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STATE OF MICHIGAN
IN THE SUPREME COURT

MACK C. STIRLING,	Supreme Court No. 162961
Petitioner-Appellant,	Court of Appeals No. 353117
v	Tax Tribunal Docket No. 19-003870-TT
COUNTY OF LEELANAU,	
Respondent-Appellee.	

APPELLEE COUNTY OF LEELANAU'S BRIEF IN OPPOSITION TO MACK STIRLING'S APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

CLARK HILL PLC

Charles A. Lawler (P65164)
Zachary C. Larsen (P72189)
212 East Cesar E. Chavez Ave.
Lansing, MI 48906
517.318.3100
Clawler@clarkhill.com
Zlarsen@clarkhill.com

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COUNTER-STATEMENT OF JURISDICTION

Stirling timely appealed from a published decision of the Michigan Court of Appeals dated March 25, 2021. *Stirling v Leelanau Co*, __ Mich App __; __ NW2d __ (2021) (Docket No 353117); MCR 7.305(C)(2). The County does not dispute this Court's jurisdiction to consider his application.

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COUNTER-STATEMENT OF QUESTION PRESENTED

Appellant Mack Stirling's spouse received a "residential exemption" on two Utah properties under Utah Code § 59-2-103(3). Stirling attempted to claim a Principal Residence Exemption ("PRE") on Michigan property under MCL 211.7cc, which Leelanau County denied due to the disqualifier when a taxpayer or taxpayer's spouse has received a "substantially similar" exemption in another state. The Court of Appeals determined that the "substantially similar" disqualifier under MCL 211.7cc(3)(b) does not demand exactness by requiring another state's property tax exemption to be identical to Michigan's PRE, and that court then held that Utah's "residential exemption" is "substantially similar" to Michigan's PRE. Stirling does not challenge the Court of Appeals' interpretation of "substantially similar" but only the application of that standard. The question is therefore:

1. Should the "residential exemption" from property tax under Utah Code § 59-2-103 be construed as a single property tax exemption under Utah law?

Appellant's answer:	No.
Appellee's answer:	Yes.
Michigan Tax Tribunal's answer:	No.
Michigan Court of Appeals' Answer:	Yes.

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CONSTITUTION AND STATUTES INVOLVED

MCL 211.7cc(1): "A principal residence is exempt from the tax levied by a local school district for school operating purposes to the extent provided under section 1211 of the revised school code, 1976 PA 451, MCL 380.1211, if an owner of that principal residence claims an exemption as provided in this section."

MCL 211.7cc(3): ". . . [A] married couple who are required to file or who do file a joint Michigan income tax return are entitled to not more than 1 exemption under this section . . . *[A] person is not entitled to an exemption under this section in any calendar year in which any of the following conditions occur*: (a) *That person has claimed a substantially similar exemption, deduction, or credit, regardless of amount, on property in another state* . . . [or] (b) *that person or his or her spouse owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit substantially similar to the exemption provided under this section* . . . ." (Emphasis added).

Utah Const, Art. XIII, Section 3: "(2)(a) The Legislature may by statute exempt the following from property tax: . . . (iv) up to 45% of the fair market value *of residential property,* as defined by statute."

Utah Code § 59-2-103: "(2) Subject to Subsections (3) through (5) and Section 59-2-103.5, for a calendar year, *the fair market value of residential property located within the state is allowed a residential exemption* equal to a 45% reduction in the value of the property.

. . .

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(5) (a) Except as provided in Subsection (5)(b)(ii), a residential exemption described in Subsection (2) is limited to one primary residence per household.

(b) An owner of multiple primary residences located within the state is allowed a residential exemption under Subsection (2) for:

(*i*) subject to Subsection (5)(a), the primary residence of the owner; and

(*ii*) each residential property that is the primary residence of a tenant."

