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PENNSYLVANIA STATE ALLIANCE OF YMCAS

House Finance Committee – Public Hearing on Institutions of Purely Public Charity Act (Act 55 of 1997)

August 15, 2013 – Bellefonte, PA

Good morning Chairman Benninghoff, Chairman Mundy and Members of the Committee,

My name is John Flynn and I am the President and CEO of the Philadelphia Freedom Valley YMCA and the Vice Chairman of the Pennsylvania State Alliance of YMCAs. Joining me here today is David John, Executive Director of the State Alliance. The State Alliance of YMCAs consists of 69 local YMCA associations and 105 branches, more than any other state in the country. We serve approximately 900,000 Pennsylvanians as Y members or program participants, roughly 7.4 percent of all residents of the Commonwealth.

On behalf of the Executive Committee and members, I want to thank you for the opportunity to present testimony this morning on an act our

members strive to demonstrate each and every day, the Institutions of Purely Public Charity Act, commonly known as Act 55.

I'd like to begin by sharing with you some important information about the YMCA in Pennsylvania which will provide some perspective as I offer my testimony today.

First, Pennsylvania Ys are served by more than 17,000 volunteers ranging from child care aides, camp and afterschool workers, and teen program volunteers to those individuals who serve on boards and committees. All of these volunteers offer various skills, talents and knowledge to our local Ys. When translated into dollars, these volunteers represent in excess of \$5 million in value. Simply put, our Ys would not be able to serve communities as effectively as we do without these caring volunteers.

Second, YMCAs are the largest provider of child care services in the Commonwealth. We provide pre-school, before and after school care, summer day camp and resident camp programs. One in five children participating in our child care and camp programs received subsidized care valued in excess of \$12.5 million. Without this support from the Y, parents might not be able to work, or children might be home without supervision during the critical after school hours.

Third, the Y does not turn away individuals from our programs, services and memberships due to economic hardships. In 2011, Pennsylvania YMCAs raised over \$8.1 million in Annual Support; \$4.4 million from United Way; \$900,000 in bequests, legacies and other general contributions; and \$14.7 million in support for Capital projects. All of this money raised is returned to our communities through financial aid and the offering of programs and services under our three areas of focus: youth development, healthy living and social responsibility.

I share all of this background information to help you understand why it is so critically important to the mission of the Y to preserve our tax exempt status. Without it, we simply could not afford to do what we do to serve our communities.

Now, please permit me to address how we arrived at where we are today.

Article VIII, Section 2 of the Pennsylvania Constitution clearly provides the Legislature with the authority to exempt from taxation five general categories of entities. Subsection (5) states that institutions of purely public charity may be exempted from taxation, provided that only the portion of

real property actually and regularly used for the purposes of the institution be subject to tax exemption.

Furthermore, the General County Assessment Law contains statutory language granting tax exempt status to those institutions qualifying as institutions of purely public charity.

However, neither the state constitution, nor the General County Assessment Law define what constitutes a public charity. In 1985, the state Supreme Court established a 5-prong test to determine whether an entity qualifies as a public charity, thus, subject to exemption from taxation.

Known as the HUP Test, the Court stated that in order for an institution to qualify as a purely public charity, it must meet the following criteria:

- 1) Advance a charitable purpose.
- 2) Donate or render gratuitously a substantial portion of its services.
- 3) Benefit a substantial and indefinite class of persons who are legitimate subjects of charity.
- 4) Relieve the government of some of its burden.
- 5) Operate entirely free from private profit motive.

Throughout the years following this Supreme Court decision, nonprofit organizations faced court challenges in which they were compelled to demonstrate how they met each of these five criteria. The resulting case law was inconsistent, vague and left a trail of confusing opinions as to how institutions were expected to demonstrate compliance with these provisions.

When the Legislature enacted the Institutions of Purely Public Charity Act in 1997 after many months of deliberation, it placed in statute the 5-prongs of the HUP Test; however, it also included objective definitions and provisions intended to clarify and tighten the language enabling public charities to have a full and complete understanding of the expectations for maintaining their charitable status.

A YMCA in western Pennsylvania was one of the first entities to be subject to a challenge following the enactment of Act 55. In the 2001 case *Appeal of Sewickley Valley YMCA of the Decision of the Board of Property Assessment*, Sewickley borough challenged the Y's tax exempt status suggesting that it was not an institution of purely public charity from 1993 through 1997 under the HUP Test and that it failed to meet the community service requirements under Act 55.

First, the Commonwealth Court determined that the Sewickley Valley Y had a charitable purpose in reviewing broadly the members of the community who were served by the Y.

Second, the Court determined that the Y met the charitable purpose section of Act 55 through its educational, religious, social, moral and physical objectives.

Third, the Court recognized the value and numbers of volunteers providing free services to the community at the Y and declared that it rendered gratuitously a substantial portion of its services.

Fourth, the community service requirement of Act 55 was met when the Court determined that volunteer boards of directors should be included when calculating the number of volunteer hours rendered.

Fifth, because the Sewickley Valley YMCA allowed school districts to use its facilities free of charge, the Court determined that school districts were relieved of their governmental burdens.

