

IN THE SUPREME COURT
STATE OF GEORGIA

COLUMBUS, GEORGIA,)
BOARD OF TAX ASSESSORS;)
COLUMBUS, GEORGIA; and)
LULA LUNSFORD HUFF,)
TAX COMMISSIONER OF)
MUSCOGEE COUNTY,)

CASE NO. S23G1183

Appellants/Defendants,)

v.)

THE MEDICAL CENTER HOSPITAL)
AUTHORITY,)

Appellee/Plaintiff.)

BRIEF OF APPELLANTS

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I. INTRODUCTION

This case presents the question whether a resort-style retirement community open only to the healthy and wealthy is exempt from property taxation as “public property” notwithstanding evidence of gain and income to a private entity. The Medical Center Hospital Authority (“the Authority”) claims that the improvements consisting of Spring Harbor at Green Island (“Spring Harbor”) are tax-exempt “public property” on grounds that the Authority owns them through a ground lease from Columbus Regional Healthcare System, Inc. (“Columbus Regional”). The Authority also claims that Spring Harbor’s income supports only the Authority. The facts, however, refute those claims.

Bond proceeds were used to pay Columbus Regional. Columbus Regional can pocket 5% of Spring Harbor’s annual revenues. No money from Spring Harbor is used to support any indigent care in the county; it must stay at Spring Harbor. In the reverse of every other hospital authority case decided by this Court, once the bonds are repaid all ownership interest in Spring Harbor will revert to a private entity—Columbus Regional—and the Authority will retain no interest whatsoever. Underlying Spring Harbor is a circular structure created to benefit Columbus Regional with both tax-exempt bond financing and property tax exemption. There is nothing altruistic about the structure and financial

arrangements underlying Spring Harbor. They exist only to benefit Columbus Regional. They do not benefit the Authority or the public.

The Court of Appeals' majority opinion is based on the fact that the Authority holds a leasehold, and it accepts the Authority's assertion that Spring Harbor is devoted to "public purposes" in furtherance of the Authority's legitimate functions. *See Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, No. A23A0373, slip op. at 10-12 (June 28, 2023). However, as Judge Brown recognized in dissent, the majority opinion contravenes this Court's prior direction that the Authority must "hold[] title to its leasehold interest *only* for the benefit of the State and the public," and it cannot prevail if Columbus Regional receives any "private gain or income." *Id.*, dissent, at 1-3 (citing *Columbus Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 302 Ga. 358, 362-63 (2017)) (brackets added; italics supplied in Judge Brown's dissent).

If affirmed, this case will send a message statewide to private entities that they can use hospital authorities for their own private reward and serve only the citizens they choose—simply by following the same structure as here and claiming some amorphous "public purpose" despite substantial private gain. To allow private entities such as Columbus Regional to hide from property taxes under a hospital authority's shell would extend the "public property" exemption to a far-reaching place this Court has never approved, and it would thwart both the law and

policy underlying hospital authorities' entitlement to the exemption. This Court should not permit tax exemption that benefits a private entity; absolves the private entity from its civic responsibility to pay for fire, police, schools, and other local government services; and increases the tax burden on all other property taxpayers.

II. JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to the Georgia Constitution and O.C.G.A. § 5-6-15, which state that this Court may review Court of Appeals' decisions by certiorari. *See* Ga. Const. art. VI, § 6, ¶ 5; O.C.G.A. § 5-6-15. The Petition for Certiorari was timely filed, with a seven-day extension, on July 25, 2023, following the Court of Appeals' June 28, 2023 decision. The Court granted the writ of certiorari on February 20, 2024.

III. ENUMERATION OF ERROR (QUESTION PRESENTED IN ORDER GRANTING THE WRIT OF CERTIORARI)

The question the Court presented in its order granting the writ of certiorari is as follows:

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?

(Feb. 20, 2024 Order.)

IV. STATEMENT OF THE CASE

A. Factual Background

Spring Harbor is a continuing care retirement community in Columbus. It is open only to persons in “good health” capable of “independent living” who possess “significant resources.” (V1-326, V1-502.¹) As addressed in section IV.A.2 *infra*, entry to Spring Harbor costs hundreds of thousands of dollars, and ongoing fees total in the tens of thousands of dollars each year. (V1-427-29.)

1. Spring Harbor’s Development, Financing, and Oversight

a. Conception, Development, and Ongoing Management and Oversight

Spring Harbor “was born out of” and developed by Columbus Regional, not the Authority. (Thacker Dep. 117; Elder Dep. 24, 37-38.) In 1999 and 2001, Columbus Regional purchased two tracts of land totaling forty acres for approximately \$2,142,000. (V1-31, V3-318-19, V3-480-81; Elder Dep. 63-64.) From 1999 through 2004, Columbus Regional and Columbus Regional Senior Living, Inc. (“CRSL,” an entity which Columbus Regional created in 2001 to manage Spring Harbor) undertook “typical development work” on Spring Harbor,

¹ The superior court clerk submitted the record electronically to the Court of Appeals. Accordingly, the record cites are to the volume and PDF page number within that volume, not the trial court’s stamped page number. *See* Ga. S. Ct. R. 22(2). Depositions are cited by name because they were submitted as separate files.

including hiring of leasing, marketing, environmental, architectural, design, and construction firms. (V2-44, V3-202, V3-318-20; Elder Dep. 38, 63-65 & Ex. 14.)

Columbus Regional Senior Vice President Donald Elder testified he was responsible for “development,” “construction,” “financing,” and “sales” of Spring Harbor, and he remained responsible for its “oversight” and “management” for years after Columbus Regional and the Authority signed a ground lease in 2004. (Elder Dep. 24, 35, 37-38, 40, 59-60, 90, 98-99, 101-02, 153, 164; *accord* Thacker Dep. 69, 72-73, 108, 159.) Elder was an officer of only Columbus Regional entities, not the Authority. (Elder Dep. 24, 38, 40.) The Authority’s accountants and auditors have stated that “development, construction and operation of the Facility has been overseen and managed by” CRSL. (V2-167; *accord* V2-523.)

b. Ground Leases, Bond Financing, and Management Agreements

Though born from and developed by Columbus Regional, the Authority alleges it took over control and ownership of Spring Harbor’s improvements in June 2004 when the time came to finance the construction costs, with Columbus Regional purportedly retaining an interest in only “the dirt.” (T-8 (Jan. 28, 2013 Hr’g); *accord* V1-31-32, V1-60, V1-512-13; Elder Dep. 110.) The Authority claims this alleged ownership change occurred because Columbus Regional signed a “ground lease” with the Authority. (V1-31-32.)

