No. 122203

IN THE
SUPREME COURT OF ILLINOIS

CONSTANCE OSWALD, Plaintiff-Appellant, v. CONSTANCE BEARD, in her Official Capacity as Director of the Illinois Department of Revenue, and the ILLINOIS DEPARTMENT OF REVENUE, State Defendants-Appellees, and ILLINOIS HEALTH AND HOSPITAL ASSOCIATION, Intervenor-Defendant-Appellee.	)	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-15-2691 There on Appeal from a Judgment of the Circuit Court of Cook County, No. 2012-CH-42723 The Honorable ROBERT LOPEZ-CEPERO, Judge Presiding

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NATURE OF THE CASE

Section 15-86 of the Illinois Property Tax Code, 35 ILCS 200/15-86 (2016) (Code), provides for a property tax exemption to certain not-for-profit hospitals and their hospital affiliates. Plaintiff-Appellant Constance Oswald filed a complaint in the circuit court against the Illinois Department of Revenue and its Director (Department), seeking a declaratory judgment that section 15-86 is facially unconstitutional because she contends it violates the exclusive use requirement of Article IX, section 6 of the Illinois Constitution. The organization now known as the Illinois Health and Hospital Association (IHA), whose not-for-profit members often seek charitable property tax exemptions, was granted leave to intervene as defendant. Following cross-motions for summary judgment, the circuit court held that section 15-86 is not facially unconstitutional and so granted defendants' motions for summary judgment. On appeal, the appellate court affirmed. The only issue presented is whether section 15-86 is facially unconstitutional.

ISSUE PRESENTED

Whether section 15-86 of the Property Tax Code, 35 ILCS 200/15-86 (2016), is not facially unconstitutional, given that it creates only a statutory class of charitable hospital owners entitled to receive property tax exemptions, and does not displace the requirement that those owners must also establish that they have met the constitutional requirement of having used their property exclusively for charitable purposes, *see* Ill. Const. art. IX, § 6.

STATEMENT OF FACTS

In 2012, Plaintiff-Appellant Constance Oswald filed a single-count complaint in the circuit court seeking declaratory and injunctive relief against the Department. R. C3-6. Among other contentions not relevant to this appeal, Oswald asserted that she was an Illinois taxpayer and that a recent amendment to the Code unconstitutionally granted property tax exemptions to certain not-for-profit hospitals, effectively raising her taxes. R. C5-6; *see* 35 ILCS 200/15-86 (2016). She based her complaint on subsection 15-86(c) of the statute which provides that a charitable exemption "shall be issued" to a not-for-profit hospital or hospital affiliate when the applicant can show that the value of certain qualifying services provided by the hospital in a given year exceeded the hospital's estimated property tax liability for that same year. 35 ILCS 200/15-86(c) (2016); *see* 35 ILCS 200/15-86(e), (g) (2016). According to Oswald, application of that quantitative test violates the Illinois Constitution's requirement that property tax exemptions not be granted unless the property is "used exclusively" for charitable purposes. R. C5; Ill. Const., art. IX, § 6. She asked for a declaration that section 15-86 is "unconstitutional on its face." R. C5.

The Department initially challenged Oswald's standing to bring her claim, filing a motion to dismiss. R. C15-40. While that motion was pending, the IHA sought leave to intervene as a defendant and filed its own motion to dismiss. R. C45-85. The court allowed the IHA to intervene, then denied both

the Department's and the IHA's motions after finding that Oswald had standing to challenge the facial constitutionality of section 15-86(c). R. C183-87.

Oswald later filed a motion for summary judgment, R. C244-54, and the Department and IHA filed cross motions for summary judgment, R. C265-67, C270-300. In denying Oswald's summary judgment motion and granting defendants' motions, the circuit court held that section 15-86 is not unconstitutional because it does not dispense with the Illinois Constitution's requirement for the granting of property tax exemptions. R. C469, C486. Instead, the court held that the enactment of section 15-86 was within the General Assembly's authority to create tax exemptions pursuant to Article IX, section 6 in favor of "institutions of public charity," and that the legislature's creation of a quantitative test did not displace the traditional constitutional requirements that must also be met before a property tax exemption can be granted to a hospital. R. C470-74, C486.