Utah Code § 59-2-102(36): "(a) Subject to Subsection (36)(b), '*residential property*,' for purposes of the reductions and adjustments under this chapter, *means any property used for residential purposes as a primary residence.*

(b) Subject to Subsection (36)(c), 'residential property': . . . (ii) does not include property used for transient residential use."

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REASONS FOR DENYING THE APPLICATION

Appellant Mack Stirling ("Stirling") does not dispute that a taxpayer may not claim a PRE in Michigan if the taxpayer or their spouse claimed a "substantially similar" exemption in another state. MCL 211.7cc(3)(a) & (3)(b). The Court of Appeals held that this disqualifier requires a comparison of Michigan's PRE and the Sister State's exemption. *Stirling v Leelanau Co*, __ Mich App __; __ NW2d __ (2021) (Docket No 353117); slip op at 5. And, in deciding if the latter is "substantially similar," "demanding exactness" is not required. *Id*. Rather, the general character and purpose of the two exemptions must be the same. *Id*. Applying that test here, the court held that Utah's "residential exemption" (which Stirling received on two homes) *is* "substantially similar" to the PRE because, like Michigan's PRE, its "main characteristic" is "to grant an exemption to a person who owns a primary residence in the state." *Id*. at 6.

Stirling now seeks leave to appeal. Yet Stirling fails to challenge the only jurisprudentially significant issue decided in the Court of Appeals' brief, published opinion: the test for what constitutes a "substantially similar" exemption. *Stirling*, __; slip op at 5–6. Instead, Stirling accepts the Court of Appeals' textual analysis.[1] But he asks this Court to grant his application to decide if the Court of Appeals erred in *applying* that exclusion to Utah's "residential exemption" by treating it as a single exemption instead of several distinct exemptions. (Stirling App., pp. 11–13.)

How MCL 211.7cc(3) applies to Utah's "residential exemption" under Stirling's somewhat unique facts does not merit this Court's review. See MCR 7.305(B). More specifically:

[1] See Petitioner-Appellant Stirling's App. for Leave, p. 13 n. 9 ("Stirling is not disputing whether the Court of Appeals correctly decided the meaning of 'substantially similar.'") ("Stirling App.").

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- Whether Utah's "residential exemption" is a single exemption or is several distinct exemptions (including one for owner-occupied property and one for tenant-occupied property) is not a question of "significant public interest" in Michigan. MCR 7.305(B)(2).

- Given the limited number of Michigan residents that own second homes in Utah, that question likewise does not "involv[e] a legal principle of a major significance to the state's jurisprudence." MCR 7.305(B)(3).

- The Court of Appeals' application of Utah law is neither "clearly erroneous" nor does it cause "material injustice." MCR 7.305(B)(5).

For those reasons, this Court should deny his application for leave to appeal and leave the Court of Appeals' appropriate resolution of Stirling's tax exemption claim undisturbed.

COUNTER-STATEMENT OF FACTS

The pertinent facts are few and undisputed. From 2016 through 2019, Petitioner Mack Stirling and his wife Dixie Stirling owned property in Elmwood Township, Leelanau County. (Tax. Trib. Dkt. 7, Attach. to Answer, p. 8, Quitclaim Deed.) During each of those years, they claimed a principal residence exemption on the property under MCL 211.7cc(1). (*Id.* at p. 10, Aff. for Homestead Exemption.) That exemption provided an 18-mill rollback of their property taxes. MCL 211.7cc(1); MCL 380.1211(1). And for the same time period, the Stirlings filed their Michigan income taxes as "married filing jointly." (Dkt. 16, Answer to Mot. for Summ. Disp., p. 3.)

