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STATE OF MICHIGAN
IN THE SUPREME COURT

MACK C. STIRLING,

Petitioner-Appellant,

v

COUNTY OF LEELANAU,

Respondent-Appellee
_____/

Supreme Court No. 162961

Court of Appeals No. 353117

Tax Tribunal Docket No. 19-003870-TT

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

ORAL ARGUMENT REQUESTED

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COUNTER-STATEMENT OF JURISDICTION

Stirling timely filed an application for leave to appeal from a published decision of the Michigan Court of Appeals dated March 25, 2021. *Stirling v Leelanau Co*, 336 Mich App 575, 584; 970 NW2d 910 (2021); 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 QUESTIONS PRESENTED

Michigan's principal residence exemption ("PRE") disqualifies a person from claiming a Michigan PRE when the person or their spouse have received a "substantially similar" exemption in another state. MCL 211.7cc(3)(b). By the phrase's plain-language meaning, two states' exemptions are "substantially similar" if they are largely, even if not wholly, alike in characteristics and substance. Appellant Mack Stirling's spouse received the benefit of Utah's "residential exemption" on two properties under Utah Code Ann § 59-2-103(3). The question is therefore:

1. Is Utah's "residential exemption" from property tax under Utah Code Ann § 59-2-103 substantially similar to Michigan's PRE?

   Appellant Stirling's answer: No.

   Appellee County's answer: Yes.

   Michigan Tax Tribunal's answer: No.

   Michigan Court of Appeals' answer: Yes.

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CONSTITUTIONAL PROVISIONS, STATUTES, RULES 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] person is not entitled to an exemption under this section in any calendar year in which any of the following conditions occur*: . . . (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, § 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 Ann § 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.

. . .

(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 Ann § 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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INTRODUCTION

Appellant Mack Stirling's application turns on a quirky question of Utah law: whether a property tax exemption within the factual limitation under Utah Code Ann § 59-2-103(6)(b)(*ii*) should be treated as part of Utah's "residential exemption" under Utah Code Ann § 59-2-103(3) (which Stirling concedes *is* "substantially similar" to Michigan's PRE) or instead should be treated as a separate "exemption" (which Stirling argues *is not* "substantially similar" to the PRE). Stirling's supplemental brief reaffirms that he "is not disputing" that the Court of Appeals correctly decided the meaning of the "substantially similar" disqualifier under Michigan law. (Stirling Supp Br, p 13, n 9.) His concern is how that test was *applied* to an exception from a limitation on Utah's "residential exemption." Because this case resolves based on a limited factual application of a different state's tax law, it is unworthy of this Court's further attention.

Not only do Stirling's application and supplemental brief reveal an absence of any dispute about whether the Court of Appeals correctly articulated the "substantially similar" test, they also show Stirling is wrong in arguing that court erred. To be "substantially similar," an exemption must be "largely but not wholly alike in its characteristics and substance." *Stirling v County of Leelanau*, 336 Mich App 575, 584; 970 NW2d 910 (2021). Under Utah law, there is only one "residential exemption." Utah Code Ann § 59-2-103(3); Utah Const, Art XIII, § 3(2)(a). That singular exemption applies to all "residential property," or all property "used for residential purposes *as a primary residence*." Utah Code Ann § 59-2-103(3); Utah Code Ann § 59-2-102(36)(a). The residential exemption Dixie Stirling received for her rental property is merely an application of Utah's "residential exemption." Because Utah's exemption for properties "used for residential purposes *as a primary residence*" is substantially similar to Michigan's "principal residence exemption," Stirling was rightly disqualified from claiming a Michigan PRE.

This Court should deny Stirling's application or affirm the Court of Appeals' judgment.

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COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Denial of Stirling's Claimed Principal Residence Exemption

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. (Appellee's Appx, pp 012–013.) During each of those years, they claimed a principal residence exemption on the property under MCL 211.7cc(1). (Appellee's Appx, p 016.) 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." (Appellee's Appx, p 059.)

