MINNESOTA STATE LAW LIBRARY

NO. A07-1086

State of Minnesota

In Supreme Court

HealthEast,

Relator,

and

University of Minnesota Physicians,

Intervenor-Relator,

vs.

County of Ramsey,

Respondent.

RELATORS' REPLY BRIEF

J. Patrick Plunkett (#87221)
John G. Patterson (#144320)
Martin D. Kappenman (#320596)
MOORE, COSTELLO & HART, PLLP
900 Second Avenue South, Suite 1500
Minneapolis, Minnesota 55402-5079
(612) 673-0148

Attorneys for HealthEast, Relator

Michael C. Flom (#140089)
GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A.
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
(612) 632-3000

Attorneys for University of Minnesota Physicians, Intervenor-Relator

Darwin J. Lookingbill (#128132)
RAMSEY COUNTY ATTORNEY'S OFFICE
Ramsey County Government Center West
50 West Kellogg Blvd., Suite 560
St. Paul, Minnesota 55102
(651) 266-3222

Attorneys for County of Ramsey, Respondent

2007 – BACHMAN LEGAL PRINTING – FAX (612) 337-8053 – PHONE (612) 339-9518 or 1-800-715-3582

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. ARGUMENT	1
A. Ramsey County Relies Upon a Flawed Mechanical Approach to Determining Whether HealthEast is an Institution of Purely Public Charity	1
B. Ramsey County Relies Upon Conclusory, Unsupported Statements in Arguing that UMPhysicians is Not an Institution of Purely Public Charity	7
II. CONCLUSION	14

TABLE OF AUTHORITIES

Pages

CASES:

Allina Medical Clinics v. County of Meeker,
2005 WL 473908 (Minn. Tax) 4, 7

American Association of Cereal Chemists v. County of Dakota,
454 N.W.2d 912, 915 (Minn. 1990) 12

Assembly Homes, Inc. v. Yellow Medicine County,
273 Minn. 197, 201, 140 N.W.2d 336, 341 (1966) 3

Care Institute – Maplewood v. County of Ramsey,
576 N.W.2d 734, 739 (Minn. 1998) 3

Chisago Health Services v. Commissioner of Revenue,
462 N.W.2d 328 (Minn. 1990) 6, 10

Christian Bus. Men's Comm. of Minneapolis, Inc. v. State,
228 Minn. 549, 38 N.W.2d 803 (1949) 2

Community Hosp. Linen Serv., Inc. v. Commr. Of Taxation,
309 Minn. 447, 245 N.W.2d 190 (1976) 1, 2

Cook Area Health Services, Inc. v. County of St. Louis,
2001 WL 428623 (Minn. Tax) 9, 11, 12, 13

North Star Research Inst. v. County of Hennepin,
306 Minn. 1, 236 N.W.2d 757 (1975) 3, 4

In re Petition of Junior Achievement of Greater Minneapolis, Inc.,
271 Minn. 385, 135 N.W.2d 881 (1995) 6

State v. St. Paul Union Depot Co.,
42 Minn. 142, 43 N.W. 840 (1889) 2

Wexford Medical Group v. City of Cadillac,
713 N.W.2d 734 (Mich. 2006) 10, 14

ARGUMENT

A. Ramsey County Relies Upon a Flawed Mechanical Approach to Determining Whether HealthEast is an Institution of Purely Public Charity.

1. HealthEast does not need to be a subsidiary of hospitals for *Community Hospital* to apply.

Ramsey County relies upon an incorrect reading of *Community Hospital*, that *Community Hospital* only applies to situations in which the property claimed to be exempt from tax is owned by a subsidiary of the tax exempt hospitals. (Respondent's Brief, p. 8) Both Ramsey County and the Tax Court have incorrectly failed to consider HealthEast in the context of its role as the parent corporation of a health care system that includes several hospitals and other tax-exempt subsidiaries. Neither the Tax Court's decision nor Ramsey County articulates any reason why the facts at issue in the *Community Hospital* case, in which several non-affiliated hospitals created a new subsidiary entity, is materially different than the instant case in which several affiliated Hospitals create a new parent corporation, HealthEast.