In 2019, the County conducted an audit of the Stirling's PRE claim. (Dkt. 7, Attach. to Answer, pp. 11–12.) Through the audit, the County discovered that Dixie Stirling had also claimed the "residential exemption" allowed under Utah Code, § 59-2-103(2) on two Utah properties—one in Provo, Utah and one in Bountiful, Utah. (Dkt. 7, Attach. to Answer, pp. 13–21, Utah Tax Notices.) Dixie Stirling leased both of those properties as long-term residential rental units, including one to her daughter and her daughter's husband. (Dkt. 13, Pet.'s Mot. for

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Summ. Disp., at pp. 3–4 and Ex. B & C.) Accordingly, because the Stirlings benefitted from the Utah residential exemption in the same tax years, the County disallowed the Stirling's claimed Michigan PRE and issued a notice denying the Stirling's Michigan PRE for the 2016 through 2019 tax years. (Dkt. 7, Not. of Denial, at p. 7.)

PROCEEDINGS BELOW

Petitioner Mack Stirling, on behalf of himself and his wife Dixie Stirling as co-owners of the subject property, filed an appeal with the Small Claims Division of Michigan Tax Tribunal on October 14, 2019. No one disputed that Mack and Dixie Stirling are and have at all relevant times been residents of Michigan; they are (and were). But the County opposed the Stirling's PRE claim because, as a matter of law, the Utah exemption that the Stirlings benefitted from during the tax years at issue is "substantially similar" to Michigan's PRE—a disqualifier under MCL 211.7cc(3)(a) & (3)(b).

The Tax Tribunal disagreed. In its Final Order and Judgment dated January 23, 2020, the Tax Tribunal granted Mack Stirling summary disposition and ordered a restoration of the property's principal residence exemption. (Tax Trib. Docket No 19-003870, Order Granting Pet.'s Mot. for Summ. Disp., Final Opin. and Judg., p 4.) The Tax Tribunal observed that there was "no dispute that Petitioner's spouse, Dixie Stirling owns properties in Utah and received a tax exemption on those properties." (*Id.* at 2.) But the Tax Tribunal held that the Utah exemption was not "substantially similar" to the Michigan PRE. (*Id.* at 3.) Rather, the Tax Tribunal reasoned that "Petitioner's spouse receives the Utah exemption for 'the primary residence of a tenant,'" whereas the Tax Tribunal viewed Michigan's PRE as being "for a property 'owned and occupied as a principal residence by that owner of the property.'" (*Id.*) In so concluding, the Tax Tribunal made no mention of the fact that there is no separate Utah exemption for the primary residence of a tenant versus the primary residence of an owner. Those are merely different

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factual scenarios that the Utah exemption reaches. Utah Code, § 59-2-103(2). Nonetheless, the Tax Tribunal concluded on that basis that Stirling was not disqualified from benefitting from the Michigan PRE.

The County filed a timely motion for reconsideration pointing out that the Tax Tribunal confused the test. (Dkt. 21, Resp's Mot. for Recon.) The motion explained that the Tax Tribunal erred in considering how an exemption applied to a taxpayer's facts rather than to the essence of the exemption and the Tax Tribunal erred in elevating differences in scope over the general character of the exemption. (*Id.*) Nonetheless, the Tax Tribunal denied reconsideration on February 24, 2020, and it repeated its mistake. (Dkt. 23, Order Denying Recon., p. 1.)

The County appealed to the Michigan Court of Appeals on March 13, 2020. The Court of Appeals reversed on March 25, 2021. The Court of Appeals explained that MCL 211.7cc(3)(b) requires "conducting a comparison between the PRE and the exemption 'claimed' by the taxpayer," which, in this case, was Utah Code § 59-2-103(3). *Stirling*, at __; slip op. at 5. The Court observed that Utah's exemption "can be claimed for residences occupied in two different ways." *Id.* (citing Utah Code § 59-2-103(6)(b)(*ii*) and (6)(b)(*iii*)). With that understanding of Utah law, the court construed the "substantially similar" requirement as meaning that "the Sister State's exemption must be largely but not wholly alike in its characteristics and substance to the PRE." *Id.*