On June 1, 2004, Columbus Regional and the Authority entered into a ground lease for \$10.00. (V3-32-60.) The ground lease stated the Authority desired “to construct, own, and operate” Spring Harbor on land owned by Columbus Regional. (V3-32.) At the conclusion of the ground lease, all of Spring Harbor would become the “absolute property” of Columbus Regional, “free and clear of any liens and encumbrances.” (V3-38, V3-43.) The lease term was forty years, but “early termination” could occur at Columbus Regional’s sole election just as soon as bonds issued to finance Spring Harbor’s construction were retired, “without any further obligation” from Columbus Regional to the Authority except for an indemnity. (V3-37.)

Two Columbus Regional senior executives deposed in this litigation, Mr. Elder and Chief Financial Officer Roland Thacker, both admitted that Columbus Regional as landlord and the Authority as tenant—instead of the normal reverse structure, with the Authority as landlord and Columbus Regional as tenant—is “unique,” not the “typical scenario,” and unlike any other structure they have entered into with the Authority. (Elder Dep. 110-11; Thacker Dep. 116-17.) Mr. Thacker admitted, “I don’t think the purpose of the Ground Lease was to do a market-based rent on it.” (Thacker Dep. 138.) Instead, Columbus Regional created the ground lease as a basis to obtain tax-exempt bond financing and then asserted that the Spring Harbor facilities are also exempt from property taxes on

grounds that the Authority “owns” them. (V1-31-32, V1-60, V1-74-75, V2-29 & 36 (consecutive pages in the underlying document but misnumbered in the record), V2-110, V2-148, V3-202; Thacker Dep. 78, 82-83, 85, 87, 159; Elder Dep. 38, 151, 153; *see* T-51-52 (Jan. 28, 2013 Hr’g); Thacker Dep. 138-39 (“Q. And by putting the Ground Lease in place with the Authority, the Authority can claim ownership of the improvements and claim they’re property tax exempt? A. That’s correct.”).)

The ground lease was executed in connection with the Authority’s \$75 million issuance of 30-year revenue bonds to finance Spring Harbor’s construction. (V1-31, V2-11, V2-27-87.) The bonds were issued following June 2004 bond validation proceedings before Superior Court Judge Frank Jordan. (V2-64, V3-153-56.) Validation authorized the bonds’ issuance and exempted them from Georgia income taxation, but the proceedings did not make any findings that the Authority owns the Spring Harbor improvements or resolve property tax issues. (V3-153-56.) Approximately \$3.3 million in proceeds from the bond sale were used to “[p]ay [Columbus Regional] for a portion of the Project-related assets such as construction in progress, deferred marketing fees, and other such items, that have been incurred as of the closing date.” (V3-202; *accord* V3-225, V3-323.)

On the same day Columbus Regional and the Authority entered into the 2004 ground lease, the Authority entered into a management agreement with

Columbus Regional's CRSL subsidiary to develop, market, and manage the operation of Spring Harbor. (V3-94-123.) So at the same time Columbus Regional executed the ground lease with the Authority, the Authority transferred Spring Harbor's operation right back to Columbus Regional's CRSL affiliate. (V3-32-60, V3-94-123, V3-330.) The management agreement included a submanagement agreement dated the same day between CRSL and CRSA Management, LLC, a for-profit entity, for CRSA to "perform [CRSL's] duties and obligations" because CRSL possessed "no experience" in operating or managing a facility like Spring Harbor. (V1-405, V3-115; *accord* V3-330.)

Both an amended ground lease and an amended management agreement were executed when the bonds were refinanced in 2007, with final bond repayment no later than July 1, 2037. (V2-11, V2-89, V3-61-90, V3-124-52; *accord* V2-167; Elder Dep. 82.) This refinancing was for only \$41 million because \$34 million of the 2004 bonds already had been redeemed from Spring Harbor entrance-fee income. (V2-98, V2-112; *accord* V3-332.) The amended ground lease extended the term to sixty years (thus expiring in 2064), but the total rent remained \$10.00. (V3-66.) Additionally, although the Authority was to "pay or cause to be paid" all real estate taxes (including property taxes) under the 2004 ground lease, the 2007 amended lease changed that provision to place the property tax burden on

Columbus Regional.² (V2-535, V3-35-36, V3-41, V3-64-65, V3-70; Comp. Dep. Exs. 210, 212; Williams Dep. 118.)

Other provisions from the original 2004 ground lease remained the same in the 2007 amended lease, including Columbus Regional's (1) right to early termination as soon as the bonds are retired and (2) the reversion of all interest in Spring Harbor to Columbus Regional upon termination of the lease—even though the 2007 fair market value exceeded \$53 million. (V2-467, V2-533, V3-66-67, V3-71-72.) The management agreement between the Authority and CRSL was similarly amended to provide that the agreement remains in effect for 30 more years until June 30, 2037—one day before the bonds must be repaid—but it will terminate upon the bonds' earlier repayment or the ground lease's termination, if either occurs before 2037. (V2-150, V3-136.) The management agreement, as amended, permits CRSL to take 5% of Spring Harbor's annual operating revenues, in addition to reimbursable expenses. (V2-151, V3-135-36.)

The bonds refinanced in 2007 were issued following bond validation proceedings. (V2-141, V3-157-61.) As with the 2004 bond validation, the 2007 bond validation did not find that the Authority owns the Spring Harbor

² Spring Harbor residents do not pay any real property taxes. (V1-337, V3-190.)

improvements or resolve property tax issues.³ (V3-157-61.) In fact, the 2007 bond validation proceedings included findings by Superior Court Judge Bobby Peters which contradict the Authority's contention that the Spring Harbor improvements are owned, managed, and controlled by the Authority. (V3-309-36.)

Noting this validation was just a refinance of already existing facilities, Judge Peters validated the bonds. (V3-157-61, V3-335-36 (stating that "these and other concerns were issues which would have best been discussed" in 2004, and to deny validation of the refinance "would be detrimental" to holders of those bonds).) Judge Peters, however, also entered a separate 27-page order detailing his numerous concerns with the Spring Harbor structure and refuting Columbus Regional and the Authority's representations that the Authority owns, controls, and is the real beneficiary of Spring Harbor. (V3-309-36, *cited in Columbus Bd. of Tax Assessors*, 302 Ga. at 359 (referencing Judge Peters' "detailed, 27-page order").)

As to ownership and control, Judge Peters found that "clear and convincing evidence" shows that the Authority transferred and delegated its rights and duties to Columbus Regional and thus concluded that one "cannot rule as a matter of fact

³ Referencing the two bond validations in its prior decision holding "the bond validation proceedings did not conclusively establish whether the leasehold interest of the Hospital Authority is 'public property' for tax purposes," this Court emphasized, "The trial courts' bond validation rulings were not appealed, and we express no opinion on their merits." *Columbus Bd. of Tax Assessors*, 302 Ga. at 360 n.3, 363.

and as a matter of law” the Authority owns Spring Harbor. (V3-310, V3-318.) Instead, “it is apparent Columbus Regional has acquired the site, built Spring Harbor, prepared all the legal documents and financial transfers, and will own, manage and control Spring Harbor.” (V3-311; *accord* V3-331-32 (“the entire project is owned, managed, and controlled by” CRSL); *see also* V3-313-33 (listing facts supporting that Columbus Regional and CRSL own Spring Harbor).)

