

**SUPREME COURT
STATE OF GEORGIA**

COLUMBUS, GEORGIA BOARD OF
TAX ASSESSORS, et al.,

Appellants,

v.

THE MEDICAL CENTER HOSPITAL
AUTHORITY,

Appellee.

Case No.
S23G1183

Trial Ct. No.
SU07CV-1467

APPELLEE'S BRIEF

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INTRODUCTION

In a brief dripping with populist animus, the Columbus Board of Tax Assessors and the Tax Commissioner of Muscogee County (together, “Assessors”) assert a right to tax a leasehold interest in a retirement community called Spring Harbor owned by the Medical Center Hospital Authority (“Authority”). But in their haste to tax Spring Harbor and the Authority into submission, the Assessors’ argument ignores virtually all this Court’s prior jurisprudence regarding the public property tax exemption set out in O.C.G.A. § 48-5-41(a)(1)(A). Instead of engaging with that precedent, the Assessors just regurgitate their panoply of political/social grievances about Spring Harbor, hoping that this Court will write a new rule just for this case. Ultimately, however, the rule the Assessors seem to want cannot be reconciled with the holdings or outcomes of numerous prior cases construing the public property exemption. This Court should not upend that well-settled law.

This Court should affirm the lower courts’ rulings that the Authority’s leasehold interest is public property because providing housing and healthcare to the elderly serves a public purpose and is a project squarely contemplated by the Georgia Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., and because the Authority keeps all income generated from Spring Harbor and uses it to repay the

bonds issued to finance Spring Harbor’s construction. Those bonds were validated as having a public purpose, so the Authority may pay them down.

Both providing housing and healthcare to the elderly and the use of Authority income to pay Authority-issued bonds further the “legitimate functions of the hospital authority,” and do not provide “private gain or income.” *Columbus Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 302 Ga. 358, 362 (2017) (“*Columbus Bd. II*”). The Authority is thus entitled to the tax exemption for the actual property interest at issue here—its 60-year leasehold—under the standard this Court set in its prior opinion in this case.

Resisting this Court’s prior mandate—and indeed all this Court’s cases on the public property exemption—the Assessors argue that virtually every aspect of the Spring Harbor project confers “private gain or income” on Columbus Regional Healthcare System (“Columbus Regional”), a nonprofit corporation. They challenge everything from the Authority’s contract with Columbus Regional to operate Spring Harbor to the Authority’s lease agreement with Columbus Regional, under which the Authority has complete control over Spring Harbor.

The Assessors’ argument makes no sense and is impossible to square with this Court’s precedents. By the Assessors’ logic, *any* contract between the Authority and a private entity would destroy the public property exemption. That cannot be the law. Not only would that rule constrain the government from relying

on the private sector to carry out its functions more efficiently, it would conflict with the Hospital Authorities Law's express authorization to lease property for Authority projects and to contract with private entities. *See* O.C.G.A. § 31-7-75(4), (7), (23). This Court has previously rejected the argument that contracts with the private sector destroy the public property exemption, and the Assessors offer no reason to depart from that settled law.

STATEMENT OF THE CASE

The Authority is a public body corporate and politic organized under the Georgia Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq. V4/478 (Def.'s Resp. to Pl.'s Stmt. Facts). It is a tax-exempt 501(c)(3) nonprofit organization. *Id.* It has no shareholders, and it does not distribute income to private entities or individuals. V4/411 (Thacker Aff.). It devotes its resources to supporting nonprofit hospitals, healthcare facilities, and indigent care in Columbus, Georgia. V4/412–15. Its support of nonprofit hospitals in the Columbus area totals millions of dollars each year. *Id.*

One component of the Authority's spectrum of healthcare facilities in the Columbus area is a continuing care retirement community, also called a "life plan community," named Spring Harbor. A continuing care retirement community such as Spring Harbor provides room and board and nursing care or personal services to the elderly for a fee. V4/478–79.

As Georgia’s elderly population grows, continuing care retirement communities have become an important part of the state’s healthcare system. The Department of Community Health issues certificates of need for these “life plan communities” to “ensure that adequate health care services and facilities are developed in an orderly and economical manner.” Ga. Comp. R. & Reg. § 111-2-2-.02; *see also* Ga. Comp. R. & Reg. § 111-2-2-.01(37) (defining “life plan community”). Such communities have become more common, including one in Macon-Bibb County, which the assessor there has deemed tax exempt. *See* V4/490.

The Authority owns and operates Spring Harbor pursuant to a ground lease with Columbus Regional, which is itself a 501(c)(3) nonprofit corporation. V4/478, 482 (Def.’s Resp. to Pl.’s Stmt. Facts). At issue is the taxability of the Authority’s leasehold interest in Spring Harbor. The undisputed record establishes that the Spring Harbor lease furthers the Authority’s mission of meeting the community’s healthcare needs, and that all income from Spring Harbor goes toward the Authority’s mission as well.

I. Spring Harbor’s Ownership and Operations

Spring Harbor provides independent living units, an assisted living center, a 40-unit skilled nursing center providing 24-hour nursing care, and a 30-room Alzheimer’s care center. V2/438–39 (Spring Harbor brochure); V3/479 (2007

Audit). Residents move into Spring Harbor when they are ready to do so, and, as they need additional personal or healthcare services, they transition to assisted living, the nursing center, or the Alzheimer's care center for no additional fee. V2/421–24 (Spring Harbor brochure). Residents must be over 62, and the average age of a Spring Harbor resident is 75. V2/402 (Elder Aff.). Spring Harbor also offers amenities, including restaurants, a swimming pool, a library, a post office, a salon, and a pharmacy. V2/424 (Spring Harbor brochure).

The Authority acquired the real estate for Spring Harbor in 2004 via a ground lease from Columbus Regional, which purchased 40 acres for the project in 1999 and 2001. V2/403 (Elder Aff.). When the Authority acquired the Spring Harbor property, Columbus Regional had already made outlays to begin preliminary development and construction. V17/65 (Elder Dep.). So in connection with the lease, the Authority reimbursed Columbus Regional approximately \$3.3 million for such expenses. V17/84; V3/149 (2007 Bond Documents); V4/332 (2007 Order Concerning Bond Validation). The Authority did not pay anything toward the purchase price of the real estate. V17/84.

The original lease gave the Authority the right to use the land for any purpose, including to “construct, maintain, alter, reconstruct, demolish, build, and replace any Improvements on the Land.” V4/37–38 (2004 Lease). Further illustrating the Authority's ownership, the Authority has the right to encumber the

land with a leasehold mortgage. V4/39–41. An amended 2007 lease, which remains operative today, includes those same rights but gives the Authority a 60-year lease, through 2064. V4/66 (2007 Lease). Columbus Regional has the option to terminate the lease when the bonds are repaid. *Id.* At the end of the lease, any remaining improvements on the property revert to Columbus Regional (assuming no lease extensions). V4/67.