While *Community Hospital* involved a subsidiary of several hospitals, the case stands for the proposition that real estate taxation in a complex health care system is not to be determined by applying a simple litmus test to the fee owner of a particular parcel of real estate. *Community Hosp. Linen Serv., Inc. v. Commr. Of Taxation,* 309 Minn. 447, 245 N.W.2d 190 (1976). Rather, in order to determine whether the property is exempt,

the taxing authority needs to examine the facts and circumstances relevant to the function of the fee holder within the entire hospital/health care system.

Indeed, the rationale followed in *Community Hospital* and *St. Paul Union Depot Co.*, applies with equal force in the present case because, as in *Community Hospital* and *St. Paul Union Depot Co.*, the entity at issue was created by several tax-exempt hospitals to serve their needs, and is operated as a non-profit organization without private benefit to shareholders. *Community Hosp. Linen Serv., Inc. v. Commr. Of Taxation,* 309 Minn. 447, 245 N.W.2d 190 (1976); *State v. St. Paul Union Depot Co.,* 42 Minn. 142, 43 N.W. 840 (1889).

Ramsey County incorrectly asserts that because the HealthEast Care System has several taxable subsidiaries, HealthEast is not an institution of purely public charity. It is not uncommon for tax exempt entities to have for profit affiliates. This Court resolved the property tax implications of such affiliations in *Christian Bus. Men's Comm. of Minneapolis, Inc. v. State*, 228 Minn. 549, 38 N.W.2d 803 (1949). Under this Court's ruling in *Christian Bus. Men's Comm. of Minneapolis,* the portion of any tax exempt property devoted to the work of a for profit affiliate is taxed on a prorated basis. 228 Minn. 549, 38 N.W.2d 803 (1949). Thus, Ramsey County's claim that HealthEast has taxable affiliated entities is irrelevant. The presence of taxable affiliated entities does not disqualify an institution of purely public charity from receiving a property tax exemption.

2. Minnesota law does not require that gifts and donations constitute the principal source of Revenue for an institution of purely public charity.

Ramsey County claims that in comparison to the total revenues of the HealthEast Care System, charitable contributions when viewed either (i) as donations to HealthEast as a separate entity, or (ii) to the entire HealthEast Care System, are not sufficient to satisfy the second factor of the *North Star* test. The Tax Court agreed with Ramsey County on this issue, and relies upon *Care Institute,* which held that the applicant did not satisfy the second factor of the *North Star* test because the donations received by the applicant were not significant when compared to the applicant's value or revenues. *Care Institute – Maplewood v. County of Ramsey*, 576 N.W.2d 734, 739 (Minn. 1998). The *Care Institute – Maplewood* decision is an apparent departure from long standing precedent that in order to qualify as a purely public charity only minimal contributions were necessary. See *Assembly Homes, Inc. v. Yellow Medicine County*, 273 Minn. 197, 201, 140 N.W.2d 336, 341 (1966).

In *Assembly Homes, Inc.*, the public charity received only $66 in donations, merely a minute fraction of its total revenue, which was for the most part received from charges to patients. This Court ruled that even though donations were not the primary means for producing revenue to operate the facility, the nursing home facility at issue must be considered to be a purely public charity. *Id.* at 341. The focus of the analysis was properly placed upon the organization's "charter, its bylaws, its policy and the conduct of its operations." *Id.* The same analysis should be applied to HealthEast, especially in light

of the fact that over 5,000 individuals, businesses and organizations have donated to the HealthEast Foundation, which as a result, has been able to make over one million dollars in grants to HealthEast affiliates each of the years at issue. [Ex. 60-64, 85-86 (Annual Reports to the Community)] There can be no doubt that the number and total amount of donations received by the HealthEast Care System is substantial. Moreover, the second *North Star* factor expressly asks whether the entity is supported "by donations and gifts in **whole or in part**." *North Star Research Inst. v. County of Hennepin,* 306 Minn. at 6, 236 N.W.2d at 757 (1975) (emphasis added).

