

IN THE SUPREME COURT  
STATE OF GEORGIA

Nuci Phillips Memorial            )  
Foundation, Inc.,                )  
                                  )  
                          Appellant, )  
                                  )  
v.                                    )     CASE NO.   S10C0448  
                                  )  
Athens-Clarke County Board     )  
of Tax Assessors,                )  
                                  )  
                          Appellee. )  
                                  )  
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THE GEORGIA CENTER FOR NONPROFITS, INC.'S AMICUS BRIEF  
IN SUPPORT OF APPELLANT'S PETITION FOR CERTIORARI

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COMES NOW The Georgia Center for Nonprofits, Inc. ("GCN") and files this Amicus Brief in support of Appellant's Petition for Certiorari. The Court of Appeals' decision denying Appellant's property tax exemption is based on a clearly erroneous interpretation of O.C.G.A. §48-5-41(d)(2) and represents a matter of great concern and importance to the public itself and the large number of not-for-profit entities providing services to them. As a result, GCN respectfully asks this Court to grant Appellant's application and reverse the Court of Appeals' decision.

STATEMENT OF INTEREST

GCN is a not-for-profit association dedicated to serving, strengthening and supporting Georgia's not-for-profit and charitable organizations. It has three offices statewide and over 1200 members. GCN serves as an advocate to improve the not-for-profit sector and helps not-for-profit organizations operate more efficiently by providing information, training, consulting, and job services. GCN has a direct interest in this case because the outcome may dramatically impact the ability of many not-for-profit organization members of GCN to qualify for property tax exemptions, and in turn, may jeopardize their ability to continue their charitable mission, operations and financial viability.

STATEMENT OF THE CASE

GCN adopts by reference the statement of the case set forth in Appellant's petition for certiorari.

ARGUMENT AND CITATION TO AUTHORITY

**1. The Court of Appeals Ignored the Rules of Statutory Construction.**

In finding that Appellant had not satisfied the criteria of O.C.G.A. § 48-5-41(d)(2), the Court of Appeals cited the language of the statute, focusing only on the requirement that a "building is used by such charitable institution exclusively for the charitable purpose of such charitable institution." Athens-Clarke County Bd. of Tax Assessors v. Nuci Phillips Mem'l Found., 2009 WL 3784399, \*1 (Ga. App. 2009). The Court provided no analysis or interpretation of the statutory language, merely concluding that, because Appellant rents its building out for events and rehearsals, the building is not exclusively devoted to its charitable purposes.

It is a well established rule of statutory construction that a "statute must be construed 'to give sensible and intelligent effect to all of [its] provisions and to refrain from any interpretation which renders any part of the statute meaningless.'" See, e.g. Handel v. Powell, 284 Ga. 550, 554-55 (2008); R.D. Brown Contractors, Inc. v. Board of Educ. Of Columbia County, 280 Ga. 210, 212 (2006).

The statute at issue here provides:

With respect to paragraph (4) of subsection (a) of this Code section, a building which is owned by a charitable institution that is otherwise qualified as a purely public charity and that is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code and which building is used by such charitable institution exclusively for charitable purposes of such charitable institution, and not more than 15 acres of land on which such building is located, may be used for the purpose of securing income so long as such income is used exclusively for the operation of that charitable institution.

O.C.G.A. § 48-5-41(d)(2)(emphasis added). Thus, a public charity is eligible to maintain a property tax exemption while using its building, and up to 15 acres of land on which the building is located, to generate income if the charity meets the following four criteria: (i) it is a purely public charity; (ii) it enjoys a 501(c)(3) tax exemption; (iii) it uses its building exclusively for charitable purposes; and (iv) it uses such income exclusively for the operation of the charity.

The Court of Appeals has concluded, however, that a building is not used "exclusively for [] charitable purposes" if it is used to generate income. Such an interpretation clearly renders this entire portion of the statute meaningless, violating one of the most basic principles of statutory construction. Under the Court of Appeals' interpretation, any charity meeting the eligibility requirements to use its building to generate income would immediately render itself unable to

satisfy requirement (iii) set forth above once it actually began generating such an income. Under this reading, there would be no circumstance in which a charity could use a building or its real estate to generate an income for operations to support its charitable causes.

This reading clearly undercuts the legislative intent behind the statute. For example, it could mean a hospital could lose its property tax exemption, despite the provision of O.C.G.A. § 48-5-41(a)(5A), if it used a portion of its building as a gift shop, even if all income from the gift shop went to support the operation of the hospital. It could mean that a natural attraction, such as a botanical garden, could not maintain its property tax exemption if it rented its facilities for weddings even if it used that income to support its ecological purpose. Since the Court of Appeals' interpretation renders the last phrase of the statute meaningless and results in an unintended outcome, it should be reversed.