Applying that standard here, the court reasoned that "[t]he primary purpose and characteristic of both statutes is to grant property tax relief to a person for a home that is used as a primary residence." *Id.* at 6. Although "the Utah exemption claimed by petitioner goes further than the PRE by granting the exemption to a homeowner who does not occupy the home, but that is occupied by a tenant as a primary residence," that difference did not change the fact that "the

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primary character and substance of both statutes" was the same. *Id*. Thus, the "overarching provisions make the Utah exemption claimed by [Stirling] substantially similar to the PRE." *Id*. That disqualified Stirling from claiming the exemption. *Id*. And Stirling's position that the differences in the two statutes rendered them *not* "substantially similar" "would require demanding an exactness between the two statutory exemptions that the law does not require." *Id*. The court therefore reversed and remanded to the Tax Tribunal. *Id*.

Stirling now seeks leave to appeal to this Court. For the reasons noted in this brief in opposition, this Court should deny leave.

ISSUE PRESERVATION

Whether Mack Stirling was disqualified from claiming a Michigan PRE because Dixie Stirling claimed two Utah residential exemptions was the central (and sole) issue raised before the Tax Tribunal below. The County does not challenge preservation of that issue here.

STANDARD OF REVIEW

On appeal, the "review of a Tax Tribunal decision is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle." *Inter Co-op Council v Dep't of Treasury*, 257 Mich App 219; 668 NW2d 181 (2003). In particular, the Tax Tribunal's interpretation of a statute is a question of law that appellate courts review *de novo*. *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624; 752 NW2d 479 (2008).

Michigan courts have sometimes (even recently) said that they "defer" to a Tax Tribunal's interpretation of Michigan tax statutes. See, e.g., *Campbell v Dep't of Treasury*, 331 Mich App 312, 316 (2021). But that is not accurate. This Court's precedents do not allow "deference" to an agency—only "respectful consideration" of its interpretation. *In Re Complaint of Rovas*, 482 Mich 90; 754 NW2d 259 (2008) ("[C]ourts may not abdicate their judicial responsibility to interpret statutes by giving unfettered deference to an agency's interpretation.");

see also MCL 24.232(5) ("A court shall not rely upon" an agency's "interpretive statement . . . to uphold an agency decision to act or refuse to act.").

And, as the Court of Appeals correctly recognized, even "respectful consideration" is inapplicable where the interpretation of *another state's laws* is at issue. *Stirling*, slip op at 2, n 1. Utah property tax laws are not statutes that the Tax Tribunal "is charged with administering and enforcing." *Twentieth Century Fox Home Entertainment, Inc v Dep't of Treasury*, 270 Mich App 539; 716 NW2d 598 (2006). The Tax Tribunal has no more expertise in Utah law than this Court does. So, review in this appeal is simply *de novo*. *VanderWerp*, 278 Mich App at 627.

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ARGUMENT

I. Whether Utah's Residential Exemption is a Single Exemption or Several Distinct Exemptions is Not an Issue of "Significant Public Interest" in Michigan.

Stirling has conceded that he is not challenging the Court of Appeal's interpretation of the phrase "substantially similar" under MCL 211.7cc(3)(b). (Stirling App., p. 13 n. 9.) That was the crux of the opinion below. *Stirling*, at __; slip op at 5–6. What is left then is only whether the Utah exemption claimed by Stirling here *is* "substantially similar" within the meaning given to that phrase by the Court of Appeals. (Stirling App., pp. 2 & 11–13.) That type of fact-specific application does not ordinarily merit review by this Court. MSC IOP 7.305(B). And it primarily raises a question of Utah law: whether the "residential exemption" under Utah Code § 59-2-103 contains more than one exemption (as Stirling proposes) or only one exemption (as Leelanau County argued and the Court of Appeals held).