As to the real beneficiary, Judge Peters emphasized both the reversion and other financial benefits to Columbus Regional, noting that only entrance fees and/or future rents will retire the bonds, and “[w]hen the bonds are paid off, the land, buildings, improvements, fixtures, furniture, personal property, everything located on the site will be totally owned by Columbus Regional []. The present value of said improvements is \$53,000,000, not including the value of the land.” (V3-314 (brackets added); *see* V2-467.) Judge Peters also noted that Columbus Regional was reimbursing itself approximately \$3.3 million from the 2004 bond proceeds (V3-323, V3-332; *see* V3-202, V3-225), and the management agreement permits CRSL to pocket 5% of Spring Harbor’s annual operating revenues—in addition to its reimbursable expenses—even though CRSL does not actually run it:

The reason given by the Authority in the written agreement to transfer the project back to Columbus Regional after Columbus Regional had leased the project to them was the Authority’s lack of knowledge in running such a facility. But [CRSL] then sub-leased the Management

to another Corporation [CRSA] for the same reason, lack of knowledge on how to run such a facility.

(V3-330 (brackets added); *see* V2-151, V3-135-36, V3-144.)

Judge Peters concluded, “without any financial risk, Columbus Regional [] has been simply using the proceeds of a line of credit to build and construct Spring Harbor.” (V3-332 (brackets added).)

The public Authority has transferred all the bond proceeds, acquisition, construction, management, and total control of this Project to a private company, Columbus Regional [] and/or “affiliates.” According to the bond documents, the Medical Center Hospital Authority will be responsible for the repayment of the bonds but the Management and Control and Ownership of the project will be vested with Columbus Regional [] and/or “Affiliates.”

(V3-313-14, *quoted in Columbus Bd. of Tax Assessors*, 302 Ga. at 360 (brackets added).) To Judge Peters, these facts reveal how Columbus Regional is both the actual owner and the real beneficiary receiving private gain and income. (V3-310-11, V3-313-14, V3-326-27, V3-330-32.) Thus he emphasized one “cannot rule as a matter of fact and as a matter of law” that Spring Harbor “only benefit[s] the Authority and the public” or that “the Authority will ‘*own*’” it. (V3-318 (emphasis in original and brackets added).)

2. *Spring Harbor’s Restrictive Admissions and Luxurious Amenities*

The high net worth and income required for admission to Spring Harbor make residency unattainable for most Columbus residents. (V3-219, V3-228-53.) Also, no one who needs a lot of healthcare can move there. To gain admission,

one must possess “significant resources,” enjoy “good health,” and be able to “live independently” with no “diagnosed medical conditions” that would risk “premature transfer from independent living.” (V1-326-27, V1-333, V1-442, V3-180, V3-219, V3-242, V3-312-13; *see* V-3-312 (Judge Peters’ order calling Spring Harbor “a wonderful retirement community for the affluent”).) Spring Harbor rejects applicants for not meeting its “financial criteria” or its “medical criteria for independent living.” (Elder Dep. 120-21.)

The record reflects that, as of 2011, the entrance fee for Spring Harbor ranged from \$100,205 to \$514,547, with additional fees ranging from \$18,795 to \$31,470 for a second person. (V1-427-29.) Additional monthly fees ranged from \$1,956 to \$4,376—or \$23,472 to \$52,512 annually. (V1-427-29.) Both to qualify for admission and to remain at Spring Harbor, one must submit documentation that he or she has, and will continue to have, income that equals at least 160% of the monthly fee. (V1-326, V3-181.) If a resident fails to pay the monthly fee or any other charges, Spring Harbor can terminate the agreement. (V3-184-85, V3-187.) The Authority claims that no one has been evicted for failure to pay, but it says the reason is “careful screening” of prospective residents’ finances. (V3-371.) A financial feasibility study estimated that only 27.5% of households in the “primary market area” for Spring Harbor were “income eligible” for its independent living units. (V3-233.) The study excluded less economically affluent Columbus-

Muscogee County neighborhoods, which means that far less than 27.5% of community households are likely income-eligible. (V3-228.) No one who is indigent resides at Spring Harbor. (V1-326, V3-181, V3-371; Elder Dep. 120-21.)

For those fortunate enough to live at Spring Harbor, “[e]very day is about exciting choices and limitless possibilities” to enjoy luxurious services and amenities. (V1-412.) The services and amenities provided within this gated community include formal and informal dining venues with alcohol, a putting green, movie theatre, club and game room, computer/business center, library, woodworking shop, ballroom, music and reading room, exercise facility, indoor pool and hydro-therapy center, arts and crafts room, market shoppe, local bank branch, hair salon, post office, pharmacy delivery services, outdoor fireplace, gazebos, walking trails, transportation services, concierge services, 24-hour security, and weekly housekeeping and laundry service. (V1-417, V1-422, V1-424-25, V1-438, V2-92-94, V3-312, V3-317, V3-331; T-8 (Jan. 28, 2013 Hr’g); Elder Dep. 164.)

As Spring Harbor boasts in its marketing materials, many of these amenities are what one finds at a resort, not a health care facility. (V1-412, V1-417; *accord* V2-155.) Indeed, most of Spring Harbor is devoted to “village-style” housing and resort amenities for “independent,” “active” retirees—not to assisted living or nursing home care. (V1-411.) There are 196 “residential dwelling” “independent

living units” which “are not subject to licensing or certificate of need requirements.” (V2-163, V2-179.) “About half a block” away there are 28 assisted living rooms, 30 Alzheimer’s center rooms, and 40 “skilled nursing center” rooms with no admission to anyone “from the outside.” (V1-31, V1-333-34, V1-338-39, V2-179-80, V3-216-17; Elder Dep. 123.)

B. Prior Proceedings

In 2015 the superior court granted summary judgment to the Authority on grounds the Spring Harbor improvements are tax-exempt “public property.” (V4-533-42.) The superior court denied summary judgment to the Authority on grounds that Spring Harbor is tax-exempt as a “home for the aged.” (V4-539-41.)

On appeal, the Court of Appeals decided the case on threshold grounds that “the bond validation proceedings conclusively established that Spring Harbor furthers a legitimate function of the Hospital Authority” and therefore the Spring Harbor improvements are tax-exempt “public property.”⁴ *Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 338 Ga. App. 302, 307 (2016). This Court granted certiorari to review the Court of Appeals’ decision.

⁴ The Court of Appeals did not reach the issue “whether Georgia law authorizes an institution dedicated to serving wealthy individuals to be deemed a public project,” but it said that “if so, the practice of hospital authorities entering lease agreements with private entities is now at some remove from the wellspring of its constitutional legitimacy.” *Columbus, Ga. Bd. of Tax Assessors*, 338 Ga. App. at 307 n.1.