In 2019, the County conducted an audit of the Stirling's PRE claim. (Appellee's Appx, pp 018–019.) Through the audit, the County discovered that Dixie Stirling had also claimed the "residential exemption" allowed under Utah Code Ann § 59-2-103(3) on two Utah properties—one in Provo, Utah and one in Bountiful, Utah. (Appellee's Appx, pp 021–029.) Dixie Stirling leased both of those properties as long-term residential rental units, including one to her daughter and her daughter's husband. (Appellee's Appx, pp 091–092 & 107–115.) Accordingly, because the Stirlings benefitted from the Utah residential exemption in the same tax years, the County disallowed the Stirlings' claimed Michigan PRE and issued a notice denying the Stirlings' Michigan PRE for the 2016 through 2019 tax years. (Appellee's Appx, p 011.)

In his brief, Stirling attempts to supplement these core, undisputed facts with non-record evidence. (Stirling Supp Br, p 7 & n 4.) This Court should ignore those additional, immaterial claims. On the above undisputed facts, this case presents strictly a question of law.

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Michigan Tax Tribunal Proceeding

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. (Appellee's Appx, p 130.) 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 128.) But the Tax Tribunal held that the Utah exemption was not "substantially similar" to the Michigan PRE. (*Id*. at 129.) 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 factual scenarios that the Utah exemption reaches. Utah Code Ann § 59-2-103(3). Nonetheless, the Tax Tribunal concluded 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. (Appellee's Appx, p 003.) 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

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exemption and the Tax Tribunal erred in elevating differences in scope over the general character of the exemption. (*Id*.) The Tax Tribunal denied reconsideration on February 24, 2020, and it repeated its mistake. (Appellee's Appx, p 132.)

Michigan Court of Appeals' Decision

The County appealed to the Michigan Court of Appeals, and that court 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 Ann § 59-2-103(3). *Stirling*, 336 Mich App at 583. The court observed that Utah's exemption "can be claimed for residences occupied" in at least two different ways. *Id*. (citing Utah Code Ann § 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*. at 584.

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*. 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 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 substantially *dis*-similar "would require demanding an exactness between the two statutory exemptions that the law does not require." *Id*. at 584–585.

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The court therefore reversed and remanded to the Tax Tribunal. *Id*. Stirling now seeks leave to appeal to this Court.

STANDARD OF REVIEW

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, 221; 668 NW2d 181 (2003). But the Tax Tribunal's interpretation of a statute is a question of law that is reviewed *de novo*. *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 627; 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; 952 NW2d 568 (2021). 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, 93; 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 in this case, even "respectful consideration" is inapplicable where the interpretation of *another state's laws* is at issue. *Stirling*, 336 Mich App at 578, n 2. 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, 541; 716 NW2d 598 (2006). The Michigan Tax Tribunal has no more expertise in Utah law than this Court does. So, review on this appeal is simply *de novo*. *VanderWerp*, 278 Mich App at 627.

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ARGUMENT

I. The Court of Appeals did not err in holding that Utah's residential exemption is "substantially similar" to Michigan's PRE.

The Court of Appeals did not err by concluding that Utah's "residential exemption" under Utah Code Ann § 59-2-103(3) is "substantially" similar to Michigan's PRE. Its analysis was exactly right. The court appropriately expounded the plain-meaning of MCL 211.7cc(3)(b) to determine the scope of the "substantially similar" exemption disqualifier. *Stirling*, 336 Mich App at 583–584. Even Stirling does not dispute that point on appeal. (Stirling Supp Br, p 13, n 9.) The court likewise fairly applied that test to hold that the Utah statute at issue, which is a single "residential exemption" for "any property used for residential purposes as a primary residence," Utah Code Ann § 59-2-102(36)(a), is largely similar to the Michigan PRE. This Court should either deny Stirling's application or affirm the Court of Appeals' judgment.

A. Another state's exemption is "substantially similar" to Michigan's PRE when it is "largely" even if "not wholly alike in its characteristics and substance to the PRE."

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*

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Dep't of Treasury, 322 Mich App 439, 448; 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 DAIIE*, 143 Mich App 223; 371 NW2d 917 (1985); *Menard, Inc v Dep't of Treasury*, 302 Mich App 467, 471; 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, 53; 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; but see *TOMRA of North America, Inc v Dep't of Treasury*, 505 Mich 333, 343; 952 NW2d 384 (2020) (noting that the strict construction of exemptions canon is a canon of "last resort").

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

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comparison. It must be determined 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 it 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 to which the two exemptions must be "similar" (again, not identical). And it answers that the exemptions must be similar to a "substantial" degree. In other words, the two exemptions must be similar only 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 "related in . . . nature" or "alike though not identical" to the general character of Michigan's PRE, then the taxpayer may not claim both, and claiming 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

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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.