Questions of Utah law are not affected with "significant public interest" in Michigan. Though similar issues on the interpretation of Utah law will reach the Michigan Tax Tribunal and Michigan courts from time to time,[2] there is undoubtedly a limited number of Michiganders who own second homes in Utah. Those questions do not repeat often enough that this Court should devote its limited resources to answering questions of Utah property tax law. That is particularly true when the questions are so obscure that even Utah's appellate courts have not answered them. Accordingly, Stirling's application does not merit review under MCR 7.205(B)(2).

[2] Utah law was at issue in *Whiting v Grand Traverse Cty*, Final Opin. and Judgment issued Mar. 1, 2017 (MTT Docket No 16-005482) and *Boyd v Grand Traverse Cty*, Proposed Opin. and Judgment issued Feb. 13, 2017 (MTT Docket No 17-004340), which are referenced in Stirling's application. (Stirling App., p 12.)

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II. How to Construe Utah's Residential Exemption as Applied to Tenant-Occupied Properties Does Not Present a Jurisprudentially Significant Issue for this Court.

For the same reasons, it is self-evident that the interpretation of Utah's residential exemption is not a jurisprudentially significant issue under Michigan law. This question might be answered differently by the Utah Supreme Court. But this Court's expertise is Michigan law. Its *raison d'etre* is to answer the hard questions of Michigan's constitutional, statutory, and common law, and to provide guidance concerning those matters to Michigan's lower courts. MSC IOP 7.305(B) ("[T]he Court seeks to address legal issues of jurisprudential significance that will impact a larger group of current or future cases.") This appeal does not touch on anything of the kind. Thus, Stirling's application does not satisfy MCR 7.205(B)(3).

III. The Court of Appeals Decided This Case Correctly and No Material Injustice Will Result from Its Decision.

Lastly, this Court sometimes hears a case because the Court of Appeals decision is "clearly erroneous and will cause material injustice." MCR 7.305(B)(5). That is rare since this Court "is not predominantly an 'error correcting' court." MSC IOP 7.305(B). It also is not the case here. The Court of Appeals correctly decided this matter. But, even if this Court questioned its reasoning, there is no "material injustice" to correct. The maximum benefit that *any* Michigander may receive is one PRE each year. MCL 211.7cc(3). Yet Stirling received two, even without the exemption disputed in this appeal. (Stirling App., p. 4.)

A. The Court of Appeals Correctly Determined that Utah's Residential Exemption for Primary Residences is "Substantially Similar" to Michigan's Principal Residence Exemption.

The Court of Appeals' analysis was exactly right. It appropriately expounded the text of the MCL 211.7cc(3)(b) to determine the meaning of the "substantially similar" disqualifier. *Stirling*, at __; slip op at 5–6. Stirling does not dispute that point in this appeal. (Stirling App., p. 13, n. 3.) The Court likewise appropriately applied that test to the Utah statute at issue.

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The General Property Tax Act [GPTA] allows that "[a] principal residence is exempt from the tax levied by a local school district for school operating purposes . . . if an owner of that principal residence claims an exemption as provided in this section." MCL 211.7cc(1). That exemption allows a benefit of up to an 18-mill reduction of taxes on the property. MCL 380.1211(1). To qualify for this exemption from tax, the property must serve as a "principal residence," MCL 211.7cc(1), which the GPTA defines as "the 1 place where an owner of the property has his or her true, fixed, and permanent home, to which, whenever absent, he or she intends to return, and that shall continue as a principal residence until another principal residence is established." MCL 211.7dd(c). Thus, the general character or type of this exemption is an exemption for properties serving as "principal residences" or "homesteads." *Estate of Schubert v Dep't of Treasury*, 322 Mich App 439; 912 NW2d 569 (2017).

But the exemption is limited and subject to disqualifying factors. For example, "a married couple who are required to file or who do file a joint Michigan income tax return are entitled to ***not more than 1 exemption***" on properties in Michigan. MCL 211.7cc(3) (emphasis added). And, particularly relevant here, "a person is not entitled to an exemption under this section in any calendar year in which any of the following conditions occur" including when "(b) . . . *that person or his or her spouse owns property in a state other than this state for which that person or his or her spouse claims an exemption, deduction, or credit* ***substantially similar to the exemption provided under this section*** . . . ." MCL 211.7cc(3)(a) & (3)(b) (emphasis added).