In deciding the issue, the circuit court agreed with Oswald's premise that if the statute were interpreted to do away with the constitutional requirement of exclusive charitable use it would be facially unconstitutional. R. C475. "Because charitable use is a requirement for exemption," the court observed, "[s]ection 15-86 cannot simply disregard it." *Id.* But given the circuit court's reading of section 15-86 as incorporating the legislature's announced quantitative test alongside the historical factors traditionally used

to establish exclusive charitable use under the Constitution, the court concluded that the statute was capable of being read in a way that preserved its validity. R. C475-76.

On review, the appellate court affirmed. 2016 IL App (1st) 152691, ¶ 50. It noted that the crux of Oswald's argument is that section 15-86(c) includes a provision providing that if the not-for-profit hospital applicant can show that it has met specific spending levels in support of its financially needy patients, or if it provides sufficient material support to "underserved individuals" or community-welfare programs, then the applicant "shall be issued a charitable exemption for that property." *Id.,* ¶¶ 16-17. According to Oswald, this sentence, with its use of the word "shall," and the failure of section 15-86 to explicitly state that exemptions may not be granted unless the property has been exclusively used for charitable purposes, renders the statute unconstitutional. *Id.*, ¶¶ 18, 21.

The appellate court rejected Oswald's interpretation of section 15-86. It held, instead, that the word "shall" in section 15-86(c) is "directory" rather than "mandatory" because no specific consequence is triggered if a local government or the Department refuses to comply with the "shall" language by denying a tax exemption to an applicant that meets the statute's quantitative spending test. *Id.*, ¶¶ 21-26. The court also found that this reading of section 15-86(c) aligned with prior cases that interpreted property exemption statutes "alongside" the relevant constitutional requirements. *Id.,* ¶ 27; *see* ¶¶ 28-40.

The court thus determined that the General Assembly was aware of the courts' historical interpretation of property tax exemption statutes and so intended section 15-86(c) to be read that way as well:

> It is clear that the General Assembly did not intend for satisfaction of section 15-86 to *ipso facto* grant an exemption, as the supreme court in *Eden* [*Retirement Ctr., Inc. v. Dep't of Revenue*, 213 Ill. 2d 272 (2004)] held the legislature cannot do. Rather, the General Assembly intended the requirement of section 15-86 to be considered on a case-by-case basis, along with the constitutional requirements.

Oswald, 2016 IL App (1st) 152691, ¶ 43.

The appellate court also relied upon the doctrine of *in pari materia* in reaching its decision, concluding that the General Assembly intended sections 15-65 and 15-86 of the Act to be read together, consistent with the background provisions of the law set out in section 15-86(a). *Id.* Section 15-65 is the older exemption for "institutions of public charity," the statutory category historically applied in favor of charitable hospitals. *See* 35 ILCS 200/15-65 (2016). According to the court, the enactment of section 15-86 merely established a "quantifiable calculation" to be used "as part of the process of determining a charitable exemption," consistent with section 15-65. 2016 IL App (1st) 152691, ¶ 44. Based on its analysis of the constitutional principles, this Court's case law, and the General Assembly's chosen statutory language, the court determined that "section 15-86 is facially constitutional." *Id.*, ¶ 46.

As an alternative ground for affirming, the appellate court noted that Oswald could not sustain her burden of showing that section 15-86 is unconstitutional under the "no-set-of-circumstances test" used by Illinois courts to address facial constitutional challenges. *Id.*, ¶ 47. Under that test, a facial challenge must be rejected unless the plaintiff can show that there are no circumstances under which the statute could be valid. *Id.* The court noted that Oswald had conceded that it was "hypothetically possible" for an applicant to meet the quantifiable test set out by section 15-86(e) of the Act *and* have used its property in the tax year exclusively for charitable purposes. *Id.* Thus, the court concluded that the statute was not facially unconstitutional, and so the Department was properly granted summary judgment. *Id.*