Finally, because the Y re-applied its surplus revenue to maintain its facility, the Court determined that the Y demonstrated it is free from the private profit motive.

Act 55 provides clarity to Ys and other nonprofit organizations as to the intent of the Court under the HUP Test standards by including specific criteria defining what institutions must demonstrate to meet each of the HUP standards.

For the "Charitable Purpose" criterion, Act 55 provides six specific purposes, any one or more of which would qualify an institution as having met the charitable purpose provision. Using only the broad HUP language, the Y and other charities would have to speculate on what a governmental entity would determine constitutes a charitable purpose rather than relying on the specific language of Act 55.

To meet the "Private Profit Motive" criterion, a public charity must meet all four of the very specific and rigorous provisions contained in this section of Act 55 in order to demonstrate they operate free of private profit. Again, without this specific language and relying only on the interpretation of the term "private profit motive" by governmental bodies, YMCAs and other charities would be challenged to ascertain what evidence would be required to prove they meet this standard.

The "Community Service" section of Act 55 affords Ys and other charities with multiple avenues to demonstrate how they donate or render

gratuitously a substantial portion of their services. Charities need only meet any one of the provisions in this section to meet the community service standard. As stated previously, in the Sewickley Valley YMCA case, the Commonwealth Court determined that the volunteer members of boards of directors should be included when calculating the number of volunteer hours. Without that language in Act 55, the Sewickley Valley Y may have lost their appeal and suffered severe economic consequences.

The "Charity to Persons" section of Act 55 not only clarifies and details what constitutes a substantial and indefinite class of persons who are legitimate subjects of charity; it also states which institutions would not be in compliance with this standard. This language helps to distinguish YMCAs and other charities from organizations with a more narrow purpose and scope of membership. Were Ys and other charities unable to rely on this statutory language to demonstrate how they serve legitimate subjects of charity, this standard would likely be one of the easiest for governmental entities to identify in challenging the tax exempt status.

The "Government Service" standard states that an institution must relieve the government of some of its burden. The language of Act 55 requires institutions to meet only one of the six specific criteria contained in the section. Again, the Legislature in its wisdom recognized the importance

of clarifying ways in which a charity could demonstrate how it relieves government of some of its burden and included these criteria in Act 55.

The language in Act 55 allows the Y and other nonprofits to examine the ways in which they operate and to ensure they are in compliance with the broad intent of the HUP Test criteria.

YMCA of the USA, our national organization, has developed and shared with member Ys what is called a "Community Benefits Toolkit" to help local Ys be able to consistently demonstrate how they benefit the communities they serve. The State Alliance is working tirelessly with our member Ys to ensure that they are completing and updating their Community Benefits Statements as well as sharing them with stakeholders in the community, including their local elected officials. This pro-active effort is intended to serve as both an accountability tool and an information tool.

Unfortunately, the state Supreme Court in a decision rendered last spring re-affirmed its authority under the Pennsylvania Constitution to determine whether a charity qualifies for tax exemption. Interestingly enough, it did not address the constitutionality of Act 55. In fact, it ruled that charities must first meet the broad provisions of the 1985 HUP decision before the more specific provisions of Act 55 are applied.

The State Alliance expressed its concern about this decision to lawmakers immediately as we knew it would surely entice tax challenges from governmental entities who could use the broad language of the HUP standards to pick apart the work of Ys. Sure enough, the Warren County YMCA received notice less than three months after the Supreme Court's decision that they were being stripped of their tax exempt status and would now be subject to property tax levies potentially by the county, the city of Warren and the Warren County School District.

The CEO of the Y described the potential hit to his budget as catastrophic. He estimates the cost of the assessment to be approximately \$172,000 or 11 percent of his annual budget. Warren County officials revoked the Y's tax exempt status, as well as that of other nonprofit organizations, in an attempt to generate additional revenue for their budget.

The Warren Y immediately appealed this ruling to the County's Board of Assessment Appeals. At the hearing, the CEO was asked, and I kid you not, why does the YMCA provide swim lessons for children. The CEO responded by reminding the board members that two rivers run through their town and the Y considers teaching kids to swim a public safety issue in the city and county.

Probing further, the CEO was also asked by the board members why he needed to provide parking for his patrons. It was apparent the board was looking for any avenue possible to deny the appeal.

Not surprisingly, the appeal was denied in spite of the Y submitting considerable documented evidence of its compliance with the provisions of the HUP Test, including that the Warren Y returns approximately \$310,000 per year to the community in programs, services and financial assistance.

Presently, the Warren Y has spent in excess of \$16,000 in legal fees just to prepare a legal defense of its charitable status in county court. The money the Y is being compelled to spend is money that is NOT being used for financial aid for families or to provide programs and services for families in Warren County. These costs will continue to grow as long as it takes for this case to be resolved.

The CEO has made it clear that if the challenge is successful and the Y loses its tax exempt status, he and his board will have little choice, but to eliminate programs. One of the programs he has indicated could be eliminated is the 7th Grade initiative which provides free memberships to all 7th grade students. One of the Warren Y's key afterschool programs which serves many young children could also be eliminated meaning children

would no longer have access to the Y's safe and nurturing afterschool environment.