The lease provides that “Title to all Improvements, furniture, furnishings, fixtures, trade fixtures and personal property ... shall be and remain in [the Authority] through the Lease Agreement Term.” V4/72. “All Improvements shall be **completely within the control** of” the Authority “throughout the Lease Agreement term.” V2/149 (emphasis added).

The Authority financed Spring Harbor’s construction with revenue bonds. V2/403–04 (Elder Aff.); V3/11–13 (Thacker Aff.). An initial round of bonds in 2004 raised \$74.6 million. V3/11 (Thacker Aff.). The Authority refinanced the bonds in 2007 with \$41.4 million of fixed-rate bonds. *Id.* The Muscogee County Superior Court validated both rounds of bonds. The 2004 Bond Order found that “the purposes for which the Bonds are being issued ... are in furtherance of the public purposes for which the Defendant Authority was established.” V2/173. The 2007 Order likewise found that “the purposes for which the bonds are being issued ... are in furtherance of the public purposes for which Defendant Authority was

established.” V2/223 (2007 Bond Order). Under Georgia’s Constitution, both validation orders are “incontestable.” Ga. Const. art. IX, § VI, ¶ IV.

Contemporaneously with the 2007 validation order, the superior court judge issued a separate “Order Concerning Bond Validation Proceedings.” V4/309–36. That order, on which the Assessors heavily rely, was apparently entered on the court’s own motion. It did not grant or deny any relief. It simply detailed the judge’s personal, political views about Spring Harbor. But it also found that Spring Harbor is “a wonderful community asset ... which does address a public need of an identifiable class of citizens, the elderly.” V4/313. And it found “as a matter of law and as a matter of fact” that Spring Harbor “is a project contemplated under the Hospital Authorities Law.” *Id.*

The Authority uses its revenue from Spring Harbor to repay the bonds used to build Spring Harbor. Spring Harbor generates income from entrance fees and monthly fees that residents pay to cover room and board and the healthcare services they may use when needed. V2/439–40. The uncontested record establishes that “all net income associated with the Authority’s operation of” Spring Harbor “has been and is necessarily kept and applied to further the Authority’s purposes under the Georgia Hospital Authorities Law.” V4/411 (Second Thacker Aff.). The record contains no evidence—none—that any Spring

Harbor income has been distributed to any private party or otherwise misappropriated.

When Spring Harbor began construction and then operations, the Authority “had no experience in the operation or management of continuing care retirement communities.” V2/404 (Elder Aff.). What’s more, like many other hospital authorities in Georgia, it “had and has no employees.” *Id.* The Authority thus contracted with Columbus Regional Senior Living, Inc. (“CRSL”), a tax-exempt nonprofit 501(c)(3) corporation and affiliate of Columbus Regional, to manage Spring Harbor. *Id.* That is entirely proper; the Hospital Authorities Law allows the Authority to “contract for the management and operation of [a] project by a professional hospital or medical facilities consultant or management firm.” O.C.G.A. § 31-7-75(23). As this Court has observed, “[t]here is no apparent reason why a suitable private corporation could not properly operate [a] hospital, either as lessee or owner, so as to likewise promote the public health functions of government.” *Bradfield v. Hosp. Auth.*, 226 Ga. 575, 583 (1970).

CRSL manages Spring Harbor on the Authority’s behalf, subject to the Authority’s oversight. V2/404–06. The Authority may terminate the management agreement if CRSL fails to meet the Authority’s expectations and requirements. V2/405 (Elder Aff.); V4/109 (Mgmt. Agmt.). In return for its services, CRSL receives a fee scaled on the scope of its services and Spring Harbor’s operations,

not to exceed 5% of Spring Harbor's annual revenue. V4/135 (Am. Mgmt. Agmt.). It also receives reimbursement of certain expenses. *Id.*

II. The Assessors' Tax Bills to the Authority

Beginning in 2005, the Assessors started issuing tax bills for Spring Harbor to the Authority. V4/484–85 (Def.'s Resp. to Pl.'s Stmt. Mat. Facts). In 2007, the Assessors sent the Authority two bills totaling nearly \$900,000 (including penalties), one for improvements at Spring Harbor and one for personal property. V3/467, 470 (Ad Valorem Tax Bills). The Authority disputed the tax bills and asserted that Spring Harbor was tax exempt. But the Assessors have continued sending tax bills for Spring Harbor throughout this litigation.

At the same time, the Assessors taxed Columbus Regional's reversionary interest in Spring Harbor. V4/485 (Def.'s Resp. to Pl.'s Stmt. Mat. Facts.); *see also* V3/473 (Ad Valorem Tax Bill). They have done so throughout this litigation, and Columbus Regional has duly paid. *Id.* The Assessors now deny that they have taxed the reversionary interest, but they expressly admitted to taxing the reversionary interest in the trial court, and never sought to withdraw that admission. V4/485. Their admission is "conclusive of the fact[] admitted." *Wyatt v. MARTA*, 367 Ga.App. 453, 461 n.5 (2023).

III. Prior Proceedings

Unable to resolve the dispute with the Assessors, the Authority filed this action against the Assessors in 2007 seeking a declaration that its leasehold interest in Spring Harbor constitutes public property exempt from taxation. The trial court granted summary judgment for the Authority in 2015, and the Assessors appealed.

The Court of Appeals affirmed, holding that the bond validations were “dispositive” of question of tax exemption of the leasehold. *Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 338 Ga.App. 302, 302 (2016) (“*Columbus Bd. I*”). This Court reversed, holding that, while relevant, “bond validation orders do not specifically resolve the issue of taxation.” *Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 302 Ga. 358, 362 (2017) (“*Columbus Bd. II*”). The Court remanded for application of its precedents in *Hospital Authority of Albany v. Stewart*, 226 Ga. 530 (1970), and *Sigman v. Brunswick Port Authority*, 214 Ga. 332 (1958), which set out “the standard to be applied in order to determine whether a hospital authority’s **property interest** qualifies as ‘public property.’” *Columbus Bd. II*, 302 Ga. at 363 (emphasis added). The Court of Appeals remanded for the trial court to apply this Court’s decision in the first instance. *Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 345 Ga.App. 544, 545 (2018) (“*Columbus Bd. III*”).

On remand, the parties again filed cross-motions for summary judgment, in a tacit admission by the Assessors that there are no facts in dispute. The trial court again granted summary judgment to the Authority. V2/4–23 (Ord. Granting Summ. J.). Acknowledging this Court’s direction, the trial court stated that it “has not relied on the bond validation orders as granting automatic approval of tax-exempt status.” V2/8. Instead, it reviewed this Court’s *Stewart* and *Sigman* cases and held that the Authority’s leasehold interest in Spring Harbor serves a public need to provide care to the elderly and that all Spring Harbor income from that leasehold goes to the Authority for its legitimate purposes. V2/16–23.