Finally, the appellate court acknowledged that its decision differed from the Fourth District's holding in *Carle Foundation v. Cunningham Township,* 2016 IL (4th) 140795, a case then pending in this Court. *Oswald*, 2016 IL App (1st) 152691, ¶ 48. Later, this Court vacated the Fourth District's judgment in *Carle* on jurisdictional grounds, and so never reached the constitutional question. *See Carle Found. v. Cunningham Twp.*, 2017 IL 120427, ¶ 47 (circuit court improperly issued Rule 304(a) language without entry of final order). Accordingly, this Court has yet to decide if section 15-86 is facially unconstitutional, the question squarely presented here.

ARGUMENT

Oswald contends that section 15-86(c), which provides that a hospital applicant "shall be issued a charitable exemption" upon showing that the value of certain services or activities in a given year exceeds the hospital's estimated property tax liability, is unconstitutional as a facial violation of Article IX, section 6 of the Illinois Constitution, which requires exemption applicants to establish exclusive charitable use of property in the relevant tax year. *See* 35 ILCS 200/15-86(c) (2016); Ill. Const. 1970, art. IX, § 6. Both the lower courts correctly rejected Oswald's arguments, granting and affirming summary judgment for the Department. This Court should affirm.

I. The Standard of Review Is *De Novo*.

The circuit court granted summary judgment to the Department. R. C486. Summary judgment is proper when the pleadings, depositions, and admissions on file, together with any affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (2016). This court reviews the circuit court's grant of summary judgment *de novo*. *Hertz Corp. v. City of Chi.*, 2017 IL 119945, ¶ 12; *Lazenby v. Mark's Constr., Inc.*, 236 Ill.2d 83, 93 (2010). Review is also *de novo* because whether section 15-86 is facially unconstitutional is a pure question of statutory construction. *See Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill. 2d 217, 227 (2010); *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 200 (2009).

II. Oswald's Attack on Section 15-86 Is Disfavored Because She Brings Only a Facial Challenge.

Article IX, Section 6, of the Illinois Constitution provides that "[t]he General Assembly by law *may exempt* from taxation *only* . . . property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes . . . ." Ill. Const., art IX, § 6 (emphasis added). Section 6 thus operates as both an authorization and limitation on the power of the General Assembly to exempt Illinois property from taxation, *see Eden Retirement Ctr., Inc. v. Dep't of Revenue*, 213 Ill. 2d 272, 290 (2004), and this Court has made clear that "[t]he legislature cannot add to or broaden the exemptions specified in section 6," *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 236 Ill. 2d 368, 389 (2010) (citing *Chi. Bar Ass'n v. Dep't of Revenue*, 163 Ill. 2d 290, 297 (1994)). Although the General Assembly cannot grant exemptions beyond those authorized by section 6, it may "place restrictions, limitations, and conditions on [property tax] exemptions as may be proper by general law." *N. Shore Post No. 21 of the Am. Legion v. Korzen*, 38 Ill. 2d 231, 233 (1967).

To meet the constitutional test allowing property to be exempted from taxation, property must both fall into one of the enumerated constitutional categories identified by section 6 and be shown as having been "used exclusively" for that purpose within the given tax year. *Chi. Bar Ass'n*, 163 Ill. 2d at 299 (school purposes); *McKenzie v. Johnson*, 98 Ill. 2d 87, 98-99 (1983)

(religious and school purposes); *Children's Dev. Ctr., Inc. v. Olson*, 52 Ill. 2d 332, 336 (1972) (charitable and school purposes); *see also Methodist Old Peoples Home v. Korzen,* 39 Ill. 2d 149, 157 (1968) (per curiam) (charitable purposes involving "exclusive use" under 1870 Constitution).