The Court of Appeals articulated nearly this same analysis. That court observed that MCL 211.7cc(3)(b) requires a "comparison . . . between the PRE and the exemption 'claimed by the taxpayer.'" *Stirling*, 336 Mich App at 583. And, indisputably, it does. MCL 211.7cc(3)(b) (comparing "an exemption" "in a state other than this state" with "the exemption provided under this section.") The court expounded that the undefined "substantial similarity" test could be understood by the plain-meaning of its constituent terms. First, "[t]he meaning of the common but statutorily undefined word 'substantial' is 'being largely but not wholly that which is specified . . . .'" *Stirling,* at 583. Second, the court noted that "'similar' is defined as having characteristics in common' and 'alike in substance or essentials.'" *Id*. Putting these words together, the court explained that in order to conclude that two exemptions are "substantially similar," "the Sister State's exemption must be *largely but not wholly alike* in its characteristics and substance to the

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PRE." *Id*. (emphasis added). The Court of Appeals' textual analysis is unimpeachable. And Stirling offers no challenge to it nor suggests any alternative meaning for the key phrase.

B. As an exemption for primary residential property, Utah's "residential exemption" is "largely . . . alike" in its characteristics and substance to Michigan's principal residence exemption.

Applied here, the Court of Appeals correctly decided that 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 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 in some instances 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).

1. The general character of Michigan's PRE is an exemption for property used as a principal residence.

Michigan's PRE exempts property used as a "principal residence" from "the tax levied by a local school district for school operating purposes" under MCL 380.1211. MCL 211.7cc(1). Michigan's PRE has sometimes been called a "homestead exemption." See *Stege v Dep't of Treasury*, 252 Mich App 183, 189; 651 NW2d 164, 167 (2002). But the Michigan Legislature recharacterized the exemption as a "principal residence exemption" via 2003 PA 140. And *Stege* was legislatively overruled even earlier by 2003 PA 105. A "principal residence" is "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 . . . ." MCL 211.7dd(c). For most instances, Michigan's PRE is limited to property "owned and occupied as a principal residence by that owner of the property . . . ." MCL 211.7cc(2).

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But not in all instances. Michigan extends its PRE to tenant-occupied residences in some cases. For example, property that previously qualified as a principal residence may be kept as such by active-duty military personnel while rented to another for up to three years. MCL 211.7dd(c). And the rented portions of otherwise owner-occupied property also qualifies. *Id*.; see also *Rentschler v Twp of Melrose*, 322 Mich App 113; 910 NW2d 711 (2017) (allowing Michigan PRE despite use as a rental property); and MCL 206.508(2) (defining "homestead" for income tax to include "a dwelling or unit . . . occupied as the dwelling of the renter or lessee.").[1] Similarly, Michigan extends its PRE to persons who may not otherwise qualify as "owners" by defining them as "owners" by legislative decree. Those include a person purchasing property under land contract, MCL 211.7dd(a)(*i*), someone who has a life lease on property previously sold, MCL 211.7dd(a)(*v*), and a trust beneficiary. MCL 211.7dd(a)(*vii*); see also *Breakey v Dep't of Treasury*, 324 Mich App 515, 523; 922 NW2d 397, 402 (2018) (discussing trust beneficiaries qualifying as owners).

The core of the exemption is thus an exemption for property used as a "principal residence" for someone. The Legislature has defined the scope of what constitutes a "principal residence" as well as who may claim the exemption. Nonetheless, at its core, the Michigan PRE is an exemption for principal residences—i.e., residential property used as a person's primary home.

[1] Most rental properties do not qualify for a Michigan PRE. For example, Michigan does not allow a PRE to be claimed for properties principally used for short-term or vacation rentals. Such properties are considered commercial under Michigan law. See, e.g., *Eager v Peasley*, 322 Mich App 174; 911 NW2d 470 (2017). Utah's residential exemption similarly does not extend to short-term rentals. Utah Code Ann § 59-2-102(36)(a); see also Utah Tax Commission, *Standards of Practice for Property Tax*, "Chapter 6: Real Property Valuation," Definitions, p 6 (defining "secondary residential" as "the assessment classification of residential property *not qualifying for the residential exemption*").

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2. The Utah "residential exemption" is only one exemption that is applicable to "property used for residential purposes" as a domicile.

