

(248) 822-7800

Attorneys for *Amicus Curiae* Michigan

Manufacturers Association

Certificate of Service

I hereby certify that on April 13, 2016, I electronically filed the foregoing papers with the Clerk of the Court using the Odyssey File and Serve system, which will send notification of such filing to all counsel of record and/or a copy will be sent via first class U.S. Mail to all counsel not listed on the Odyssey service list.

By: /s/ Stephanie A. Douglas
Stephanie A. Douglas (P70272)
douglas@bsplaw.com