The test for "exclusive" use is a fact-specific and practical one. It is well established, for example, that the exclusive use requirement does not prevent an exemption as long as the exempted use is the property's "primary" use, even if there are also incidental or secondary uses of the property that fall outside the exemption. *Ill. Inst. of Tech. v. Skinner*, 49 Ill. 2d 59, 66 (1971); *Girl Scouts of Du Page Cty. Council, Inc. v. Dep't of Revenue*, 189 Ill. App. 3d 858, 862 (2d Dist. 1989); *Highland Park Hosp. v. Dep't of Revenue*, 155 Ill. App. 3d 272, 278 (2d Dist. 1987). Nor does the Constitution operate to prevent a taxing district from allowing a proportional exemption for property shown to be physically separated into exempt and nonexempt uses. *See*, *e.g.*, *People ex rel. Kelly v. Avery Coonley Sch.*, 12 Ill. 2d 113, 117 (1957); *City of Mattoon v. Graham*, 386 Ill. 180, 186 (1944).

Because statutes are presumed constitutional, a litigant challenging a provision has the burden of establishing a clear constitutional violation. *Konetski*, 233 Ill. 2d at 200; *see also Walker v. McGuire*, 2015 IL 117138, ¶ 12. This Court thus affirms the constitutionality of a statute if it is reasonably capable of such a determination. *People v. Johnson*, 225 Ill. 2d 573, 584 (2007). Doubts as to the statute's construction are always resolved in favor of

its validity. *People v. Boeckmann*, 238 Ill. 2d 1, 6-7 (2010). Facial invalidation "is, manifestly, strong medicine" that "has been employed by the court sparingly and only as a last resort." *Pooh-Bah Enters., Inc. v. Cty. of Cook*, 232 Ill. 2d 463, 473 (2009) (internal quotations omitted). In contrast, an "as applied" constitutional challenge is limited to the effect of the statute on the plaintiff's specific circumstances and enforcement of the law is enjoined only against that plaintiff, whereas a successful facial attack "voids the statute in its entirety and in all applications." *In re M.A.*, 2015 IL 118049, ¶ 40.

Here, Oswald seeks to have the statute declared facially unconstitutional, meaning she has not presented any specific facts as to how it has been applied by taxing authorities. This Court properly applies its "most exacting standard" to such challenges. *People v. Burns*, 2015 IL 117387, ¶¶ 27-28 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). Accordingly, Oswald's claim is disfavored and cannot succeed unless she can show that section 15-86 is unconstitutional in all of its actual and potential applications. *See City of Chi. v. Pooh Bah Enters., Inc.*, 224 Ill. 2d 390, 442 (2006); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998).

III. Section 15-86 Is Consistent with the General Assembly's Authority to Create Property Tax Exemptions That Are Limited by the "Exclusive Use" Requirement of Article IX, Section 6.

To understand the purpose and effect of section 15-86, it is necessary to start with the more general preexisting charitable exemption statute, section 15-65. 35 ILCS 200/15-65 (2016). That section lists six categories of owners

entitled to seek charitable property tax exemptions in Illinois. These are (1) institutions of public charity (the category that has traditionally included hospitals seeking exemption), (2) beneficent organizations, (3) retirement homes, (4) health maintenance organizations, (5) free public libraries, and (6) historical societies. *Id.* To be entitled to a charitable property tax exemption, an applicant must satisfy the statutory ownership requirements of section 15-65 and the constitutional exclusive use requirement of Article IX, section 6. *Eden*, 213 Ill. 2d at 273.

In enacting section 15-86, the General Assembly sought to accomplish two things. First, the amendment modifies, for not-for-profit hospitals and their affiliates, section 15-65's ownership requirements for "institutions of public charity." 35 ILCS 200/15-65(a) (2016). In *Provena*, this Court unanimously held that a parent hospital corporation could not satisfy the exemption regardless of its subsidiary's exclusively charitable use of hospital property because there was insufficient evidence that the parent corporation satisfied the statutory charitable ownership requirements in its own right. *See* 236 Ill. 2d at 393; *id.* at 412 (Burke, J., concurring in part and dissenting in part); *see also Provena Covenant Med. Ctr. v. Dep't of Revenue*, 384 Ill. App. 3d 734, 741-42 (4th Dist. 2008) (discussing statutory requirement of "owned by an institution of public charity"). Section 15-86 changed that. Under section 15-86(c), 35 ILCS 200/15-86(c) (2016), a charitable property tax exemption can be granted not only to property owners that operate hospitals but to their

"affiliates" that own hospital property, *see* 35 ILCS 200/15-86(b) (2016).