This Court unanimously reversed the Court of Appeals' decision that the bond validations conclusively established the Spring Harbor improvements are "public property." *See Columbus Bd. of Tax Assessors*, 302 Ga. at 358-59, 363. According to this Court, facts which establish bonds have a "public purpose" may show the associated property is "public property, but it is not inevitably so." *Id.* at 363. "The question of whether a hospital authority's property interest qualifies for ad valorem tax exemption as 'public property' is a separate and distinct question from the issues presented in a bond validation proceeding." *Id.* Instead, this Court explained that the inquiry on remand should be whether the Authority holds its Spring Harbor leasehold interest "only for the benefit of the State and the public" or whether there is "private gain or income" for Columbus Regional. *Id.* at 362.

In its decision, this Court recited a number of the "lengthy factual findings" that Judge Peters made "regarding the ownership, control, and management of the property" in his "detailed, 27-page order" issued during the 2007 bond validation proceedings. *See id.* at 359-63 & nn.4 & 6. It instructed the superior court "to review all submitted record materials in support of and opposing the motion [for summary judgment] in order to determine whether a genuine issue of material fact existed as to the ad valorem tax exemption." *Id.* at 363 n.6 (brackets added).

On remand, the superior court again concluded the Spring Harbor improvements are "public property" and granted summary judgment to the

Authority, adopting almost entirely verbatim a proposed order drafted by the Authority's trial court counsel.⁵ (V1-4-23; *see* V5-329-62.) The order wholly ignores record evidence showing the private gain and income Spring Harbor provides to Columbus Regional. Other than noting Judge Peters approved the 2007 bond validation, the order makes no mention of Judge Peters' order that this Court highlighted and directed the superior court to review. (V1-10-11.) *See Columbus Bd. of Tax Assessors*, 302 Ga. at 361 n.4, 363 n.6.

The Court of Appeals affirmed in a 2-1 decision issued two days before the end of distress. *See Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 1. The majority opinion applies a legal standard based on severance of the leasehold and accepts the Authority's claims of "public purposes" in furtherance of its legitimate functions. *Id.* at 10-12. It neither addresses the record evidence of private gain and income to Columbus Regional nor applies the "private gain or income" standard this Court directed. But for once again holding the bond validations are "conclusive," the majority opinion essentially readopts the court's prior analysis. *Compare Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 10-11, *with Columbus, Ga. Bd. of Tax Assessors*, 338 Ga. App. at 305-06.

⁵ The superior court did not revisit its prior decision that the Spring Harbor improvements are not tax-exempt as a "home for the aged." (V1-4-23; *see* V4-539-41 (2015 decision).) It excised the "home for the aged" section from the conclusions of law in the Authority's proposed order. (V1-4-23; *see* V5-354-61.)

In dissent, Judge Brown set forth the correct test this Court instructed to apply, which the majority opinion does not follow:

When property is not held by the State itself, but 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.” [T]he mere fact that property is owned by a [h]ospital [a]uthority does not exempt it from property taxes.

Columbus, Ga. Bd. of Tax Assessors, No. A23A0373, slip op., dissent, at 1-3 (quoting *Columbus Bd. of Tax Assessors*, 302 Ga. 358, 362-63) (citations and punctuation omitted and brackets and italics supplied in Judge Brown’s dissent).

Judge Brown dissented because “I cannot say that the undisputed facts show that the Authority holds title to its leasehold interest *only* for the benefit of the State and the public.” *Id.*, dissent, at 3 (emphasis in original).

Appellants sought certiorari review. This Court granted the writ of certiorari on February 20, 2024, directing 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?

(Feb. 20, 2024 Order.)

V. SUMMARY OF THE ARGUMENT

The Authority is not entitled to summary judgment on its claim that Spring Harbor is tax-exempt “public property.” The Authority’s leasehold is not held “only for the benefit of the State and the public” but instead provides Columbus Regional “private gain [and] income.” *Columbus Bd. of Tax Assessors*, 302 Ga. at 362 (quoting *Hosp. Auth. of Albany v. Stewart*, 226 Ga. 530, 537 (1970), and *Sigman v. Brunswick Port Auth.*, 214 Ga. 332, 335 (1958)). The Court of Appeals’ majority opinion rests its decision on two other bases: (1) assertions of “public purposes” in furtherance of the Authority’s legitimate functions—despite those claims being negated by record evidence showing private gain and income to Columbus Regional—and (2) the Authority holding a leasehold severed from the fee. *See Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 10-12.

In concluding that Spring Harbor is devoted to public purposes in furtherance of the Authority’s legitimate functions, the majority opinion ignores the next part of the test which requires inquiry into whether there exists “private gain or income.” *Columbus Bd. of Tax Assessors*, 302 Ga. at 362; *see Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 11 (concluding that Spring Harbor income is “devoted to public purposes and in furtherance of the legitimate functions of the Authority” and “is therefore exempt from ad valorem taxation as

public property”) (citations omitted). If “private gain or income” exists, the leasehold is not held “only for the benefit of the State and the public.” *Id.*

The majority opinion also contradicts this Court’s direction that “the mere fact that property is owned by a Hospital Authority does not exempt it from property taxes.” *Id.* at 362-63 (citation omitted); *see Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 12 (stating that “the Authority’s leasehold interest in Spring Harbor controls, and thus, as established above, Spring Harbor is public property for taxation purposes”). Form cannot replace substance. For tax purposes, one must determine whether there exists “private gain or income.” *Id.* at 362. If so, the property interest cannot be tax-exempt.

VI. ARGUMENT AND CITATION OF AUTHORITIES

A. This Court Should Not Permit Tax Exemption as “Public Property” When There Exists “Private Gain or Income.”

1. To Permit Tax Exemption as a Matter of Law When “Private Gain or Income” Exists Would Contradict This Court’s Precedent.

A genuine issue of material fact regarding whether “property is held only for the benefit of the State”—and thus is entitled to property tax exemption—should exist when evidence shows that someone other than the title holder has received

“private gain or benefit related to the holding or financing of such property.”⁶

(Feb. 20, 2024 Order.) This conclusion is supported by the Court’s precedent—including its 2017 unanimous decision in this same case. *See Columbus Bd. of Tax Assessors*, 302 Ga. at 358-63 (quoting *Stewart*, 226 Ga. at 537, and *Sigman*, 214 Ga. at 335). For this Court to retreat from this conclusion would require it not only to overrule almost seventy years of precedent, but also to overrule a decision reaffirming the standard set forth in this case just six and one-half years ago. *See id.* at 362-63.

As this Court noted in deciding the prior appeal, “public property” is not defined in the Georgia Public Revenue Code, O.C.G.A., tit. 48, and the closest statement to a definition of “public property” comes from *Hospital Authority of Albany v. Stewart* and *Sigman v. Brunswick Port Authority*. “Public property” is

property which “is owned by the State, or some political division thereof, and title to which is vested directly in the State, or one of its subordinate political divisions, or in some person holding exclusively for the benefit of the State, or a subordinate public corporation.” 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.”