The Assessors appealed, and the Court of Appeals again affirmed. *See Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 368 Ga.App. 489 (2023) (“*Columbus Bd. IV*”). The Court of Appeals likewise obeyed this Court’s direction that bond validation proceedings are “not conclusive on the issue of taxability.” *Id.* at 494. Rather, relying on *Stewart* and *Sigman*, the Court of Appeals held that the Authority’s leasehold interest in Spring Harbor “is property held by the Authority, used for a public need, and its income derived therefrom is properly devoted to public purposes and in furtherance of the legitimate functions of the Authority.” *Id.* at 494. Judge Brown, dissenting in cursory fashion, would have remanded for a trial because he believed that disputes of fact precluded

summary judgment. *Id.* at 495. But the dissent did not identify any specific question of fact requiring a trial, nor how any such trial would proceed.

The Assessors petitioned for certiorari. This Court granted the petition and ordered the parties to address the following question:

When determining whether property is public for purposes of exemption from ad valorem taxation under O.C.G.A. § 48-5-41(a)(1)(A), can evidence of private gain or benefit related to the holding or financing of such property, which gain or benefit accrues to an individual or entity other than the property's title holder, create a genuine issue of material fact as to whether the property is held only for the benefit of the State and the public?

Ord. Granting Certiorari (Feb. 20, 2024).

This brief is timely filed under the Court's order extending the time to respond through April 15, 2024. *See* Ex. A, Ord. Granting Extension.

ARGUMENT AND CITATION TO AUTHORITY

The Court should answer the certiorari question by adhering to its prior precedent: the public property exemption applies here because the Authority “holds the leasehold interest” in Spring Harbor “only for the benefit of the State and the public” and “for public purposes in the furtherance of the legitimate functions of the hospital authority rather than for private gain or income.” *Columbus Bd. II*, 302 Ga. at 362 (quotation and citation omitted).

The undisputed evidence shows that, like the Brunswick Port Authority in *Sigman*, no private party has an interest in the Authority's leasehold, and the

Authority's board members do not use the leasehold for their private gain or income. *See Stewart*, 226 Ga. at 537. Further, both the bond validations and the record conclusively establish that Spring Harbor serves a public purpose: providing housing and healthcare to the elderly. Every court to have decided the issue has concluded that the Hospital Authorities Law authorizes the Authority to operate projects like Spring Harbor. The Authority's populist rhetoric about Spring Harbor residents' supposed wealth is simply not relevant, even were it fair or accurate, as the General Assembly has never imposed an indigency or means-testing requirement on the public property exemption. Indeed, the Assessors' repeated wealth-baiting says more about the political origins of this dispute than it does anything about the actual law.

Moreover, the undisputed evidence shows that the Authority uses all income from the property in furtherance of its legitimate functions, including to repay bonds it issued to build Spring Harbor. Two incontestable validation proceedings have established that those bonds serve a public purpose. The trial court and the Court of Appeals correctly concluded that the Authority is entitled to summary judgment on its claim that its leasehold in Spring Harbor is tax exempt public property.

I. The Assessors do not follow the rule this Court laid down in *Columbus Bd. II*.

In the prior appeal of this case, this Court set forth the test for determining whether hospital authority property is tax exempt public property under O.C.G.A. § 48-5-41(a)(1)(A):

When property is held not by the State itself, but instead by an instrumentality such as a hospital authority, whether it is “public property” depends on whether the instrumentality holds title only for the benefit of the State and the public. Put another way, the question in this case is whether the Hospital Authority holds the leasehold interest for public purposes in the furtherance of the legitimate functions of the hospital authority, rather than for private gain or income.

Columbus Bd. II, 302 Ga. at 362 (citations omitted and alterations adopted). This Court directed that *Stewart* and *Sigman* set out the “standard to be applied in order to determine whether a hospital authority’s **property interest** qualifies as ‘public property.’” *Id.* at 363 (emphasis added).

The Assessors interpret *Columbus Bd. II* to mean that *any* payment from a public authority to a private entity will destroy the public property exemption. They go so far as to claim that the management fee the Authority pays to CRSL, a nonprofit corporation, under the management agreement between the entities is “evidence of private gain and income.” Petitioner’s Br. at 37.

But the Assessors cannot—and never attempt to—square their interpretation of the Court’s prior mandate with *Stewart* and *Sigman*, or this Court’s other precedent, such as *Teachers Retirement System v. City of Atlanta*, 249 Ga. 196

(1982) (“*TRS*”). Those cases, along with another case that the *Columbus Bd. II* court cited, *Delta Air Lines, Inc. v. Coleman*, 219 Ga. 12 (1963), establish three principles that resolve this appeal in the Authority’s favor. The Assessors fail to recognize these principles, and so the cases warrant detailed discussion.

A. The Authority’s leasehold interest must be severed from the fee simple to assess taxability.

First, when determining whether the Authority holds title only for the benefit of the State and the public, the Court must assess the Authority’s leasehold interest separately from Columbus Regional’s fee simple interest. In *Coleman*, the City of Atlanta leased “hangars, office space, and maintenance and storage facilities” at the Atlanta Airport to Delta Airlines. 219 Ga. at 13. By statute, “[a]ll real property including, but not limited to, leaseholds ... shall be liable to taxation and shall be taxed, except as otherwise provided by law.” O.C.G.A. § 48-5-3. The Court relied on this statute to hold that the leasehold was a “distinct estate in ... land” that “is severed from the fee and classified for tax purposes as separate realty.” *Id.* at 16. Because Delta is a private company, the leasehold did not fall within the public property exemption. The Court explained:

When any estate in public property is disposed of, it loses its identity of being public property and is subject to taxation just as any other privately owned property. Private property becomes public property when it passes into public ownership; and public property becomes private property when it passes into private ownership.

Id. The Assessors do not question *Coleman* or propose that it be overruled.

Coleman involved a government leasing property to a private corporation, but the principle works the other way as well. The Court of Appeals followed *Coleman* to hold that a nonprofit hospital leased from a private corporation was tax exempt. See *Douglas County v. Anneewakee, Inc.*, 179 Ga.App. 270, 271 (1986). In *Anneewakee*, the court held that “the leasehold held by” a nonprofit psychiatric hospital, “when severed from the private—and taxable—fee owned by [a private corporation], took on the tax exempt status of the holder of the leasehold.” 179 Ga.App. at 275.

The Assessors note that this Court did not cite *Anneewakee* in its earlier decision, but that does not make *Anneewakee* any less applicable. Further, the Assessors do not question *Anneewakee*’s reasoning, which was a straightforward application of this Court’s holding in *Coleman* that a leasehold is taxed separately from the fee. Because “the grant of an estate,” including a leasehold, “transfers ownership of the property to the estate holder during the term of the estate,” the Authority’s leasehold is publicly owned. *GeorgiaCarry.Org, Inc. v. Atlanta Botanical Garden, Inc.*, 306 Ga. 829, 839 (2019).

Finally, in *Columbus Bd. II*, this Court made clear that the proper focus for analysis was on the “hospital authority’s **property interest,**” which here is the leasehold, just as for the airline in *Coleman* and the non-profit hospital in *Anneewakee*. 302 Ga. at 363 (emphasis added). The Assessors’ proposed rule

essentially negating public entities' ability to lease private property without incurring tax liability cannot be reconciled with *Coleman* (or the plain text of O.C.G.A. § 48-5-3).