Second, the General Assembly sought to "establish a new category of *ownership* for charitable property tax exemption to be applied to not-for-profit hospitals and hospital affiliates in lieu of the existing ownership category of 'institutions of public charity'." 35 ILCS 200/15-86(a)(5) (2016) (emphasis added). This new ownership category includes "quantifiable standards for the issuance of charitable exemptions for such property." *Id.* In this provision, the legislature was careful to make clear that it was not creating a blanket exception for such institutions simply because an applicant could meet a quantitative threshold: "It is *not* the intent of the General Assembly to declare any property exempt ipso facto, but rather to establish criteria to be applied to the facts on a case-by-case basis." *Id.* (emphasis added). Accordingly, the exemption sought to modify the statutory ownership standards, *not* the Constitution's exclusive charitable use requirements.

Oswald's arguments take issue with one sentence of section 15-86(c) that she claims makes the statute facially unconstitutional by undermining the constitutional requirement of exclusive charitable use. AT Br. 8-16. The statute provides in relevant part,

> [a] hospital applicant satisfies the conditions for an exemption under this Section with respect to the subject property, and shall be issued a charitable exemption for that property, if the value of services or activities listed in subsection (e) for the hospital year equals or exceeds the relevant hospital entity's estimated property tax liability, as determined

> under subsection (g), for the year for which exemption is sought.

35 ILCS 200/15-86(c) (2016). Oswald's contention fails because it ignores *decades* of consistent direction from this Court as to how exemption statutes are harmonized with article IX, section 6.

In assessing a facial challenge like Oswald's, courts examine only whether the statute at issue contains "an inescapable flaw that renders the . . . statute unconstitutional under every circumstance." *People v. One 1998 GMC*, 2011 IL 110236, ¶ 58. As construed by Oswald, the "shall issue" language of section 15-86(c) makes the statute facially unconstitutional because it purports to do away with the constitutional requirement of exclusive charitable use. AT Br. 10-11. Indeed, Oswald's claim, as she framed it in the circuit court, was based entirely on the argument that section 15-86(c) "forbids" the Department from applying the constitutional test. R. C246. In the appellate court Oswald made the same argument, relying on the Fourth District's recently vacated decision in *Carle Found. v. Cunningham Twp.*, 2016 IL App (4th) 140795, *vacated,* 2017 IL 120427, ¶ 37.

But Oswald and the Fourth District were both wrong in their assessment of how section 15-86 operates. And Oswald's mistaken premise cannot support her conclusion that section 15-86 is facially unconstitutional.

In *Carle*, the appellate court held that section 15-86 is facially unconstitutional because it fails to incorporate the exclusive charitable use

requirement within its text — thus allowing for the possibility that a property tax exemption could be granted without the applicant meeting the requirement of exclusive charitable use. *Carle*, 2016 IL App (4th), ¶ 141. As described more fully below, however, and as the First District recognized in this case, there are now decades of precedent on how statutes are construed in the property exemption context. Those cases provide a straightforward solution to any perceived conflict between the constitutional requirement of exclusive charitable use and the mandated statutory requirements for being awarded an exemption pursuant to section 15-86.