⁶ The *de novo* standard of review applies to this appeal. *See* Ga. S. Ct. R. 19(1)(g). Both legal conclusions and whether the trial court correctly held no genuine issue of material fact exists are reviewed *de novo* following the grant of summary judgment. *See* O.C.G.A. 9-11-56(c); *Parham v Stewart*, 308 Ga. 170, 176 (2020) (quoting *Woodcraft by MacDonald, Inc. v. Georgia Cas. and Sur. Co.*, 293 Ga. 9, 10 (2013)); *Cowart v. Widener*, 287 Ga. 622, 623 (2010).

Columbus Bd. of Tax Assessors, 302 Ga. at 362 (quoting *Stewart*, 226 Ga. at 537, and *Sigman*, 214 Ga. at 335); *see id.* (citing O.C.G.A. § 48-5-41 (a)(1)(A)).

As this Court has explained, “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.’” *Id.* at 362 (quoting *Stewart*, 226 Ga. at 537) (ellipsis in *Columbus Bd. of Tax Assessors*; citation omitted and emphasis added). If “private gain or income” exists, tax exemption should not be permitted.

This conclusion is supported by both *Stewart* and *Sigman*. Together they state that the “public property” exemption applies solely to property held “*exclusively*” or “*only* for the benefit of the State or the public.” *Id.* (quoting *Sigman*, 214 Ga. at 335, and *Stewart*, 226 Ga. at 537) (emphasis added). Thus, “[w]hen the property is not held 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.’” *Id.* at 362 (quoting *Stewart*, 226 Ga. at 537) (brackets and emphasis added).

If there exists any “private gain or income,” one cannot conclude as a matter of law that the Authority “holds title *only* for the benefit of the State and the public.” *Id.* (emphasis added). To retreat from this standard would create statewide

mischief by encouraging private entities to use hospital authorities as vehicles for avoiding property taxes, and it would make a mockery of what constitutes tax-exempt “public property.”

2. **Evidence of Private Gain and Income Creating a Genuine Issue of Material Fact Exists in This Case.**

The record shows the Authority does not hold the leasehold interest in Spring Harbor “only for the benefit of the State and the public.” *Id.* The entire structure provides significant “private gain [and] income” to Columbus Regional. *Id.*

Columbus Regional created the ground lease as a basis to obtain the benefit of tax-exempt bond financing and to assert that the Spring Harbor facilities are also exempt from property taxes on grounds that the Authority “owns” them. (V1-31-32, V1-60, V1-74-75, V2-29 & 36 (consecutive pages in the underlying document but misnumbered in the record), V2-110, V2-148, V3-202; Thacker Dep. 78, 82-83, 85, 87, 159; Elder Dep. 38, 47, 151, 153; *see* T. 51-52 (Jan. 28, 2013); Thacker Dep. 138-39 (“Q. And by putting the Ground Lease in place with the Authority, the Authority can claim ownership of the improvements and claim they’re property tax exempt? A. That’s correct.”).) Only the Authority is responsible for repayment on the bonds, and Columbus Regional has no obligation regarding the bonds, other than providing “limited” support, with Columbus Regional’s obligations capped between \$0 and \$5 million, depending on the circumstances. (V2-53 (“The Series

2004 Bonds are not, directly or indirectly, an obligation of [Columbus Regional] or any affiliate thereof.”); V2-123-24 (“Except to the extent of the Support Agreement, the Series 2007 Bonds are not, directly or indirectly, an obligation of [Columbus Regional] or any affiliate thereof.”.) The bond obligations have totaled far more than this potential “limited” support: the bonds issued in 2004 totaled \$75 million, and the refinanced bonds issued in 2007 totaled \$41 million. (V2-11, V2-27, V2-89, V2-98, V2-112.)

Approximately \$3.3 million in proceeds from the bond sale were used to “[p]ay [Columbus Regional] for a portion of the Project-related assets such as construction in progress, deferred marketing fees, and other such items, that have been incurred as of the closing date.” (V3-202; *accord* V3-225, V3-323.) As Judge Peters noted, this entire structure is one way Columbus Regional “without any financial risk” used the Authority as a “line of credit,” and it is now additionally trying to use the ground lease as a shield against paying property taxes despite this obvious private benefit recognized by Judge Peters. (V3-332.)

The management agreement also permits CRSL to pocket 5% of Spring Harbor’s annual operating revenues—in addition to reimbursable expenses. (V2-151, V3-135-36.) Columbus Regional can take this money even if there is no net income and even though CRSL does not actually run Spring Harbor. (V2-151, V3-135-36, V3-144.) As Judge Peters noted and the Authority admits, CRSL hired

CRSA because CRSL “had no experience” and “lack[ed] knowledge on how to run such a facility.” (V1-405, V3-330; *see* V3-144.) Unsurprisingly, given the intent to benefit Columbus Regional, this allowance lasts until the bonds are repaid, currently scheduled for 2037. (V2-90, V3-136.) It does not matter that CRSL is a nonprofit; the law prohibits gain or income to “private entity” CRSL and its parent Columbus Regional. *Columbus Bd. of Tax Assessors*, 302 Ga. at 359 & n.2, 362.

The income derived from operating Spring Harbor repays the bonds. (V1-34.) Repayment of the bonds provides substantial benefit to Columbus Regional, especially because once the bonds are repaid and the lease terminates, “everything located on the site” reverts to Columbus Regional. (V3-37, V3-43, V3-66, V3-71-72, V3-314.) *See Columbus Bd. of Tax Assessors*, 302 Ga. at 360. The record shows that as of 2011 the fair market value of this benefit exceeded \$53 million. (V2-468.) Even if there were no additional evidence of private gain or income to Columbus Regional, which there is, the benefit of this “unique” structure alone shows Columbus Regional receives private gain and income. (Elder Dep. 110-11; Thacker Dep. 117.)