The GPTA does not expressly define when an exemption is "substantially similar to the exemption provided under this section . . . ." MCL 211.7cc(3)(b). But Michigan Courts interpret statutes according to their plain-language meaning and in their grammatical context. *Maxwell v Citizens Ins Co of America*, 245 Mich App 477, 482; 628 NW2d 95 (2001), quoting *Bailey v*

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DAIIE, 143 Mich App 223; 371 NW2d 917 (1985); *Menard, Inc v Dep't of Treasury*, 302 Mich App 467; 838 NW2d 737 (2013) (statute must be read "in its grammatical context"). That includes looking to the dictionary to define a word. *Cole v Auto Owners Ins Co*, 272 Mich App 50; 723 NW2d 922 (2006) ("To determine the ordinary meaning of a term, we may refer to a dictionary.") Further, as a tax-exemption provision, the statute is "strictly construed in favor of the taxing unit." *Inter Co-op Council*, 257 Mich App at 222; *EldenBrady v City of Albion*, 294 Mich App 251; 816 NW2d 449 (2011).

With the light of these guides, this Court can make a few observations about the meaning of Section 7cc(3)(b) of the GPTA. ***First***, the disqualifying language of this subsection requires a comparison. We must determine whether two things are "similar." *Id*. In other words, are they "related in appearance or nature"? *American Heritage Dictionary, 2nd College Ed*, Houghton Mifflin (1985), p. 1141 (defining "similar"). ***Second***, the word "similar" means that the two things being compared must be "alike" but does not require that those two things be "identical." *Id*. (defining "similar" as "alike *though not identical*") (emphasis added). ***Third***, the objects in the balance of this comparison are "the exemption provided under this section" and the "exemption" "claim[ed]" "in a state other than this state." MCL 211.7cc(3)(b). ***Finally***, the inquiry is whether the two exemptions are "*substantially* similar." *Id.* Are they "alike" in a general sense? "Substantially" acts as an adverb, *American Heritage Dictionary*, p. 1213, to modify the adjective "similar." It therefore describes the degree that the two exemptions must be "similar" (again, not identical). And it answers that the exemptions must be similar to a "substantial" degree—i.e., in their general or essential character. *Id.* (defining "substantial" as "of, pertaining to, or having substance; material" and defining "substance" as the "essential nature"). Accordingly, if the general or essential character of the out-of-state exemption is

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"related in . . . nature" or "alike though not identical" to the general character of Michigan's PRE, then the taxpayer may not claim both, and the claim of the out-of-state exemption prevents the taxpayer from claiming the Michigan PRE. MCL 211.7cc(3)(b).

Looking to the core, the general character, or the essence of something is also how courts in both Michigan and elsewhere have understood the phrase "substantially similar" in other contexts. For example, in *Topps-Toeller, Inc v City of Lansing*, 47 Mich App 720; 209 NW2d 843 (1973), the Court of Appeals explained that *stare decisis* applies legal rules in prior cases to "substantially similar issues" requiring the same results "[u]nless the facts are *essentially* different . . . ." *Id.* at 729 (emphasis added). This Court has applied medical malpractice rules to negligence claims where "the *essence* of the hospital's alleged wrong is substantially similar to medical malpractice." *Chase v Sabin*, 445 Mich 190, 197; 516 NW2d 60, 64 (1994) (emphasis added), overruled on other grounds in *Trentadue v Buckler Lawn Sprinkler Co*, 479 Mich 378; 738 NW2d 664 (2007). Other courts have also invoked the phrase in the same way. See, e.g., *N Am Specialty Ins Co v Lapalme*, 258 F3d 35, 40–41 (CA1 2001) ("The transaction . . . remains substantially similar because *its 'essential character' . . . has not changed*.") (Emphasis added); *Thorpe v Commonwealth*, 223 Va 609; 292 SE2d 323 (1982) ("Results of experiments are not admissible in evidence unless the tests were conducted under conditions which were the same or *substantially similar in essential particulars* to those existing at the time of the accident.") (Emphasis added). Thus, reading the "substantially similar" test of MCL 211.7cc(3)(a) & (3)(b) to require the two exemptions to be "alike" in their general character but not identical in all respects is consistent with a plain-meaning understanding of that phrase.