Ramsey County asks the Court to look to the Tax Court's prior decision in *Allina Medical Clinics v. County of Meeker*, 2005 WL 473908 (Minn. Tax.) to support its claim that under the fourth *North Star* factor, an inquiry must be made into whether salaries and other benefits exceed the amount of the charitable contribution. (Respondents Brief, p. 11). In *Allina Medical Clinics v. County of Meeker* the tax court imposed a new requirement to the fourth *North Star* factor, which simply does not exist under this Court's decisions establishing the *North Star* factors. The fact that the total payroll costs of a charitable organization may exceed the amount received by the organization in charitable donations in a given year, is irrelevant to determining whether the organization is exempt from property taxes. Ramsey County would penalize HealthEast for operating efficiently. In a large health care system, there simply cannot be sufficient support from charitable donors to cover the payroll costs of the thousands of persons employed by the system.

The failure to recognize the millions of dollars in donations made by thousands of donors to the HealthEast Care System, coupled with an ill-reasoned and unsupported requirement that the HealthEast Care System has to raise sufficient charitable donations to cover the entire payroll costs of the System, results in a twisted and distorted interpretation of the Minnesota Constitution which guarantees to "institutions of purely public charity" exemption from taxation.

3. HealthEast benefits an unrestricted class of persons and reduces the burden of government

Ramsey County claims that because HealthEast receives payments from Medical Assistance, it has failed to show that its operations reduce the burden of government. (Respondents Brief, p 12) [It should be noted that "lessening the burdens of government" is merely one example of a charitable activity. There are other charitable activities, such as the performing arts, that are not traditionally considered to be the responsibilities of government]. That observation aside, Ramsey County's position ignores the millions of dollars in benefit conferred upon the public each year by the HealthEast Care System. Ramsey County acknowledges that HealthEast's tax exempt entities, including the HealthEast Hospitals, will not refuse non-emergency medically necessary services solely because of a patient's ability to pay. Nor is there a dispute that millions of dollars of traditional charity care was provided to needy individuals during the years in question (that is care provided without compensation from any source). [Ex. 60-64, 85-86 (Annual Reports to the Community)]

It is obvious that the charity care policies of the HealthEast Care System lessen the burdens of government by providing necessary medical care to those who can neither afford it nor qualify for government programs, thus contributing to the overall health of the community and preventing future government expenditures upon individuals who did not receive medically necessary care and thus suffered a deterioration in condition. Ramsey County also ignores the six to eight million dollars of services provided each year in the form of services to the low income and broader community, which were set forth in detail in Relator's principal brief. Unlike the clinic in *Chisago Health Services v. Commr. of Revenue*, the HealthEast Care System's charitable services extend far beyond "writing off uncollectible bills." *Chisago Health Services*, 462 N.W.2d at 391. The record in this case demonstrates that the HealthEast Care System, consistent with its charitable mission, has provided millions of dollars of traditional charity care and community benefit programs, which is undeniably different than a typical health care providers practice of writing off uncollectible bills. [Ex. 60-64, 85-86 (Annual Reports to the Community)]

The charity care and community benefit programs provided by the HealthEast Care System is exactly the type of care for which the Minnesota Constitution created the benefit of the public charity exemption. *In re Petition of Junior Achievement of Greater Minneapolis, Inc.*, 271 Minn. 385, 135 N.W.2d 881 (1995) (defining charity in relevant part as an organization "relieving their bodies from disease, suffering or constraint").