This case is unlike any other Georgia hospital authority case addressed in appellate decisions. In every other case, the authority owns the property, leases it to a health care system to operate the facilities, and the property reverts to the authority at the end of the term. *See FTC v. Phoebe Putney Health Sys., Inc.*, 568

U.S. 216, 221 (2013), *rev'g* 663 F.3d 1369, 1373 & n.8 (11th Cir. 2011), *aff'g* 793 F. Supp. 2d 1356, 1360 (M.D. Ga. 2011); *Smith v. Northside Hosp., Inc.*, 302 Ga. 517, 518 (2017); *Richmond Cnty. Hosp. Auth. v. Richmond Cnty.*, 255 Ga. 183, 184 (1985); *Bradfield v. Hosp. Auth. of Muscogee Cnty.*, 226 Ga. 575, 578 (1970); *Dep't of Human Res. v. Ne. Ga. Primary Care, Inc.*, 228 Ga. App. 130, 130-31 (1997); *Nw. Ga. Health Sys., Inc. v. Times-Journal, Inc.*, 218 Ga. App. 336, 338 (1995); *Clayton Cnty. Hosp. Auth. v. Webb*, 208 Ga. App. 91, 91 (1993). Yet in this case, once the bonds are repaid Columbus Regional can take Spring Harbor with no further obligation to the Authority except for an indemnity. (V3-66, V3-71-72 (2007 amended lease); *accord* V3-37, V3-43 (2004 original lease).) This is the opposite of what the law intends. *See Phoebe Putney*, 663 F.3d at 1373 n.4; *Smith*, 302 Ga. at 528; *Richmond Cnty. Hosp. Auth.*, 255 Ga. at 188. Other than noting that Appellants have questioned the existence of the reversion—and accepting the superior court's factually incorrect statement that Columbus Regional pays taxes on its “reversionary interest”⁷—the Court of Appeals' majority opinion does not address this issue. *Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 4, 6-7.

⁷ Columbus Regional has never paid taxes on any reversionary interest in the improvements. Documents and deposition admissions show it pays taxes only on the land. (V1-60, 62 (“CRHS-Land Only”), V1-63, V1-64 (“Land Valuation Only”), 998; Elder Dep. 78-79, 146; Thacker Dep. 86; Williams Dep. 100.)

If unaltered, the Court of Appeals’ decision will invite private entities to seek similar bond financing and tax exemption for their own benefit with property reversion to themselves. This would be a sea-change in Georgia law, and the Court should prohibit its occurrence. Indeed, this Court has stressed that the reversionary interest is how the public retains ultimate ownership and benefits from the transaction. *See Smith*, 302 Ga. at 528 & n.6 (stating that the reversion means “Northside stands to lose much of its efforts” at expiration or termination of the agreement, and “the Authority stands to gain”); *Richmond Cnty. Hosp. Auth.*, 255 Ga. at 187 (“The Authority is protected by the reversionary clause in the lease.”). Here the opposite, upside-down structure providing for reversion to a private entity means the Authority “stands to lose” and Columbus Regional “stands to gain.” *Smith*, 302 Ga. at 528.

Importantly, Spring Harbor serves no one who is indigent (*see supra* at 12-14), and the Authority cannot contend in defense that it uses any revenues from Spring Harbor to serve indigent patients—or even non-indigent ones—elsewhere. It is clear “all revenue” for Spring Harbor must remain in the facility’s operating fund until the bonds are repaid, at which time “everything located on the site” reverts to Columbus Regional. (V2-379 (emphasis in original), V3-314.) Nothing from Spring Harbor goes to the Authority to support its mission or services elsewhere in the county.

Even in years when Spring Harbor has earned net income, no support for indigent care has occurred. The Authority's financials show no Spring Harbor funds transferred to support any indigent care. (V2-240-62, V2-475-508, V2-510-35, V3-283-308.) The Authority's briefing admits it. (V3-359-62.) Testimony from the Authority's Assistant Treasurer (and Columbus Regional's CFO) Roland Thacker confirms it. (V3-408, V3-410-13.) The Authority produced no new documents on remand showing otherwise. A close reading of Mr. Thacker's testimony reveals he never says any Spring Harbor revenues have been used to support indigent care. He only says Spring Harbor is an operating segment of the Authority and then separately states the Authority supports indigent care. (V3-410-13.) There is no link between the two.

The record thus shows no evidence Spring Harbor funds have ever been used to support Columbus/Muscogee County indigent care. (*See also supra* at 12-14.) What is received at Spring Harbor stays with Spring Harbor. To the extent the Authority claims otherwise, as recognized by Judge Brown, it should submit such proof to a jury to resolve this genuine issue of material fact. The beneficiary must be the public, not a private entity, for tax exemption to apply. Here record evidence shows Columbus Regional used the proceeds of tax-exempt financing to construct Spring Harbor and reimburse itself, it controls Spring Harbor and can take 5% of its revenues, and once the bonds are repaid Columbus Regional gets

everything while the Authority will be left with nothing. Without this Court’s reversal, private entities statewide will copy this structure and avoid paying their fair share of property taxes, raising the property tax burden for everyone else.

B. “Public Purposes in the Furtherance of Legitimate Functions” Cannot Negate the “Private Gain or Income” Standard.

1. Recitations of “Public Purposes in the Furtherance of Legitimate Functions,” from Bond Validations or Otherwise, Should Not Suffice To Subvert the “Private Gain or Income” Standard.

The Court of Appeals’ majority opinion incorrectly concludes that Spring Harbor income is “devoted to public purposes and in furtherance of the legitimate functions of the Authority” and “is therefore exempt from ad valorem taxation as public property.” *Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 11 (citations omitted). Even if Spring Harbor met this test, which it does not, the majority opinion ignores the next part of the test which requires factual inquiry into whether there exists “private gain or income.” *Columbus Bd. of Tax Assessors*, 302 Ga. at 362-63. As noted above, this Court previously stated that “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.’” *Id.* at 362 (quoting *Stewart*, 226 Ga. at 531, 537) (ellipsis in *Columbus Bd. of Tax Assessors*) (emphasis added). For tax exemption purposes, one cannot prevail as a matter of law on the “public purposes” requirement if there exists any “private gain or income.” *Id.* at 361-63.

Indeed, this Court's prior decision explains that facts which establish bonds have a "public purpose" may show the associated property is "public property, but it is not inevitably so." *Id.* at 363. "The question of whether a hospital authority's property interest qualifies for ad valorem tax exemption as 'public property' is a separate and distinct question from the issues presented in a bond validation proceeding." *Id.*

If not reversed, the Court of Appeals' decision will allow private entities statewide to claim exemption from property taxes simply by placing purported "ownership" in the local hospital authority and asserting some amorphous "public purpose" even when substantial private gain or income exists. This decision also will encourage these entities to serve only the citizens they choose. Make no mistake, this case will serve as the blueprint. A private entity will create a project that benefits it and likely will serve only the most profitable customers. (V1-427-29.) It will enter a lease with the local hospital authority which document claims the authority owns and controls the project even though a separate agreement will place actual control with the private entity and allow it to take funds from the project in an amount far above its expenses and any reasonable fee for services provided. (V3-61, V3-124.) The authority's ability to issue bonds will both remove financing risk for the private entity and almost surely provide a better interest rate than the private entity could obtain. (V2-90.) A requirement will be

inserted prohibiting the authority from taking any funds from the project, thus preventing the authority from using any profits to serve all the county's residents including its indigent sick. (V2-379.) The private entity's use of the authority for these purposes can continue for decades. (V3-66, V3-136.) Then, once the bonds are paid off, the private entity can take everything free and clear, with nothing left to the authority. (V3-66-67, V3-71-72.)