Applied here, the general character of Utah's "residential exemption" is "*substantially* similar" to the general character of Michigan's PRE. Like Michigan's PRE, the Utah exemption

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provides a substantial reduction of property taxes to benefit property that serves as a person's primary residence. The fact that Utah goes *further* than Michigan's PRE and also allows the exemption to apply to property that serves as the principal residence of someone other than the owner is of no import. Because the general character of each exemption is alike, Michigan law does not allow a taxpayer to benefit from both. MCL 211.7cc(3)(a) & (3)(b).

The Utah Constitution provides that "[t]he Legislature may by statute exempt the following from property tax: . . . (iv) up to 45% of the fair market value *of residential property*, as defined by statute." Utah Const, Art XIII, Section 3(2)(a). The Legislature did just that in adopting Utah's "residential exemption" for all "residential property" under Utah Code § 59-2-103(2). Utah law defines "residential property" as "any property used for residential purposes as a primary residence." Utah Code § 59-2-102(36)(a).

Whether a property is "used for residential purposes as a primary residence" is determined under administrative rules that guide whether or not a property serves as a domicile. Utah Admin Code, R884-24P-52(2) (defining "primary residence" as "the location where domicile has been established"); Utah Admin Code, R884-24P-52(5) (establishing factors for determining domicile). The Utah Legislature limited the exemption to "one primary residence per household," but it permitted the exemption to be claimed for both owner-occupied property *and* rental property that is used as a primary residence. Utah Code § 59-2-103(5)(a) & (5)(b); see also Utah Admin Code, R884-24P-52(3) & (4). The essence of Utah's exemption is thus an exemption for property that is "used for residential purposes *as a primary residence*." Utah Code, § 59-2-103(2); Utah Code, § 59-2-102(36)(a) (emphasis added).

Indeed, that is exactly how Utah courts have described this exemption. It is "a tax exemption for primary residential property." *Hammons v Weber Cty*, 417 P3d 624, 625 (Utah

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2018); *Bd of Equalization of Summit Cty v State Tax Comm'n*, 98 P3d 782 (Utah App 2004) ("[T]he legislature has provided a 45% *exemption for residential property*.") (Emphasis added.) It benefits property that is *someone's* domicile or permanent home. Utah Admin Code, R884-24P-52(2) & (5). And, importantly, it is a *singular* exemption—*the* exemption under Utah Code § 59-2-103(2). See *AE, Inc v Summit Cty Comm'n*, 35 P3d 1153, 1156 (Utah App 2001) (referring to "*the* residential exemption of section 59-2-103(2)") (emphasis added); see also *Dennis v Summit Cty*, 933 P2d 387 (Utah 1997) ("*the* exemption"); *cf. Robinson v City of Detroit*, 462 Mich 439; 613 NW2d 307 (2000) (the definite article "the" is singular and contemplates one object).

There are not separate exemptions the Utah Legislature has granted based on different uses of residential property. Instead, the qualification for the exemption is that a property must meet Utah Code § 59-2-103(2). Specifically, "[t]he crucial qualification for the exemption is the use to which the property is put," "(i.e., *that the residential property in question be used as a 'primary residence'*)." *Dennis*, 933 P2d at 389 (emphasis added). The rest of Utah Code § 59-2-103 merely modifies or limits the scope of the exemption, similar to how Michigan's PRE operates. See *Campbell*, 331 Mich App 320–321 (explaining that MCL 211.7cc(1) "states the general rule," subsection 2 provides the mechanism for claiming and applying an exemption, and other subsections modify or limit the general rule).