B. Ramsey County Relies Upon Conclusory, Unsupported Statements in Arguing that UMPhysicians is Not an Institution of Purely Public Charity

Ramsey County does not take issue with the positive attributes and charitable benefits to the community provided by UMPhysicians or the Bethesda Clinic. Rather, as it does with HealthEast, Ramsey County narrowly focuses on the organizational structure of UMPhysicians, claiming that "Relators again urge the Court to ignore the status of the legal entity at issue." (Respondent's Brief, p. 13.) This statement is not accurate – Relators' initial brief deals extensively with UMPhysicians, including its stated purpose, its operations, its financial performance and the support it receives through donations and gifts, while at the same time addressing the relevant factors as they relate to the Bethesda Clinic which, after all, is the use to which the subject property is put. Even the Tax Court case relied upon most extensively by the Tax Court and Ramsey County, *Allina Medical Clinics v. County of Meeker*, 2005 WL 473908 (Minn. Tax), deals extensively with the Litchfield Clinic located on the property at issue, and is not limited to addressing the overall Allina Medical Clinics organization. Ramsey County not only relies on the same flawed mechanical approach it attempts to apply to HealthEast, as described above, it then proceeds to assert that UMPhysicians does not meet four of the six *North Star* factors in a manner that is not supported by the record in this case or the law.

1. UMPhysicians meets *North Star* factor two.

Ramsey County claims that UMPhysicians fails to meet this factor, which addresses whether the entity is supported by donations and gifts in whole or in part,

despite acknowledging that UMPhysicians receives extensive support from the University of Minnesota and the Minnesota Medical Foundation. Ramsey County states broadly, "If support is received from those entities, it is not recorded on any of the financial statements publicly filed by UMPhysicians." (Respondent's Brief, p. 14.) However, this statement ignores the financial statements provided by UMPhysicians and made part of the record in their care, showing the significant financial support Bethesda Clinic requires in order to operate, the most significant of which is salary support from University of Minnesota funding sources, shown as "University Supported Clinical Expense" on financial statements, amounting to between $415,000 and $430,000 annually during the years at issue. (Relators' Initial Brief, p. 32; App. at 16, 100-101; Stip. 69.) The fact that UMPhysicians is organized to receive charitable support through University of Minnesota funding sources and the Minnesota Medical Foundation, rather than through direct contributions, is no different from other health care and other organizations who receive charitable support through Foundations or similar sources, and in no way diminishes the charitable support received by UMPhysicians, including that necessary to operate the Bethesda Clinic.

Ramsey County also attempts to nullify the funding grants received by Bethesda Clinic faculty and staff, by arguing that "the grants received, however, are for specific projects, not patient care." (Respondent's Brief, p. 14.) There is no authority or other basis for the distinction Ramsey County attempts to make, or any basis to deviate from the accepted rule that funding through grants can be a form of charitable contribution. *Cook*

Cook Area Health Services, Inc. v. County of St. Louis, 2001 WL 428623 (Minn. Tax). Ramsey County does not, and cannot, deny the funding received by Bethesda Clinic in the form of University of Minnesota and Minnesota Medical Foundation sources, as well as funding in the form of grants, and these sources are more than sufficient to satisfy *North Star* factor two.

2. UMPhysicians meets *North Star* factor three.

This factor looks at whether the recipients of the charity are required to pay for the assistance in whole or in part. Ramsey County does not dispute that Bethesda Clinic treats all patients without the regard to ability to pay, and has a Community Care Program under which eligible patients receive services at a 50%-90% discount off standard charges, and can even access up to a 100% discount if certain additional criteria are met. In addition to the 5%-6% of UMPhysicians' patients who have received support from the Community Care Program, Bethesda Clinic has a high percentage of patients on Medical Assistance, and it deeply discounts its fees for those patients, a discount that amounts to over 70% on services provided to Medical Assistance beneficiaries. (Relators' Initial Brief, p. 34.)