That structure is exactly what has occurred here and, if allowed to stand, will turn the role of hospital authorities on its head and send the "public property" tax exemption to a far-reaching place this Court has never approved. This structure fails to protect the public's interest in hospital authority property. *See Smith*, 302 Ga. at 528 & n.6; *Richmond Cnty. Hosp. Auth.*, 255 Ga. at 187. It disregards why hospital authorities exist: to serve the state's "indigent sick." *Phoebe Putney*, 568 U.S. at 220 (quoting *DeJarnette v. Hosp. Auth. of Albany*, 195 Ga. 189, 200 (1942)). Indeed, tax exemption for hospital authorities exists only in return for fulfilling their "obligation" to serve the indigent. *Ne. Ga. Primary Care, Inc.*, 228 Ga. App. 130, 134 (1997). As even its own prior opinion recognized, the Court of Appeals' decision takes us far from hospital authorities' "constitutional legitimacy." *Columbus, Ga. Bd. of Tax Assessors*, 338 Ga. App. at 307 n.1.

2. **The Authority's Claims of Purported "Public Purposes in the Furtherance of Legitimate Functions" Are Contradicted by the Evidence and Insufficient for Granting Summary Judgment.**

Neither the superior court order nor Court of Appeals' majority opinion applies the "private gain or income" standard or considers any of the evidence showing such benefit to Columbus Regional. (*See supra* §§ VI.A.1 & 2 (addressing the "private gain or income" standard and the record evidence of gain and income to Columbus Regional).) The superior court order, adopted almost entirely verbatim from the Authority's proposed order, instead buttresses its decision on six items both legally insufficient and factually in dispute. (V1-9-12. *Compare* V1-4-23 with V5-329-62.) *See Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 6. The Court of Appeals' majority opinion adopts four of them in rendering its decision. *Id.* at 10-11.

First, the superior court stated and the Court of Appeals agreed the Spring Harbor bonds were issued "in furtherance of the public purpose for which the Authority was established." *Id.* at 6, 10-11. (*See* V1-10.) This is a legally insufficient basis for summary judgment. Just because bonds are issued in furtherance of "public purposes" does not mean the "public purposes" test is met for tax exemption. "Public purposes" for tax exemption "is a separate and distinct

question from the issues presented in a bond validation proceeding.”⁸ *Columbus Bd. of Tax Assessors*, 302 Ga. at 363. The “public purposes” test cannot be met for ad valorem property tax exemption when, as is the case here, there exists evidence of “private gain or income.” *Id.* at 362. (*See supra* § VI.A.2 (addressing record evidence of private gain and income).)

It is not uncommon for such separate analyses to occur in the realm of governmental functions. For example, this Court recognizes differences between governmental and proprietary activities. *See, e.g., City of Atlanta v. Mitcham*, 296 Ga. 576, 579 (2015). Simply because an activity is a legitimate function of a public body does not necessarily mean sovereign immunity is waived. Many functions do not enjoy sovereign immunity. Hospital authorities are not covered by sovereign immunity because they perform the same functions as private hospitals and are “in direct competition” with them. *Thomas v. Hosp. Auth. of Clarke Cnty.*, 264 Ga. 40, 41, 43 (1994). Spring Harbor’s services and amenities

⁸ The ground lease and amended ground lease—both specifically contemplating property tax payment, initially by the Authority and subsequently by Columbus Regional—were included with the documents filed in the bond validation proceedings. (V3-35-36, V3-41, V3-64-65, V3-70; *accord* V4-29, V4-133 (2007 bond validation documents.) To suggest taxability needed to be challenged in those proceedings (as the Court of Appeals *still* implies) makes no sense when the bond documents themselves contemplate payment of property taxes. (V3-35-36, V3-41, V3-64-65, V3-70.) *See Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 10-11 (citing Ga. Const. art. IX, § 6, ¶ 4, and *Ambac Indem. Corp. v. Akridge*, 262 Ga. 773 (1994)).

are not more worthy of exemption than those offered at competing facilities which pay property taxes.

Second, the superior court stated and the Court of Appeals agreed that Spring Harbor addresses “a public need for an identifiable class of citizens.” *Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 6, 10. (See V1-10.) Again, this conclusion does not end the inquiry. If any “private gain or income” exists, the property cannot be tax-exempt. *Columbus Bd. of Tax Assessors*, 302 Ga. at 362. Moreover, allowing tax exemption when only wealthy people comprise the “identifiable class” thwarts the policy underlying hospital authorities and raises “constitutional legitimacy” questions.⁹ *Columbus, Ga. Bd. of Tax Assessors*, 338 Ga. App. at 307 n.1; see *Phoebe Putney*, 568 U.S. at 220 (quoting *DeJarnette*, 195 Ga. at 200) (stating that hospital authorities exist to “carry out and make more workable the duty which the State owed to its indigent sick”); *Ne. Ga. Primary Care*, 228 Ga. App. at 134 (tax exemption exists only in

⁹ A hospital authority “project” must be a “*public* health facilit[y]” and “promote the *public* health needs of the *community*.” O.C.G.A. § 31-7-71(5) (emphasis added). As a plain textual matter, Spring Harbor fails the test. It serves neither the “public” nor the “community.” See Merriam Webster’s Collegiate Dictionary 944 (10th ed. 1993) (defining “public” as “of, relating to, or affecting all the people of the whole area,” “of or relating to people in general,” “universal,” “accessible to or shared by all members of the community,” and “the people as a whole”); *id.* at 233 (defining “community” as a “unified body of individuals” such as a state or “the people with common interests living in a particular area” and “society at large”).

return for the “obligation” to serve the indigent).

Third, the superior court stated and the Court of Appeals agreed that “Spring Harbor is exclusively under the Authority’s control and ownership during the duration of the lease.”¹⁰ *Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 6; *see id.* at 10. (*See* V1-10.) Mere “control and ownership,” however, is not the test; “private gain or income” is the test. *See Columbus Bd. of Tax Assessors*, 302 Ga. at 362-63 (“mere fact” of hospital authority ownership “does not exempt it from property taxes”). Record evidence also shows that Spring Harbor is not exclusively under the Authority’s control and ownership, as this Court already has recognized. (*See supra* at 4-12.) *See Columbus Bd. of Tax Assessors*, 302 Ga. at 359-62. In fact, Judge Peters concluded “clear and convincing evidence” shows the Authority transferred and delegated its rights and duties to Columbus Regional, and one “cannot rule as a matter of fact and as a matter of law” the Authority owns Spring Harbor. (V3-310, V3-318, *quoted in*

¹⁰ Actually, in agreeing with the superior court, the Court of Appeals mistakenly said the reverse: “*Spring Harbor* holds exclusive control and ownership of the Authority through the duration of the lease.” *Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 10 (emphasis added).