B. Property that generates income for the Authority's purposes is tax-exempt public property.

Second, while Spring Harbor's healthcare purposes are readily evident,¹ the Authority may claim the public property tax exemption for property that generates income for the Authority's legitimate functions, even if the Authority does not use the property for healthcare facilities. In *Stewart*, the Court held that "several city lots, some pecan groves and some farming acreage"² owned by the Hospital Authority of Albany constituted tax exempt public property, even though "the property itself is not a part of the hospital." *Stewart*, 226 Ga. at 531, 538–39. The Court found the property tax exempt because "its income is properly devoted to public purposes (hospital operations) in furtherance of the legitimate functions of the hospital authority." *Id.* at 531. The Hospital Authority members could not "use [the property] for private gain or income." *Id.* at 537.

¹ Even the 2007 *sua sponte* order concerning bond validations recognized that Spring Harbor is a "wonderful community asset ... which does address a public need of an identifiable class of citizens, the elderly," and "is a project contemplated under the Hospital Authorities Law." V4/313 (Ord. Concerning Bond Validation).

² The *Stewart* opinion did not state this fact, but this Court recognized it in *Teachers Retirement System v. City of Atlanta*, 249 Ga. 196, 201 n.4 (1982).

This Court reaffirmed that principle in *TRS*. The Teachers Retirement System acquired three parcels—an apartment complex, an office building, and a hotel—in Atlanta through foreclosure. 249 Ga. at 198. The fact that the properties produced income did not subject them to taxation. “Although the properties in question produce income, as do cabins in state parks and the hotel facilities at the continuing education center at the University of Georgia, they are nonetheless public property.” *Id.* at 198–99. The Teachers Retirement System was authorized to acquire property through foreclosure, this Court saw no problem upholding the public property exemption.

C. Public authorities may enter contracts with private entities without losing the public property exemption.

Third, the government and public authorities may contract with private entities—contracts that no doubt benefit those entities, or else there would be no bargained-for exchange—without losing the public property exemption. In *Sigman*, the Court held that the public property exception covered a warehouse built by the Brunswick Port Authority to lease to a private gypsum company. 214 Ga. at 332. As the Court explained, property used “to provide buildings which users of the port may lease ... is in aid of commerce, and is for the promotion of public transportation, public commerce, and general welfare, and may properly be classified as public property and therefore exempt from taxation.” *Id.* at 335–36.

As if this principle were not obvious—that the government may contract with private entities for services on public property without losing the public property exemption—this Court reaffirmed it in *TRS*, which upheld the public property exemption for an Atlanta hotel owned by the Teachers Retirement System but “operated by an independent contractor.” 249 Ga. at 198–99, 206. It will not come as any surprise to learn that the Retirement System was not itself managing the office building, apartment complex, or hotel, but instead contracted those services out to the private sector. Indeed, the record in *TRS* reveals that, like the management company here, the management company in *TRS* was “compensated either on a flat monthly fee or percentage of profit.”³ Yet the *TRS* court never questioned that the Teachers Retirement System could contract with a hotel operator (which necessarily generates income) without sacrificing its tax exemption. Nor was the Court troubled that the hotel charged for rooms (and the apartments weren’t free either). So “do cabins in state parks and the hotel facilities at the continuing education center at the University of Georgia,” both of which “are nonetheless public property.” *TRS*, 249 Ga. at 198–99.

³ See Transcript of August 7, 1981 Hearing at 14, *Teachers Retirement Sys. of Ga. v. City of Atlanta*, Civil Action No. C-49693 (Fulton Cnty. Superior Ct. Oct. 19, 1981). “This Court may take judicial notice of public records from other proceedings.” *Johnson v. Allied Recycling, Inc.*, 323 Ga.App. 427, 429 n.3 (2013).

The Court would have to sweep away all this precedent to accept the Assessors' position that even a management agreement between a public authority and a private, nonprofit entity in which that private party gets paid for its services vitiates the public property exemption. The Assessors have not asked the Court to do so—they have instead simply disregarded the principles those cases lay out in hopes the Court will ignore them.

D. The Assessors disregard the consequences of the rule they propose.

Besides the blatant, unaddressed inconsistency with precedent, the Assessors' proposed rule would hamstring public authorities from meeting the public needs the General Assembly created them to fulfill. To hold that payments to private companies vitiates the tax exemption would undermine this Court's "own opinions [that] have recognized the importance of public and private partnerships" as well as the clear instruction from the General Assembly that such partnerships are to be encouraged and supported, not berated and taxed into submission. *See Franzen v. Downtown Dev. Auth.*, 309 Ga. 411, 426 (2020).

The Assessors would do away with any public-private cooperation. By the Assessors' logic, hospital authorities must own and operate healthcare facilities all by themselves to preserve the public property exemption—any payment to a private company will call the exemption into question. That rule finds no support in the true expression of the General Assembly's intent, the Georgia Hospital

Authorities Law. By that statute, hospital authority board members must be volunteers; they “receive no compensation for their services, either as members or as employees of the authority.” O.C.G.A. § 31-7-74. And again, the Authority “had and has no employees,” like many other public authorities in Georgia. V2/404 (Elder Aff.). The Authority cannot accomplish much with volunteer directors and no employees if it cannot contract for services.

Moreover, the General Assembly expressly empowered hospital authorities to do many of the things the Assessors criticize here. Hospital authorities may “make and execute contracts,” including “contract[s] for the management and operation” of a hospital “by a professional hospital or medical facilities consultant or management firm.” O.C.G.A. § 31-7-75(3), (23). Hospital authorities may also “acquire by ... *lease*” and “operate projects,” including “dormitories, ... housing accommodations, nursing homes, ... extended care facilities, and other public health facilities.” O.C.G.A. §§ 31-7-71(5), 31-7-75(4) (emphasis added). So much for the Assessors’ contention that management agreements or leaseholds are not part of the Authority’s legitimate functions or what the General Assembly intended.

The Assessors fail to grapple with the consequences of their argument on what they call the “upside down” structure of Spring Harbor. As support, they cite a series of cases in which a hospital authority leased a hospital to a private company, rather than leasing a facility from a private company. *See* Petitioners’ Br.

at 25–27. None of those cases *require* that structure.⁴ But in a classic logical fallacy, the Assessors extrapolate that hospital authorities must *always* follow this structure. *See id.* That just does not follow—especially given the powers granted by the Hospital Authorities Law.

What’s more, even these so-called “typical” structures would not satisfy the Assessors’ proposed test. In *Richmond County Hospital Authority v. Richmond County*, for example, the hospital authority leased a facility to a corporation for \$1.255 Ga. 183, 185 (1985). This minimal rent provided a private benefit; the nonprofit corporation would have had to pay far more on the open market. Under the Assessors’ proposed test, that less-than-market rent would transform the authority’s fee simple into taxable private property.