Nevertheless, Ramsey County argues that *North Star* Factor Three is not met because Bethesda Clinic patients are first asked to pay for services, and where available utilize private insurance or governmental benefits toward the services provided. (Respondent's Brief, p. 15.) However, the fact that Bethesda Clinic collects fees for services, and receives fees from private insurance or governmental programs, in no way

diminishes its extensive charitable benefits to patients who do not have such means. Any fiscally responsible charitable institution would and should be run in a similar manner.

Ramsey County attempts to support its argument by citing *Chisago Health Services v. Commissioner of Revenue*, 462 N.W.2d 328 (Minn. 1990), stating that UMPhysicians' business practices are "no different" than those of the petitioner in *Chisago Health Services*. However, *Chisago Health Services* simply states that the fact that a medical provider "discounts its market fees in accepting Medicare and Medicaid payments does not, by itself, constitute the extension of charity to the patients involved." 462 N.W.2d at 391 (emphasis added). The facility in that case discounted Medicare and Medicaid patients, respectively about 15%-40% below the hospital's charges to private paying patients. 462 N.W.2d at 388. In stark contrast, Bethesda Clinic not only has a high percentage of patients on Medical Assistance, its discount of fees to those patients' amounts to over 70%, a very substantial charitable benefit well in excess of the situation in *Chisago Health Services*, and, like HealthEast, extends far beyond "writing off uncollectible bills." *Chisago Health Services*, 462 N.W.2d 391.

Ramsey County also attempts to distinguish the well-reasoned opinion of the Michigan Supreme Court in a recent similar case granting charitable exemption, *Wexford Medical Group v. City of Cadillac*, 713 N.W.2d 734 (Mich. 2006), by claiming that Michigan does not have a test similar to that set out in *North Star* and appears to have a lower threshold for obtaining exempt status. (Respondent's Brief, p. 16.) In fact, Michigan applies a definition of charity quite similar to that utilized in Minnesota:

"[Charity] . . . [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." 713 N.W.2d at 746 (citations omitted).

In granting real estate exemption to the Wexford Clinic that had only two patients taking advantage of its charity care program in one of the years at issue, and only eleven patients in the other year, the Michigan Supreme Court also noted an open-access policy under which any patient can receive service, and the Clinic's policy of not restricting the number of Medicare and Medicaid patients accepted, leading to significant financial losses in doing so. *Id.* at 747.

Arriving at a decision in line with *Wexford Medical Group* would not signal a departure from previous rulings, as asserted by Ramsey County. (Respondent's Brief, p. 16.) For example, the Court in *Cook Area Health Services v. County of St. Louis*, 201 WL 428623 (Minn. Tax) similarly granted charitable status to a health care provider offering services at below market rates for those who did not have insurance and could not afford to pay full price, specifically finding in the process that *North Star* factor three was met.

3. UMPhysicians meets *North Star* factor four.

In its discussion of *North Star* factor four, which asks whether gifts and charges to users produces a profit to the charitable institution, Ramsey County acknowledges that realization of a profit is not decisive, so long as the profits are used to further the organization's charitable objectives instead of for private gain. (Respondent's Brief, p. 17; *American Association of Cereal Chemists v. County of Dakota*, 454 N.W.2d 912, 915 (Minn. 1990).) Ramsey County also acknowledges that the Tax Court found that factor four was satisfied in another case involving a health service provider, even where the clinic showed a small gain or loss for the preceding five years. *Cook Area Health Services, Inc. v. County of St. Louis*, 2001 WL 482623 (Minn. Tax). Ramsey County attempts to distinguish *Cook Area Health Services* by stating that profits realized by UMPhysicians are greater than those realized in the *Cook Area Health Services* case, then concluding, "Thus, these two situations are quite different . . ." (Respondent's Brief, p. 17.) Ramsey County's distinction is one without a difference -- UMPhysicians is a larger organization than Cook Area Health Services, and one would expect the numbers one way or another to be of a larger scale. The relevant inquiry is what the institution does with any gain. In this case, there is ample evidence that Bethesda Clinic does not generate gain, and in fact required support from University of Minnesota funding sources in the range of $415,000 to $430,000 annually to maintain its operations during the years at issue. Even if Bethesda Clinic were to generate a profit in any year, the money would

stay within the Clinic for future uses. Moreover, it is established in this case that the purpose of UMPhysicians is to be helpful to others without immediate expectation of financial reward. These attributes of a purely public charity demonstrate that *North Star* factor four is met in this case.