The State Alliance is monitoring this situation carefully, as is YMCA of the USA as this case has implications for Ys all across America.

The State Alliance strongly supported the passage of Senate Bill 4 and we thank the members of the General Assembly, especially Chairman Benninghoff, for their diligence in getting it through the first round. While we understand, appreciate, and, in some instances, agree with, the concerns expressed by those who opposed the legislation, we believe that a constitutional amendment is needed to ensure consistency in how the general criteria established by HUP and defined by Act 55 is applied by the courts. History demonstrates that the HUP Test alone resulted in wildly different interpretations and applications of whether charities met the criteria. There is nothing to indicate that returning to this process will have different results this time around.

Therefore, if YMCAs and other charities remain confused about what constitutes compliance with the HUP criteria as was the case prior to Act 55 and they lose a challenge at this stage, then the second "tier" comprised of Act 55 criteria is rendered moot.

Simply put, our local YMCAs cannot afford endless legal challenges to their tax exempt status by governmental entities seeking new sources of revenue. The resources our Ys generate through annual support and capital campaigns, the gifts of generous benefactors, government resources and other fundraising tools do not sit idly somewhere in a big pot. They are returned immediately to the communities and families we serve in the form of financial assistance, programs and services and safe facilities for them to gather in together.

The Legislature acted wisely in enacting the Institutions of Purely Public Charity Act in 1997. We wholeheartedly agree with the first clause in the Legislative Intent section of the act which states, "*It is in the best interest of this Commonwealth and its citizens that the recognition of tax-exempt status be accomplished in an orderly, uniform and economical manner.*" Act 55 has accomplished this intent by providing the clarity to institutions sorely lacking prior to its enactment. In the 16 years since it became law, charities, such as the Y, have been able to use the language of Act 55 as a measuring stick to evaluate their status as a charitable institution in the Commonwealth and to ensure the retention of their tax exempt status.

The Supreme Court decision of last spring has opened Pandora's Box to legal challenges most public charities cannot afford to defend and cannot

afford to lose. Governmental bodies cannot be permitted to balance their budgets on the backs of charitable organizations, like the YMCA, who provide millions of dollars in programs and services these governments would have to pay for themselves in the absence of the charities.

The Pennsylvania State Alliance of YMCAs respectfully asks this committee and your colleagues in the General Assembly to take whatever actions necessary to ensure that the YMCA and other institutions of purely public charity are fully able to continue delivering the quality programs and services by preserving our tax exempt status.

Thank you for the privilege of addressing the committee. I would be happy to answer any questions you may have.



PENNSYLVANIA YMCAs

Living our Charitable Mission Every Day!



PENNSYLVANIA HAS MORE YMCAs THAN ANY OTHER STATE

71 Corporate YMCAs and **104** branches in diverse communities across the Commonwealth serve urban, suburban and rural communities and bring together young and old, men and women, from all faiths, backgrounds and incomes. According to **2011 Census estimates, 7.8% of Pennsylvanians live within 3 miles of a Y.**

PENNSYLVANIA YMCAs SERVE 898,038 MEMBERS AND CONSTITUENTS

There are **712,610** Pennsylvania YMCA members and an additional **185,428** registered participants in hundreds of YMCA programs and services. During 2011, Pennsylvania YMCAs served **7.4%** of Pennsylvania residents, **35%** of Y members were 17 years of age and younger, while **10%** were 65 years of age or older.

17,283 PENNSYLVANIA YMCA VOLUNTEERS ENRICH COMMUNITY LIFE

Y volunteers of all ages—teens through seniors—“give back” enriching their communities. **15,119** Y program volunteers serve as child care aids, swim instructors, tutors, mentors, coaches, chaperones, etc. **2,164** Y policy volunteers serve on boards and committees providing their skills, talents and leadership. Volunteer time exceeds **\$5,084,054** in value.

PENNSYLVANIA YMCAs PROVIDE CHILD CARE STATEWIDE

YMCAs are the largest provider of child care in Pennsylvania, providing pre-school, before and after school care, summer day camp and resident camp programs. **One in five children** receive subsidized care valued in excess of **\$12,500,000**. Without this Y support, parents may not be able to work, or children would be at home, without supervision, in the critical after school hours.

PENNSYLVANIA YMCAs RAISED \$42,997,942 IN CONTRIBUTED SUPPORT

Ys strive to ensure that no one will be denied participation in Y programs, child care, camp, or membership due to economic hardship. **\$8,190,905** was received for Annual Support; **\$4,435,671** from the United Way and **\$897,862** in bequests and legacies, as well as other general contributions. Support of **\$14,766,366** was also received for Capital projects.

PENNSYLVANIA YMCAs PARTNER WITH OUR STATE GOVERNMENT

Government funding of **\$30,170,413** was invested in Pennsylvania Ys to provide needed local community services and relieve the government of this burden. The Y is proud to partner with our state government to help meet much needed services and programs in urban, suburban and rural communities throughout the state.

**The YMCAs of Pennsylvania are
for Youth Development, Healthy Living and Social Responsibility**