⁴ *See FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 220 (2013) (“[W]e hold that ... state-action immunity does not apply.”); *Smith v. Northside Hosp., Inc.*, 302 Ga. 517, 531 (2017) (“We remand for the trial court to consider ... whether the records in question ... constitute public records.”); *Richmond Cnty. Hosp. Auth. v. Richmond County*, 255 Ga. 183, 185 (1985) (“alleged inadequacy of the consideration for lease” did not void public property exemption); *Bradfield*, 226 Ga. at 579 (approving \$100 option for private company to buy hospital expansion financed with \$5 million in bonds); *Dep’t of Human Res. v. Ne. Ga. Primary Care, Inc.*, 228 Ga.App. 130, 134 (1997) (holding that nonprofit was “separate and distinct from the Hospital Authority”); *Nw. Ga. Health Sys., Inc. v. Times-Journal, Inc.*, 218 Ga.App. 336 (1995) (holding that nonprofits contracted with hospital authority were subject to the Open Meetings Act); *Clayton Cnty. Hosp. Auth. v. Webb*, 208 Ga.App. 91, 94 (1993) (corporate records in hospital authority’s possession were public records).

The Assessors' rule would call into question other transactions this Court has approved, too. In *Bradfield v. Hospital Authority of Muscogee County*, the Court rejected an attack on an agreement for a hospital authority to issue bonds to expand a hospital run by a nonprofit. 226 Ga. at 588. The Court so held even though the nonprofit had an option under the lease to purchase the hospital from the authority for \$100 at the end of the lease—far less than the \$5,000,000 in revenue bonds the authority issued in 1970 to expand the facility. *Id.* at 579.

The Assessors' argument – that private gain or income from financing improvements to public property renders that underlying property interest taxable – would also do away with bond financing of public infrastructure. If the City of Atlanta, for instance, issues bonds through Goldman Sachs for a new stadium, does the finance fee paid to Goldman Sachs in connection with the bonds make the stadium taxable? What about the payments made to the bondholders? Of course that cannot be the law, but it is the clear implication of the Assessors' hyper-aggressive rule.

Finally, the Assessors' proposed new standard would leave authorities and other government entities throughout Georgia in an impossible quandary. If evidence of a contract between a private entity and a governmental entity necessarily creates a fact question requiring a jury trial, what standard would be applied to answer what question? Would the fact finder have to decide “is the

project “public” enough?” Or “is there “too much” private gain?” Or, as the Assessors seem to suggest, is any payment due under a contract to a private counterparty disqualifying such that summary judgment would have to be granted to the taxing body?

The bottom line is that the Assessors advocate an incoherent rule in which any relationship between a public authority and a private entity destroys the public property tax exemption. Such a rule would mark a sea change in the public property tax exemption as developed by this Court’s precedent. The Assessors stray far from an analysis of the Authority’s leasehold and invite courts to second-guess every Authority transaction, never mind that this Court “has consistently ruled that the courts of this state must not interfere with such decisions as made unless a governmental unit in question clearly abused its discretion.” *Richmond Cnty. Hosp. Auth.*, 255 Ga. at 186. The Assessors have no justification to abandon precedent in this way, especially given the “greater weight” *stare decisis* has in context of a decades-old interpretation of the statutory tax exemption. *Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422, 435 (2021).

Everything the Authority did here is within the Hospital Authorities Law and consistent with long-standing case law interpreting the public property exemption. Whereas the Assessors would effectively preclude government efforts to enter public-private partnerships, the General Assembly intended the opposite result.

See, e.g., O.C.G.A. § 31-7-75(3), (23). The Spring Harbor leasehold is tax exempt public property because the Authority puts the leasehold to use for purposes approved by the Hospital Authorities Law and because income from the leasehold supports the Authority’s mission, as described in the next sections.

II. The Authority holds the leasehold in Spring Harbor in furtherance of its legitimate functions.

A. The Authority’s leasehold must be severed from Columbus Regional’s fee simple for the taxation analysis.

As noted above, *Coleman* requires that the Court sever the Authority’s leasehold from Columbus Regional’s fee simple to analyze the taxability of Spring Harbor. The Court recognized as much in the prior appeal: in *Columbus Bd. II*, this Court stated that “the question in this case is whether the Hospital Authority holds **the leasehold interest** for public purposes.” 302 Ga. at 362 (emphasis added). The certiorari question here even instructs the parties to focus on the Authority’s “property interest.”

Despite the Court’s well-settled direction to sever leasehold interests from the fee simple to determine taxability separately, the Assessors ignore *Coleman* and improperly collapse the Authority’s leasehold interest and Columbus Regional’s fee simple and reversion interest. The Assessors suggest that Columbus Regional “really” owns Spring Harbor, lease notwithstanding. *See, e.g.*, Petitioners’ Br. at 23. But it totally ignores this Court’s precedent that where, as here, “the term of a

lease is for a period greater than five years, a rebuttable presumption arises that the parties intended to create an estate for years.” *GeorgiaCarry.Org*, 306 Ga. at 840.

“It is the policy of the law treat the tenant of any estate for years as the **owner**, during the life of [the] estate.” *Id.* at 838 (alteration adopted).

That presumption cannot be rebutted here. More than just the decades-long lease term supports the Authority’s ownership. As noted above, the Authority has complete control of the property; it can mortgage the leasehold without Columbus Regional’s consent.⁵ To decide whether the Authority has a lease for years and thus owns the property, the Court must “determine what interests the parties intended to convey.” *Id.* at 840. A landlord does not generally convey the right to mortgage property when it intends to retain ownership. All evidence points to the Authority’s ownership of the leasehold; the Assessors offer nothing to the contrary.

The Assessors have **never** argued that the Authority and Columbus Regional are somehow one and the same—not to the trial court, the Court of Appeals, or even now. Nor could they. This Court has rejected the argument that a “lease to a corporation created at the direction of the [hospital] Authority” with “Authority members serving on the board of trustees” was “not a valid exercise of the

⁵ In another sign of how impossible the Assessors’ proposed standard is, such mortgage would be with a private entity and would result in payment to that entity, if not also a security interest in Spring Harbor, either of which the Assessors would then presumably claim rendered all of the mortgaged property taxable.

Authority’s power under the Hospital Authorities Act,” even where “the Authority expended its funds to create the corporation.” *Richmond Cnty. Hosp. Auth.*, 255 Ga. at 185–86. “[C]orporations are separate and distinct entities in the eyes of the law, notwithstanding even common ownership of two or corporations and the relationship of one corporation as the wholly-owned subsidiary of another.” *Id.* at 186. The Assessors have no valid basis to claim that the Authority and Columbus Regional should be treated as one.⁶

Of course, as the Assessors note, “the mere fact that property is owned by a Hospital Authority does not exempt it from property taxes.” *Columbus Bd. II*, 302 Ga. at 362–63; *see also* Petitioners’ Br. Section VI.C. The Authority has never argued otherwise. The Court must also assess whether the Authority holds title to the property in furtherance of its legitimate functions. *See id.* at 362. But considering *Coleman* and *Anneewakee*, this Court must make that assessment based on the leasehold, not the fact of a reversionary interest held by some other entity, because every lease involves a reversionary interest held by the lessor.