Utah's "residential exemption" is built on the same bedrock. 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, § 3(2)(a). The Legislature did just that in adopting Utah's "residential exemption" for all "residential property" under Utah Code Ann § 59-2-103(3). Utah law defines "residential property" as "any property used for residential purposes as a primary residence." Utah Code Ann § 59-2-102(36)(a).

Like Michigan's definition of "principal residence" under MCL 211.7dd(c), 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, R 884-24P-52(2) (defining "primary residence" as "the location where domicile has been established"); Utah Admin Code, R 884-24P-52(5) (establishing factors for determining a person's domicile). The Utah Legislature generally limited the exemption to "one primary residence per household." Utah Code Ann § 59-2-103(6)(a). But it provided an exception to this limitation: the exemption may be claimed for both owner-occupied property *and* property that is used as a primary residence of a tenant. Utah Code Ann § 59-2-103(6)(a) & (6)(b); see also Utah Admin Code, R 884-24P-52(3) & 52(4). This is not the *only* exception to this limitation. A person may also claim more than one Utah exemption if they own property that *will be* a primary residence but is not yet—either because it is under construction or otherwise awaiting occupancy. Utah Code Ann § 59-2-103(6)(a)(*iii*); Utah Code Ann § 59-2-102(34)(b)(*ii*) (defining as "residential property" a property that "the county assessor determines . . . will be used for residential purposes as a primary residence" but is "under construction" or otherwise "unoccupied"). The essence of Utah's

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exemption is thus an exemption for any property that is "used for residential purposes *as a primary residence*." Utah Code Ann § 59-2-103(3); Utah Code Ann § 59-2-102(36)(a) (emphasis added).

Indeed, that is 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 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, R 884-24P-52(2) & (5). And, importantly, it is a *singular* exemption—*the* exemption under Utah Code Ann § 59-2-103(3). 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)" [now, 59-2-103(3)]) (emphasis added); see also *Dennis v Summit Cty*, 933 P2d 387, 389 (Utah 1997) ("*the* exemption"); cf. *Robinson v City of Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000) (the definite article "the" contemplates one object).

There are not separate exemptions the Utah Legislature has granted based on different uses of residential property. Instead, the key qualification for Utah's exemption is that a property must meet Utah Code Ann § 59-2-103(3). Specifically, "[t]he crucial qualification for the exemption is the use to which the property is put . . ." *Dennis*, 933 P2d at 389. In other words, "that the residential property in question *be used as a 'primary residence*.'" (Emphasis added; cleaned up). The rest of Utah Code Ann § 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).

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3. Because the core characteristics of the two state's exemptions are the same, Stirling is disqualified from claiming a Michigan PRE.

Because Utah's exemption under Utah Code Ann § 59-2-103(3) 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 other than this state for which . . . his . . . spouse claims an exemption . . . substantially similar to the exemption provided under*"* MCL 211.7cc(1).

The Court of Appeals correctly observed that "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." *Stirling*, 336 Mich App at 584. Therefore, the court determined that the Utah residential exemption is substantially similar to the PRE. *Id.* The court further rejected Stirling's position that the Utah residential exemption is not "substantially similar" to the Michigan PRE because Michigan is not as generous to tenants as Utah's exemption is. That reading would "deman[d] an exactness between the two statutory exemptions that the law does not require . . . ." *Id*. at 584–585. In other words, Stirling's position 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 585.

The Court of Appeals was exactly right. Its reasoning, application, and result were consistent with the statutory text as explained above. There is no error for this Court to correct.

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C. Stirling's argument that the Court of Appeals improperly focused on the "statutory framework" rather than the exemption misreads the court's opinion and demonstrates that this dispute turns on Utah law.

Stirling argues that the Court of Appeals misapplied the "substantially similar" test by looking to the statutory "framework" of an exemption rather than the "exemption" itself. (Stirling Supp Br, p 11.) This argument misreads the Court of Appeals' opinion. That is not what the Court of Appeals said. It said that the task of the Court is to compare "the PRE" and "the exemption 'claimed' by the taxpayer." *Stirling*, 336 Mich App at 583. In this instance:

> that is the residential-property exemption contained in Utah Code Ann 59-2-103(3), which is limited to one primary residence per household, Utah Code Ann 59-2-103(6)(a), but which can be claimed by the property owner for residences occupied as the primary residence of the owner or as the primary residence of a tenant. Utah Code Ann 59-2-103(6)(b)(*i*) and (*ii*). [*Id*.]