4. UMPhysicians meets *North Star* factor five.

This factor asks whether the beneficiaries are restricted or unrestricted, and if restricted, whether the class of persons to whom charity is made available is one having a reasonable relationship to the charitable objectives. A subfactor is whether the entity "lessens the burden of government." In conclusory fashion, Ramsey County argues that despite the undisputed fact that Bethesda Clinic offers medical services regardless of ability to pay, in a medically underserved area, there is no lessened burden on government because Bethesda Clinic seeks other types of payment to be utilized prior to offering charity care. In drawing its conclusion, Ramsey County claims that the exemption granted to the medical clinic in *Cook Area Health Service*s should not apply in this case. Ramsey County argues that the exemption in *Cook Area Health Services* was based in part upon a showing that because of the existence of the Cook Clinic, the government did not have to operate its own hospital. Ramsey County goes on to assert that there is a lack of a showing in this case that the existence of the Bethesda Clinic similarly relieves the government of the obligation of running its own clinic in the area. (Respondent's Brief, p. 18.) This strained reading of *Cook Area Health Services* and the record in this case should be rejected. Instead, Bethesda Clinic's providing of medical services to an

underserved population without regard to ability to pay, for free or deeply discounted rates, requiring hundreds of thousands of dollars in annual subsidies to operate, should be recognized as a substantial public benefit that does indeed lessen the burden of government. The unequivocal rejection of the Michigan Supreme Court of the position advanced by Ramsey County appropriately recognizes the charitable benefit conferred by health care providers which provide free or subsidized services to those in need, with language that is particularly appropriate in this case:

> [E]ven though petitioner helps to enroll patients in Medicare and Medicaid, it still subsidizes the cost of care in light of the government's underpayment, thus lessening the government's burden of covering the full cost of a person's care.

Wexford Medical Group, 713 N.W.2d at 748.

Ramsey County does not challenge the other relevant inquiry under factor five regarding the beneficiaries to whom the charity is made available. Under both prongs of the inquiry, *North Star* factor five is satisfied in this case.

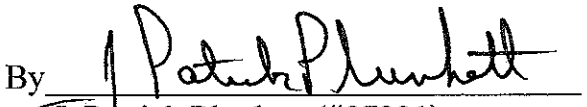
CONCLUSION

The record in this case establishes that HealthEast and UMPhysicians provide the type of public benefits that the Minnesota Constitution and the exempt property statute are meant to encourage and promote. For all of the reasons set forth herein and those reasons raised in their principal brief, Relators request that the Tax Court's decision be reversed and the Subject Property be granted exemption from Real Estate taxes for the years at issue.

Respectfully submitted,

Dated: September 24, 2007.

MOORE, COSTELLO & HART, P.L.L.P.

By 

J. Patrick Plunkett (#87221)
John G. Patterson (#144320)
Martin D. Kappenman (#320596)
900 Second Avenue South, Suite 1500
Minneapolis, MN 55402-5079
Telephone: (612) 673-0148

ATTORNEYS FOR PETITIONER
RELATOR HEALTHEAST

Dated: September 24, 2007.

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

By

Michael C. Flom (#140089)
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: (612) 632-3000
Facsimile: (612) 333-4444

ATTORNEYS FOR INTERVENOR-
RELATOR UNIVERSITY OF
MINNESOTA PHYSICIANS

1016304.1