⁶ If the Authority were so treated—and again, the Assessors have never suggested it should be—the Authority might be entitled to other tax exemptions. Columbus Regional is a nonprofit, and the General Assembly exempts nonprofit hospital property from taxation, including nonprofit “homes for the aged.” O.C.G.A. § 48-5-41(a)(5), (7), (12). The appellate courts have left open whether Spring Harbor is a tax-exempt home for the aged.

Finally, the Court should note that the Assessors' argument makes no sense on its own terms. The Assessors ask this Court to allow them to tax the interest that Columbus Regional may one day have in Spring Harbor. But the Assessors made a binding admission *in judicio* that they **already** tax the reversion. V4/485 (Def.'s Resp. to Pl.'s Stmt. Mat. Facts.). They do not get to double-dip tax both the reversion and the leasehold. Second, the Authority does not own the reversion; the reversion and fee simple belong to Columbus Regional, a **separate entity**. Taxing the Authority's leasehold because of Columbus Regional's reversionary interest would amount to taxing the Authority for a different entity's property. And third, the magnitude of the tax bill the Assessors sent to the Authority for the leasehold belies their repeated insinuation that the leasehold is somehow illusory, and the reversionary interest (or the fee simple) is where all the value is. A \$900,000 bill in 2007 does not sound like the Assessors actually thought what the Authority owned was of trivial value. V3/467, 470.

B. The Spring Harbor leasehold furthers the Authority's legitimate functions.

Through its leasehold interest in Spring Harbor, the Authority provides housing and healthcare for the elderly—a legitimate function expressly endorsed by the Hospital Authorities Law. The Assessors do not seriously contend otherwise, nor could they on the undisputed record.

As noted, Spring Harbor provides 196 independent living units and a health center with 28 assisted living units, 30 dementia units, and 40 private skilled nursing beds to the Columbus-area elderly. V2/438–39 (Spring Harbor brochure); V3/479 (2007 Audit). Residents are over 75, on average. V4/478 (Def.’s Resp. to Pl.’s Stmt. Mat. Facts). Spring Harbor ensures that the elderly have continuing care when needed. V2/421–24 (Spring Harbor brochure).

Providing housing and healthcare for the elderly is one of the Authority’s legitimate functions, as established by the Hospital Authorities Law. The Hospital Authorities Law gives the Authority broad powers to operate “projects,” which include “dormitories, ... housing accommodations, nursing homes, ... extended care facilities, and other public health facilities.” O.C.G.A. §§ 31-7-71(5), 31-5-75. The Hospital Authorities Law expressly allows the Authority to “acquire by purchase, *lease*, or otherwise and to operate projects” and to “construct, reconstruct, improve, alter and repair projects.” O.C.G.A. § 31-7-75 (emphasis added). And the Hospital Authorities Law allows the Authority to “lease[] ... projects for operation by others to promote the public health needs of the community.” O.C.G.A. § 34-7-71(5). Spring Harbor falls easily within these broad grants of power.

Indeed, property that “support[s] and complement[s] the provision and receipt of medical services” qualifies as public property. *Columbus, Ga. Bd. of Tax*

Assessors v. Med. Ctr. Hosp. Auth., 336 Ga.App. 746, 752 (2016). The Court of Appeals followed *Stewart* and *TRS* in a case between some of these same parties to hold that parking lots and walking trails belonging to the Authority adjacent to a Columbus hospital were public property, because the parking lots “provided free parking for” hospital “patients, visitors, and employees,” while the “walking trails ... are available to patients, visitors, and employees.” *Id.* The Court of Appeals also affirmed the tax exemption for a parcel containing a for-profit doctors office because it also “contain[ed] the hospital itself.” *Id.* Spring Harbor fits just as squarely within the Hospital Authorities Law than the property at issue in that prior case.

Every court to address the issue in this litigation and the bond validation proceedings has agreed that operating Spring Harbor is a legitimate function of a hospital authority. As the trial court put it in its most recent order granting summary judgment, the need to provide housing and healthcare to the elderly “has become more and more pressing as the ‘baby boomer’ generation reaches retirement age and stresses the current available resources.” V2/19 (Ord. Granting Summ. J.). Even Judge Peters’ ancillary order to the 2007 bond validation found that Spring Harbor “**is a project contemplated under the Hospital Authorities Law.**” V4/313 (2007 Ord. Concerning Bond Validation Proceedings). His order

went on to call Spring Harbor “a wonderful community asset and one which does address a public need of an identifiable class of citizens, the elderly.” *Id.*

The Authority’s leasehold interest enables it to provide these services at Spring Harbor. Put differently, without the leasehold, the Authority could not provide these services. So the Spring Harbor leasehold is thus tax exempt public property because the leasehold furthers the Authority’s legitimate functions.

In challenging the legitimacy of Spring Harbor, the Assessors make much of Spring Harbor residents’ alleged wealth. But as even Judge Peters found, Spring Harbor residents’ alleged wealth does not take Spring Harbor outside the broad grant of power in the Hospital Authorities Law. V4/313 (2007 Ord. Concerning Bond Validation Proceedings). Spring Harbor will, after all, meet its elderly residents’ medical needs as they age, whether they need assisted living, nursing care, or specialized care for Alzheimer’s. Nor is means-testing part of the public property tax exemption. The question is whether the Authority uses its lease in furtherance of its legitimate functions, and the Hospital Authorities Law does not prohibit the Authority from serving non-indigent Columbus residents, much as the Assessors seem to wish otherwise. The Court should adhere to its precedent rather than take the Assessors’ populist bait.

C. The Authority uses income from Spring Harbor in furtherance of its legitimate functions.

There is another, independent reason that Spring Harbor is tax exempt. The undisputed evidence proves the Authority uses all income from Spring Harbor for its legitimate functions. That makes the Authority's leasehold interest in Spring Harbor tax exempt under *Stewart*, *Sigman*, and *TRS*.

All evidence on this point confirms that "all net income associated with the Authority's operation of its Spring Harbor at Green Island project for any fiscal year ... has been and is necessarily kept and applied to further the Authority's purposes under the Georgia Hospital Authorities Law, and to further or advance the Authority's purposes." V4/411 (Thacker Aff.). Spring Harbor is "an operating segment of the Authority and is reported as such in the Authority's financial statements." V3/523 (2011 Audit). Accordingly, "the income that's generated by Spring Harbor ... ultimately end[s] up at the Authority." V7/28 (Williams Dep.). There is no evidence to the contrary.

Spring Harbor's fees are pledged to retire the bonds the Authority issued to build Spring Harbor. V3/121–22 (2007 Bond Circular). Two superior courts validated that "the purposes for which the bonds are being issued ... are in furtherance of the public purposes for which Defendant Authority was established." V4/153 (2004 Bond Validation Order); V4/157 (2007 Bond Validation Order). The validations are "incontestable." Ga. Const. art. IX, § VII.

It follows that using Spring Harbor income to retire the bonds serves the Authority's legitimate functions.