The "framework" reference in that court's opinion merely encapsulated this statutorily compelled "A-to-B" (or "PRE-to-Other-State-Exemption") comparison. Immediately following that description, the Court of Appeals explained that "[t]his framework for our analysis"—i.e., the exemption comparison—"steers us to the conclusion that the Utah exemption claimed by petitioner was substantially similar to the PRE." *Id*. In other words, the Court merely compared the two state's exemptions, nothing more and nothing less. That was not error.

Stirling's claim on this point also demonstrates that his real argument is with Utah law, not with the application of the Michigan PRE. Stirling contends that the Court of Appeals should have focused on "the exemption" under Utah Code Ann § 59-2-103(6)(b)(*ii*) (which he claims is not "substantially similar") instead of focusing on "the exemptions" under Utah Code Ann § 59-2-103(6)(a) and (b)(*i*) (which he concedes *are* "substantially similar"). (Stirling Supp. Br., p. 12) (acknowledging that "the exemptions allowed under Utah Code Ann § 59-2-103(6)(a) and (b)(*i*) are substantially similar to the [Michigan] PRE . . . ."). But there is only *one* exemption under Utah law: the "residential exemption" of Utah Code Ann § 59-2-103(3). See also *AE, Inc*, 35 P3d at

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1156 (referring to "*the* residential exemption of section 59-2-103(2)" [now, 59-2-103(3)]); see also *Dennis*, 933 P2d at 389 (same); Section I.B.2, *supra*.

Though repeating his claim that he "is not disputing whether the Court of Appeals correctly decided the meaning of 'substantially similar,'" Stirling also attempts to walk back that concession. He asserts that the Court of Appeals' analysis "*could be* disputed . . . ." (Stirling Supp. Br., p. 13, n 9) (emphasis added). Yet he offers no specific critique of the Court of Appeals' construction of the test nor any alternative test. This Court's caselaw is clear that it is not the duty of this Court to make a party's argument for them. See, e.g., *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) ("It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to sustain or reject his position."). Because Stirling offers no specific critique of the Court of Appeals articulation of the "substantial similarity" standard and the case otherwise turns on the understanding of Utah's tax law, this Court should deny leave to appeal.

D. Stirling position would unduly restrict the disqualifier under MCL 211.7cc(3).

Stirling's position would also unduly restrict the legislative intent to limit each Michigander to one (and only one) property tax exemption for residential property, as the Court of Appeals observed. *Stirling*, 336 Mich App at 584–585. Pointedly, if the "residential exemption" under Utah Code Ann § 59-2-103(3) is not "substantially similar" to Michigan's PRE, then Utah law has no such exemption. Such a conclusion would create a whole-state tax loophole allowing persons to claim both a Michigan PRE and a Utah "residential exemption" regardless of the circumstances. Surely, the Utah Legislature's choice to be more generous to tenants than the Michigan Legislature has been should not change the conclusion that the "residential exemption"

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is "largely" though "not wholly alike in its characteristics and substance" to the Michigan PRE. *Stirling*, 336 Mich App at 584.

But more than simply the exemptions claimed by owners of property in Utah are at stake. If this Court applies a more exacting standard than that identified by the Court of Appeals, it will place at risk *many* otherwise "substantially similar" exemptions based on the inherent differences among different states' tax laws, some of which also extend their "residential" or "homestead" exemption to tenant-occupied properties. Our national experiment of fifty "coequal sovereigns," *Franchise Tax Board of California v Hyatt*, 139 S Ct 1485; 203 L Ed 2d 768 (2019)—each with independent lawmaking authority—necessitates that different states have made different policy choices in delineating the boundaries of their residential exemptions. See, e.g., *Whalen v Roe*, 429 US 589, 597 n 20; 97 S Ct 869, 875; 51 L Ed 2d 64 (1977) ("It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.").