Because Utah's exemption under Utah Code § 59-2-103(2) at its core provides an exemption for primary residences, like Michigan's PRE, the two exemptions are "substantially similar." MCL 211.7cc(3)(a) & (3)(b). Thus, Stirling is disqualified from obtaining such an exemption on the Stirlings' Michigan property when "his . . . spouse owns property in a state

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other than this state for which . . . his . . . spouse claims an exemption . . . substantially similar to the exemption provided under" MCL 211.7cc(1).

This is the exact result that the Michigan Court of Appeals reached. The Court of Appeals explained MCL 211.7cc(3)(b) requires "a comparison between the PRE and the exemption 'claimed by the taxpayer.'" *Stirling*, at __; slip op. at 5. In determining whether the two exemptions are "substantially similar," "the Sister State's exemption must be largely but not wholly alike in its characteristics and substance to the PRE." *Id*. Because "the main characteristic of the Utah statute, like the PRE, is to grant an exemption to a person who owns a primary residence in that state," the court determined that the Utah residential exemption is substantially similar to the PRE. *Id*. at 6. The court further rejected Stirling's position as "demanding an exactness between the two statutory exemptions that the law does not require," which would force courts to ignore "the significant similarities between the two statutes (both their purposes and primary applications) and plac[e] too much emphasis on *one* additional provision available to homeowners under Utah law" thus imposing "too stringent a definition to the phrase 'substantial similarity.'" *Id*. at 6.

The Court of Appeals was exactly right and its result was consistent with the statutory text as explained above. There is no "clearly erroneous" holding to correct. Accordingly, Stirling's application does not meet the standards of MCR 7.305(B)(5).

B. Limiting Stirling to Just Two Principal Residence Tax Exemptions Does Not Cause a Material Injustice.

Even if the Court of Appeals erred in some respect (and it did not), Stirling has not met his burden of showing this Court that a material injustice will result. MCR 7.305(B)(5). As Leelanau County noted in its principal brief on appeal to the Court of Appeals, the question presented in this case was one of tax fairness: taxpayers are limited to receiving just one primary

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residential exemption. MCL 211.7cc(3). The Court of Appeals decision aligned with that principle. The Stirlings have suffered no great injustice by having to pay their full amount of property taxes to one state (Michigan) and not to another (Utah).

Indeed, the result in this matter is exactly what would happen if a Utahn living in exempt residential property attempted to claim a PRE on rental property in Michigan: they could receive a discount on their taxes in Utah for their owner-occupied primary residence but not on their tenant-occupied Michigan property. They would be limited to one exemption. Similarly, if a Michigander sought exemptions on both an owner-occupied property in Michigan and a tenant-occupied property in Michigan, they would be limited to only one exemption. Stirling thus received an equal due from an equivalent property holding: an exemption on one property but not on another. That equal outcome from similar factual scenarios is definitionally "just." There is no material injustice warranting review here. MCR 7.305(B)(5).

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CONCLUSION AND RELIEF REQUESTED

Stirling's application does not contest the Court of Appeal's framing of the "substantially similar" test under MCL 211.7cc(3)(b). He thus presents principally a question of Utah law or the application of law to his circumstances. This Court is not an error-correction court. Nor do questions of Utah law justify this Court's review. Therefore, Stirling fails to meet the standards justifying review under MCR 7.305(B). This Court should deny leave.

Respectfully submitted,

CLARK HILL PLC

/s/ Zachary C. Larsen
Charles A. Lawler (P65164)
Zachary C. Larsen (P72189)
212 East Cesar E. Chavez Ave.
Lansing, MI 48906
517.318.3100
CLawler@clarkhill.com
ZLarsen@clarkhill.com

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