The undisputed evidence further shows that the Authority distributes no income (from Spring Harbor or otherwise) to shareholders, directors, or executives **because it has none**. V4/404, 411-14. The Assessors have *never* challenged the trial court finding that no “evidence [has] been produced that the Authority has committed any malfeasance with respect to the monies it has received from the bond issuance or any other monies it has received from the operation of Spring Harbor.” V2/22. A hospital authority that distributed profits to its board or hypothetical shareholders would of course lose the public property exemption. The Authority has done no such thing, and the Assessors have never claimed or shown otherwise, for all their heated rhetoric.

Stewart authorizes the Authority to claim the tax exemption for its leasehold interests in Spring Harbor because the Authority uses the income Spring Harbor generates in furtherance of its purposes. Again, in *Stewart*, this Court deemed pecan groves, city property, and farmland owned by a hospital authority tax exempt public property because income from those properties was put to the hospital authority's uses. *See Stewart*, 226 Ga. at 538; *see also TRS*, 249 Ga. at 201 n.4. The same holds here.

The Assessors' only response is to criticize the Authority's use of the Spring Harbor income to repay the bonds rather than spend the Spring Harbor income on indigent care elsewhere in Columbus. Petitioners Br. at 27–29. To be clear, the Authority contributes millions to indigent care in Columbus each year. V4/412–15 (Thacker Aff.). And regardless, this argument ignores that Hospital Authorities Law expressly authorizes the Authority to issues bonds to “[p]ay[] all or any part of the cost of the acquisition, construction, alteration, repair, modernization, and other charges incident thereto in connection with any facilities or project.” O.C.G.A. § 31-7-78(a). And it may pay for those bonds “[e]xclusively from income and revenues of certain designated projects.” O.C.G.A. § 31-7-78(b).

That is precisely what the Authority has done here. Spring Harbor is a project within the Hospital Authorities Law—as every court has found. Paying down the bonds issued to construct a legitimate project is in turn a legitimate use of funds. To hold otherwise would call the State's and every subordinate political subdivision's credit into question. The Authority pledged Spring Harbor's revenues to repay the bonds, and the Court cannot now question that use of the funds without unsettling the expectations of bond holders. Without pledging those revenues and thereby receiving the funds necessary for building and operating Spring Harbor, there would be no Spring Harbor at all, let alone income for the Authority from it, as it would not exist. The Assessors want to tax the Spring

Harbor leasehold, but do not seem to believe the Authority ever should have built it, which reveals the bottom-line political animus behind the Assessors' position.

III. The Assessors have no evidence of “private gain or income.”

The undisputed record shows that the Authority has never distributed Spring Harbor income to any private party or used that income for anything but the Authority's purposes. V4/411–14 (Thacker Aff.). These facts should end the case. Yet the Assessors nonetheless claim that Columbus Regional receives “private gain” in three ways. Their arguments cannot be squared with *Stewart* and *Sigman*, the cases this Court directed the lower courts to follow, or this Court's other public property cases like *TRS*.

A. Columbus Regional's reversionary interest is not private gain or income because it must be severed from the leasehold.

First, the Assessors complain that the Authority's repayment of the bonds will result in the reversion of Spring Harbor to Columbus Regional. Petitioners' Br. at 20–21. But the Assessors continue to ignore that this Court directed the courts on remand to analyze the Authority's *leasehold* interest, not Columbus Regional's reversion. *Columbus Bd. II*, 302 Ga. at 363. Again, under unchallenged precedent, the Authority's lease “is severed from the fee and is classified for tax purposes as realty.” *Anneewakee*, 179 Ga.App. at 274; *see also Coleman*, 219 Ga. at 17.

The Assessors thus err in conflating the Authority’s leasehold and Columbus Regional’s reversion interest when this Court’s mandate and precedent require the Court to analyze them separately. When properly analyzed, the undisputed record establishes that the Authority uses its **leasehold** for public purposes—not private benefit. Columbus Regional’s reversion is not part of that analysis.

The Assessors must know the lease and the reversion should be separately taxed; they **already tax** Columbus Regional’s fee simple and reversion. This is not just some accidental admission: the bills are in the record. The Assessors are bound by their admission *in judicio* that they “bill” Columbus Regional “for property taxes on the ... reversionary interest in the underlying real property.” V4/485 (Def.’s Resp. to Pl.’s Stmt. Facts). There is no dispute between these parties that Columbus Regional’s reversion is taxable. But sticking the Authority with a tax bill for the reversion that’s already being taxed makes no sense.

The Assessors’ position is also inconsistent with the Hospital Authorities Law, which empowers the Authority to “to acquire” projects “by ... **lease**.” O.C.G.A. § 31-7-75(4). In every lease, the property reverts to the fee simple owner. Accepting the Assessors’ argument would deny hospital authorities (and other governmental entities) their power to lease property or projects, lest they have to pay taxes simply by virtue of the fee simple owner’s tax status.

Nor can the Assessors be heard to complain that the Authority is paying down the bonds. The Authority lawfully issued those bonds, and the courts validated them as being in furtherance of the Authority's public purpose. To now complain about the Authority's issuance and repayment of the bonds now amounts to an improper collateral attack on the bond validation.

Finally, whenever the property reverts, and the Authority no longer has a leasehold interest, then the taxation analysis will necessarily change. But to suggest that the leasehold should be disregarded simply because it, likely virtually every lease ever, will someday end, cannot be reconciled with logic or this Court's authority, including *Coleman*.

B. Reimbursing Columbus Regional for costs incurred is not private gain or income.

Second, the Assessors fault the Authority for reimbursing Columbus Regional—itsself a 501(c)(3) nonprofit—for out-of-pocket costs, such as construction and marketing fees, that Columbus Regional incurred before leasing Spring Harbor to the Authority. Petitioners' Br. at 24. But this is not "private gain or income," this is reimbursement for costs incurred. The Assessors do not (and cannot) dispute that Columbus Regional actually incurred all the expenses that the Authority reimbursed. Nor do they dispute that the Authority received the benefit of the expenses Columbus Regional incurred when it took over the project.

Here again, the Assessors' argument would prove too much. Columbus Regional advanced money on the Authority's behalf; in effect, the Authority benefited from a loan from Columbus Regional. The Hospital Authorities Law authorizes the Authority to "borrow money for any corporate purpose." O.C.G.A. § 31-7-75(17). The Assessors' position would render authorities unable to borrow money without risking their tax exemption. Would it make a principled legal difference if, instead of having reimbursed those costs at the outset, the Authority instead made monthly payments to amortize the advance over time? Of course not, which illustrates the hollowness of the Assessors' position.

C. The Authority's contracts with private parties do not provide private gain or income.

Third, the Assessors attack the management agreement under which the Authority pays CRSL (itself a 501(c)(3) nonprofit corporation) a fee to manage the facility, up to 5% of Spring Harbor's operating revenues. Petitioners' Br. at 24–25. This is not private gain or income, as the Assessor would have it. It is a "fee ... for the performance of ... Marketing Services and the Management Services." V4/135 (Amended & Restated Mgmt. Agmt.). The Assessor cites no authority for the unsupportable notion that a public entity paying a private vendor for services amounts to "private gain or income."