States denominate those exemptions differently: as "residential exemptions," see Utah Code Ann § 59-2-103(3) & Mass Gen Laws Ann, ch 59 § 5C (exempting "real property classified as Class One, residential"); as "principal residence exemptions," MCL 211.7cc(3); or as "homestead exemptions." Fla Const, Art VII, § 6; Wis Stat § 71.53. States provide different restrictions on *who* may obtain the benefit of the exemption or what type of property arrangements qualify. Utah Code Ann § 59-2-103(6)(b) (permitting owner-occupied, tenant-occupied, and as-yet unoccupied properties to qualify); Mass Gen Laws Ann, ch 59 § 2A (granting the exemption to all "Class One, residential," defined as "property used or held for human habitation containing one or more dwelling units" regardless of owner occupancy); MCL 211.7dd(a) (defining "owner" to include persons who own or are "purchasing property under land contract," are "partial

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owner[s]," own via will or trust, own a life-lease, are a "cooperative housing organization" and others); Fla Const, Art 7, § 6 (limited strictly to the "permanent residence of the owner"); Wis Stat § 71.52(3) (defining "homestead" to include a "dwelling, whether rented or owned"). And states provide distinct benefits in those exemptions. Utah Code Ann § 59-2-103(3) (providing a 45% reduction in the value of the property); Mass Gen Laws Ann, ch 59 § 5C (providing a 35% reduction of the average assessed value); MCL 211.7cc(1) (exempting property from "the tax levied by a local school district for school operating purposes"); Fla Const, Art 7, § 6 (exempting $25,000 from tax); Wis Stat § 71.54(1)(g) (exempting up to 80% of tax based upon claimant's income).

That is why Michigan's legislature chose its words carefully. The Legislature adopted the "*substantially* similar" test to allow for differences among states that would inevitably make diverging policy determinations. MCL 211.7cc(3)(b). The reading and application of the law by the Court of Appeals took these differences into account. This particular application of Utah law may be driven by a quirky instance of Utah's generosity and its policy choice to treat *all* primary residences alike regardless of who owns it. But that does not undermine the conclusion that Utah's "residential exemption" is "largely . . . alike" to Michigan's PRE in its principal application and purpose. This Court should deny Stirling's application or affirm.

E. Because Stirling's application turns on Utah law, the principles of comity should move the Court to deny Stirling's application.

Finally, because the question presented by Stirling turns on the appropriate understanding of Utah law (i.e., whether Utah's "residential exemption" is *one* exemption or *more than one* distinct exemption), this Court should exercise its discretion to deny the application based on general principles of comity.

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This case falls within the wholly discretionary exercise of review by this Court. MCR 7.303(B); MSC IOP 7.303(B) ("[t]he Court's review of all other case types is discretionary"). This Court generally seeks to exercise that discretionary review "to address legal issues of jurisprudential significance that will impact a large group of current or future cases." MSC IOP 7.305(B). And, in determining whether "the case is deserving of the Court's consideration," it is appropriate for this Court to weigh policy considerations about the case's impact to the law. MSC IOP 7.305(B)(1).

One relevant policy consideration at play in this case is the principle of interstate comity. Comity sometimes factors into jurisdictional abstention or choice-of-law questions in both state and federal courts. *Younger v Harris*, 401 US 37, 44; 91 S Ct 746; 27 L Ed 2d 669 (1971) (explaining the justification for a federal court to abstain from exercising jurisdiction over state-law disputes includes "the notion of 'comity,' that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways . . . ."); *Fu v Fu*, 150 NJ 108, 122; 733 A2d 1133 (1999) ("The interests of interstate comity require courts to consider whether application of a competing state's law would frustrate the policy or interest of other interested states."), citing *Restatement (Second) of Conflict of Laws* § 145, comment b (1971). Applied in this instance, Utah law is clear that the residential exemption is one exemption, as discussed above. See Section I.B.2, *supra*. But, even if this Court believes that question is open to dispute, that remains a question of Utah law that Utah courts should resolve. This Court should not wade too deeply into another state's uncharted jurisprudential waters. Stirling's application for leave to appeal should be denied.

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CONCLUSION AND RELIEF REQUESTED

Even Stirling does not dispute that the Court of Appeals correctly construed the "substantial similarity" test under MCL 211.7cc(3). Two exemptions must be "largely . . . alike" but "exactness" is not demanded. That court did not err in holding that Utah's "residential exemption" applicable to all property used as primary residences is largely alike to Michigan's principal residence exemption. Though the two state's legislatures inevitably diverge in the fine lines drawn by their policy determinations, the general character of both state's exemptions as tax breaks for residential property serving as domiciles are largely alike. This Court should deny leave.

Respectfully submitted,

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