As Appellee pointed out, the 2007 legislative changes added the term "exclusively" to the phrase "which building is used by such charitable institution exclusively for the charitable purposes." We believe this term was added to more closely mirror the language in the last phrase of the statutory provision: "so long as such income is used exclusively for the operation of that charitable institution." Both uses of the

term "used . . . exclusively" must be read to mean that all the uses of the building, either the physical activity taking place in the building or the income generated from such activity, must exclusively further the charitable purposes of the charitable institution.

The statute simply does not make sense if is interpreted to mean that a purely public charity, meeting all the criteria to use a building and up to 15 acres of surrounding real estate to generate income, would immediately be disqualified from its property tax exemption by exercising that very statutory right. Thus, the Court of Appeals' interpretation must be reversed.

**2. The Court of Appeals Decision Must Also Be Reversed as a Matter of Public Policy.**

There are approximately 26,000 public charities in Georgia, one third of which own property and rely on property tax exemptions. If the Court of Appeals decision is allowed to stand, it will have an enormous financial impact on Georgia's not-for-profit sector, rendering many of these not-for-profit organizations unable to continue their charitable work. Therefore, the Court of Appeals' decision should be reversed as a matter of public policy.

Throughout the State of Georgia, not-for-profit organizations serve citizens and communities, addressing numerous issues of public concern and improving the quality of

life. Georgia's not-for-profit organizations take a wide range of forms, including, but not limited to, hospitals, boys and girls clubs, universities, environmental groups, museums, theaters, and organizations working with the elderly, children with special needs, veterans, and the disabled. In many cases these not-for-profit entities provide services that were once provided by state and local governments but have been either eliminated or severely limited by budgetary cut backs. They are often in "partnerships" with such governments to deepen services to citizens with special needs. They add charitable giving to government grants or reimbursement to augment services. Not-for-profit organizations thus serve a vital role in helping state and local governments address citizens' needs by providing free healthcare, food, historic preservation, youth mentoring, education and a host of other activities that would otherwise be paid for wholly with tax dollars or would simply go unprovided altogether.

Not-for-profit organizations are not only vital to Georgia communities for the charitable services they provide, but they are also a major economic force in the State and its regions, serving as an important source of jobs and wages for Georgia citizens. In fact, based on GCN's annual surveys, Georgia's not-for-profit sector generates \$32.7 billion in revenue each

year, holds \$64.8 billion in total assets, and accounts for nearly one out of every 20 paid workers in the State.

Contrary to the Court of Appeals' conclusion, many not-for-profit entities have revenue generating programs similar to those used by Appellant that are directly tied to the mission of their organizations. For example, many cultural organizations curate museums, but also derive revenue from events, weddings, stores, and other parties to support the cost of providing services to the public. Similarly, many social service agencies derive revenue from the sale of items housed in their building, such as donated building supplies, clothing, etc. The receipts from these revenue-generating activities provides resources for the provision of immediate services to people in need and invaluable benefits, such as arts and culture, to the community. Moreover, these not-for-profit institutions catalyze investments of additional resources into counties across Georgia via fundraising activities that support charitable work, create jobs and expand assets that improve the quality of life for the communities served.

The recent economic downturn has had a two-fold impact on many not-for-profit service entities, causing not only reduced donations and revenue activity but also an increase in the demand for their services. If these organizations also have to allocate funds to pay property taxes each year, many of them,

particularly those whose property values have increased over the years, may be forced to close their doors or dramatically reduce their services.

#### CONCLUSION

Given the impact this case will have on the financial viability of many of Georgia's not-for-profit public charities, it is of great concern and importance to the citizens of Georgia. Not only does the Court of Appeals' decision represent an erroneous application of the statute, in violation of well-established principles of statutory construction, but it also represents poor public policy. Allowing this decision to stand and become binding precedent would have a devastating impact on Georgia's not-for-profit sector, jeopardizing many not-for-profit entities' ability to provide their services to the citizens of Georgia. The contributions of the not-for-profit sector to the health and well being of our state far outweigh any loss of property tax dollars received by local governments. As a result, GCN, on behalf of its members and their beneficiaries, respectfully asks this Court to grant Appellant's petition for certiorari and reverse the Court of Appeals' decision.

This \_\_\_\_\_ day of December, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within and foregoing Georgia Center for Nonprofits, Inc.'s Amicus Brief in Support of Appellant's Petition for Certiorari by depositing a copy of same in the United States Mail in a properly addressed envelope with sufficient postage affixed thereto to ensure delivery to the following:

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