Columbus Bd. of Tax Assessors, 302 Ga. at 359-60.) As Judge Peters recognized, a genuine dispute of material fact clearly exists on this issue.¹¹

Fourth, the superior court stated that the Assessors separately assessed Spring Harbor’s improvements and land, and separate tax bills were issued. *See Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 6. (*See* V1-12.) (The Court of Appeals did not adopt or otherwise address this finding.¹²) This statement, taken from the Authority’s proposed order, fails to disclose that the Assessors separated the bills only because Columbus Regional asked it to do so. (V5-339; *see* V1-60, V1-74-75; T-73, 107 (Jan. 28, 2013 Hr’g).) Regardless, neither separate bills nor even “mere fact” of ownership establish entitlement to tax exemption. *Columbus Bd. of Tax Assessors*, 302 Ga. at 362-63.

Fifth, the superior court stated “the Authority entered into a management agreement with Columbus Regional to provide daily management of Spring

¹¹ In remanding the case, this Court stated “[t]he superior court’s conclusion regarding the Hospital Authority’s ownership of Spring Harbor is inconsistent with the lengthy factual findings made by the trial court in the 2007 bond validation order,” and “the superior court order does not address these inconsistencies.” *Columbus Bd. of Tax Assessors*, 302 Ga. at 361 n.4. Neither the new superior court order nor the Court of Appeals’ majority opinion mentions, much less resolves, the inconsistencies with Judge Peters’ order.

¹² The Court of Appeals’ prior decision, however, did state that separation of the assessments “impl[ies] that the Hospital Authority and Columbus Regional each have a separate interest in Spring Harbor.” *Columbus, Ga. Bd. of Tax Assessors*, 338 Ga. App. at 305.

Harbor on the Authority's behalf." *Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 6. (*See* V1-12.) (The Court of Appeals did not mention this agreement as a basis for its decision.) In fact, this management agreement allowing Columbus Regional to pocket 5% of Spring Harbor's revenues, in addition to reimbursable expenses, is evidence of private gain and income. (V2-151, V3-135-36.)

Sixth, the majority opinion says the superior court found, and the Court of Appeals agrees, that financial statements treat Spring Harbor "operating profits" as those of the Authority. *Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 6, 11. (*See* V1-12.) That alleged fact, even if it were true, is insufficient; the issue is whether there exists "private gain or income." Also, the statement is refuted by testimony from Mr. Thacker that the Authority has not realized positive net income from Spring Harbor over its entirety. (V3-408, V3-410-13; *accord* V3-359-62.) In fact, "all revenue received" for Spring Harbor is "restricted" pursuant to the bond agreements and must remain in Spring Harbor's operating fund until the bonds are repaid, at which time "everything located on the site" reverts to Columbus Regional. (V2-379 (emphasis in original), V3-314.) It does not go to the Authority.

Both the superior court and Court of Appeals failed to consider any of the evidence showing private gain and income. Even more importantly, they did not

apply this Court’s prior guidance that, for purposes of ad valorem property tax exemption, evidence of “private gain or income” negates a finding of “public purposes . . . in the furtherance of the legitimate functions.” *See Columbus Bd. of Tax Assessors*, 302 Ga. at 362 (ellipsis in *Columbus Bd. of Tax Assessors*).

Ignoring Judge Brown’s dissent, the Court of Appeals’ majority opinion confuses the analysis by applying the wrong legal standards to this case. It accepts declarations of “public purposes” while disregarding that the leasehold must exist “only for the benefit of the State and the public” and thus cannot provide any “private gain or income.” *Id.* at 362-63.

C. The Existence of a Leasehold Held by a Public Entity Is Not Conclusive in Determining Tax Exemption When There Exists Evidence of “Private Gain or Income.”

The Court of Appeals’ majority opinion incorrectly concludes that whether the property is public or private for taxation purposes “depends on the holder of the leasehold interest,” and the Spring Harbor improvements can avoid taxation because the Authority’s interest has been “severed from the fee,” even stating that this analysis “controls” the outcome. *Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 11-12 (citations omitted). Just as before, the Court of Appeals buttresses its holding on *Delta Air Lines, Inc. v. Coleman*, 219 Ga. 12 (1963), and *Douglas County v. Anneewakee, Inc.*, 179 Ga. App. 270 (1986). Compare *Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 11-12,

with *Columbus, Ga. Bd. of Tax Assessors*, 338 Ga. App. at 304-05. This Court, though, only cited *Delta* in explaining that the severance of property interests is not conclusive. See *Columbus Bd. of Tax Assessors*, 302 Ga. at 362. Instead the applicable standard “is set forth in . . . *Stewart and Sigman*.” *Id.* at 363 (ellipsis added). This Court did not even cite, much less apply, *Anneewakee*—not a “public property” case—even though the Court of Appeals placed so much reliance on it in its first opinion, and now it has done so again. Compare *Columbus, Ga. Bd. of Tax Assessors*, No. A23A0373, slip op. at 11-12, with *Columbus, Ga. Bd. of Tax Assessors*, 338 Ga. App. at 305.

The majority opinion contravenes this Court’s direction. In setting forth the proper inquiry, this Court has stressed that “the mere fact that property is owned by a Hospital Authority does not exempt it from property taxes,” even quoting the Court of Appeals saying the same thing in other litigation between these parties. *Columbus Bd. of Tax Assessors*, 302 Ga. at 362-63 (quoting *Columbus, Ga. Bd. of Tax Assessors v. Med. Ctr. Hosp. Auth.*, 336 Ga. App. 746, 752 (2016)) (footnote omitted). One’s status as a public entity is not conclusive in determining whether a property interest is tax-exempt. If it were, Columbus Regional—which contractually must pay any taxes in this case—would have successfully shielded itself by doing nothing more than creating a lease with the Authority. (V3-64-65, V3-70.)

Regardless of the interest the Authority holds, the question is whether it holds that interest “only for the benefit of the State and the public,” without any “private gain or income” to Columbus Regional. *Id.* at 362 (quoting *Stewart*, 226 Ga. at 537). As discussed in section VI.A.2 *supra*, record evidence demonstrates private gain and income to Columbus Regional, thus negating the claim that the Authority holds its leasehold interest “only” for the State and public’s benefit.

VII. CONCLUSION

For the reasons set forth above, Appellants respectfully request the Court reverse the decision of the Court of Appeals. The record precludes the issuance of summary judgment to the Authority because it demonstrates that a genuine issue of material fact exists as to whether the property is held only for the benefit of the State and the public.

[Certification of Word-Count Compliance and Signatures on Next Page.]

CERTIFICATION OF WORD-COUNT COMPLIANCE

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

Based on the calculation provided by the computer program used to prepare this brief, it contains 9,547 words, excluding the cover page, tables of contents and citations, signature block, certificate of service, and this statement of compliance.

Respectfully submitted, this 11th day of March 2024.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *Brief of Appellants* on opposing counsel by electronic mail and by depositing a copy of the same in the U.S. Mail, with adequate postage affixed, addressed as follows:

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