Nor could it. The Authority is entitled under the Hospital Authorities Law to "contract for the management and operation of [a] project by a professional

hospital or medical facilities consultant or management firm.” O.C.G.A. § 31-7-75(23). The Authority could not market or manage Spring Harbor itself. It has no employees, and the board are all volunteers. No private entity will provide construction materials or management services for free. Adopting the Assessors’ logic would render hospital authorities (and other governmental entities) unable to contract at all without eliminating their tax exemption. That would, in turn, render them unable to carry out their mission.

This Court has recognized as much. That is why the Assessors’ logic cannot be reconciled with the facts of *Sigman*, *Stewart*, or this Court’s other public property cases, all of which involved contracts with private parties for the use and/or management of public property. So adopting the Assessors’ logic would not only radically remake Georgia tax law, it would disregard the cases that this Court directed the lower courts to rely on in deciding this case. Again, in *TRS*, the Court affirmed a public property exemption for a Teachers Retirement System-owned hotel “**operated by an independent contractor.**” 249 Ga. at 198–99, 204 (emphasis added). This precedent forecloses the Assessors’ argument.

IV. The Court of Appeals did not err in affirming the grant of summary judgment.

The Assessors dispute six determinations the superior court made in granting summary judgment, four of which the Court of Appeals adopted. Petitioners’ Br. at 32–37. The Assessors are wrong on all six counts.

First, the Assessors claim the Spring Harbor bond validations are insufficient for summary judgment. Petitioners’ Br. at 32–33. That much is true; this Court, in *Columbus Board II*, held that the bond validations are not conclusive of the issue of taxability. 302 Ga. at 362–63. But, while the Assessors wish otherwise, the Court did not hold that the bond validations were irrelevant. Indeed, the Court observed that “[i]t may be that in many cases—perhaps even most cases—facts establishing that bonds have a public purpose also will tend to show that property associated with those bonds is public property.” 302 Ga. at 363. Accordingly, the lower courts were entitled to consider the bond validations, particularly given that the income derived from operating Spring Harbor is used to repay the bonds and for other Authority purposes, as discussed above. The bonds have been validated as serving public purposes, and so spending Spring Harbor income to retire them also serves the Authority’s public purposes.

Second, echoing the populist political theme of their litigation position, the Assessors attack the alleged wealth of Spring Harbor’s residents, claiming that a tax exemption for Spring Harbor somehow “thwarts the policy underlying hospital authorities.” Petitioners’ Br. at 34. But as noted, the Hospital Authorities Law does not limit the Authority to serving the indigent, and this Court has held that Authority projects that serve paying patients are permissible. “A hospital must attract private paying patients or else it will become a deficit-ridden, indigent-only

hospital, dependent upon tax dollars to keep its doors open.” *Richmond Cnty. Hosp. Auth.*, 255 Ga. at 191.

Further, neither the tax-exemption statute nor case law incorporates a means-testing requirement for the public property exemption. The Court of Appeals has roundly rejected efforts to impose means-testing when the statute does not require it. It has rejected the argument that a nonprofit home for the aged that charged for entry “is somehow not ‘charitable enough’ to maintain its tax-exempt status.” *Bd. of Tax Assessors v. Baptist Village, Inc.*, 269 Ga.App. 848, 852 (2004). And it has rejected the argument that a monthly fee for entry into a youth psychiatric hospital “means that [the hospital] is not sufficiently public in nature” for a tax exemption. *Anneewakee*, 179 Ga.App. at 273 (rejecting effort to read public charity requirements into nonprofit hospital tax exemption). The fact that Spring Harbor charges fees does not undermine its tax exemption. If there is to be means-testing or an indigency requirement added onto the public property exception, such a change must come from the General Assembly.

Third, the Assessors misstate Georgia property law to argue that Spring Harbor is not under the Authority’s ownership and control. Petitioners’ Br. at 35. This Court has held time and again that “the grant of an estate,” including a leasehold, “transfers ownership of the property to the estate holder during the term of the estate.” *GeorgiaCarry.Org.*, 306 Ga. at 839. The Authority owns Spring

Harbor for the duration of the lease. And the Assessors have never claimed that the Authority and Columbus Regional should be treated as alter egos—a burden they could not bear if they tried.

Fourth, the Assessors dispute the significance of issuing separate tax bills for the Spring Harbor real estate and the improvements on the land. They claim they issued separate bills at Columbus Regional’s request. Irrespective of the reason, separating the bill for the Authority’s and Columbus Regional’s separate property interests is required by this Court’s *Coleman* decision and the Court of Appeals’ *Anneewakee* decision. The Authority’s lease is “severed from the fee and is classified for tax purposes as realty.” *Anneewakee*, 179 Ga.App. at 274. The issuance of separate tax bills matters because it shows the Assessors are already taxing Columbus Regional’s reversion interest—the main “private gain” they claim Columbus Regional receives from Spring Harbor, albeit decades off.

Fifth, the Assessors again repeat their complaint about the management agreement with CRSL. Petitioners’ Br. at 36–37. As covered thoroughly above, that argument proves too much. If it were the law, it would suggest that *any* contract for goods or services with a private party would strip public property of its tax exemption. No doubt that is part of why neither the General Assembly nor this Court have ever endorsed the Assessors’ view. Nor have the Assessors ever argued

– let alone introduced any evidence – that the contract is not fair market value or otherwise malfeasance.

Sixth, the Assessors dispute whether Spring Harbor’s income in fact goes to the Authority. Petitioners’ Br. at 37. And they complain (again) that the revenue is restricted to repaying the bonds. But they (again) ignore that the bonds were validated as serving the Authority’s public purpose. If the Assessors mean that retiring validated bonds is not a public purpose, that only shows how wrongheaded their position is.

The superior court and Court of Appeals, in two separate rounds of briefing and argument, both considered all this evidence and correctly rejected the Assessors’ argument. The undisputed evidence shows that Spring Harbor is a project contemplated by the Hospital Authorities Law, and that all Spring Harbor income goes to paying down lawfully issued bonds for that project. There is no evidence—none—that the Authority has distributed any profit to any private entity. The Authority is entitled to the public property tax exemption.

CONCLUSION

The Court should affirm the judgment of the Court of Appeals.

Respectfully submitted this 15th day of April, 2024.

This submission does not exceed the word-count limit imposed by Rule 20.

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CERTIFICATE OF SERVICE

I certify that on April 15, 2024, I caused a copy of this **APPELLEE'S BRIEF** to be served by U.S. mail on the following counsel for Appellant-Defendant:

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SUPREME COURT OF GEORGIA
Case No. S23G1183

March 12, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

COLUMBUS BOARD OF TAX ASSESSORS et al. v. THE MEDICAL
CENTER HOSPITAL AUTHORITY.

Your request for an extension of time to file the brief of appellee in the above case is granted until April 15, 2024.

A copy of this order **MUST** be attached as an exhibit to the document for which the appellee received this extension.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa A. Barnes
, Clerk