Exemption statutes, like all statutes, are construed as constitutional whenever it is reasonable to do so. *See Eden*, 213 Ill. 2d at 291-92. Accordingly, a party seeking a property tax exemption must prove, as part of its *prima facie* case, that the property in question falls within the terms of *both* the exempting statute *and* the constitutional authorization, as many cases have now explicitly held. *Provena*, 236 Ill. 2d at 388 (party claiming exemption must prove by clear and convincing evidence that property in question falls within both constitutional authorization and terms of statute under which exemption is claimed); *People ex rel. Nordlund v. Ass'n of Winnebago Home for Aged*, 40 Ill. 2d 91, 100 (1968) (taxpayer must "also comply unequivocally with the constitutional requirement of exclusively charitable use"); *Korzen*, 39 Ill. 2d at 155 ("Plaintiffs must show that its organization and the use of its property came within the provisions of the statute and the constitution.");

Meridian Vill. Ass'n v. Hamer, 2014 IL App (5th) 130078, ¶ 6 ("Even if an 'old people's home' meets the statutory requirements for exemption, it must also meet the constitutional requirements for charitable use").

In articulating this rule, this Court has also repeatedly stated that the legislature cannot, by statute, declare property or uses "ipso facto" exempt — in opinions using that phrase specifically. *Eden*, 213 Ill. 2d at 290; *Korzen*, 39 Ill. 2d at 155; *MacMurray Coll. v. Wright*, 38 Ill. 2d 272, 276 (1967). Thus, statutory provisions cannot supplant the constitutional requirement of exclusive charitable use. Instead, the rule in Illinois is that it is "for the courts, and not for the legislature, to determine whether property in a particular case is used for a constitutionally specified purpose." *Eden*, 213 Ill. 2d at 290. Accordingly, nothing in section 15-86, including the General Assembly's use of the word "shall" in section 15-86(c), should be read to undermine the constitutionality of the statute because the existence of the statutory exemption is not the ultimate test for deciding an exemption application. Instead, as has long been true, their requirements are applied *in addition to*, rather than *instead of*, the constitutional standard. *McKenzie*, 98 Ill. 2d at 97-101; *see Korzen*, 39 Ill. 2d at 156 (amendatory language "did nothing more than add language which was descriptive and illustrative" of retirement homes.). Oswald's arguments falter because she fails to appreciate this central tenet of statutory tax exemptions.

IV. Oswald's Premise That the General Assembly Has Foreclosed Constitutional Analysis Is Inconsistent with This Court's Interpretation of Exemption Statutes.

The long history of how Illinois courts have read tax exemption statutes presents the backdrop against which the General Assembly passed section 15-86, and it is with that understanding that the legislature's amendment to the Code must be read. *See Burrell v. S. Truss*, 176 Ill. 2d 171, 176 (1997) (statutes enacted after judicial opinions are published create presumption that legislature acted with knowledge of prevailing case law); *People v. Hickman*, 163 Ill. 2d 250, 262 (1994) (same). Here, though the legislature provided that its intent was to create a new class of charitable "ownership" of entities entitled to receive a tax exemption, it never indicated that it was eliminating the constitutional limitation of charitable use. This is why the legislature stated that it intended section 15-86 be "applied to the facts on a case-by-case basis," consistent with the cases. 35 ILCS 200/15-86(a)(5) (2016).

A. Exemption Statutes Like Section 15-86 Are Always Harmonized with the Constitutional Requirement of Exclusive Use.

There is now a well-established and consistent body of law regarding how the exclusive-use requirement set out in the Constitution is harmonized with statutory exemption provisions. In *McKenzie v. Johnson*, 98 Ill. 2d 87, 91 (1983), for example, the court considered a facial constitutional challenge to legislation granting property tax exemptions to parsonages owned by churches and religious institutions, as well as fraternity and sorority houses owned by

schools. *Id.* at 96. With regard to parsonages, the court noted that there were older cases that endorsed an "extremely narrow construction" of the Constitution with regard to its requirement that exemptions be given only for exclusively religious use, such that any non-religious use of the property such as to provide a place of residence for a pastor would disqualify the applicant. *Id.* at 98. The court held, nonetheless, that this view of the constitution was "out of step" with more recent authority holding that tax exemptions created by the General Assembly should be allowed to withstand a facial challenge if a taxpayer might be able to show that its claimed qualifying use was the dominant or primary use of the property: "we cannot say that a parsonage could never qualify for exemption as property used exclusively for religious purposes solely because it is also used for residential purposes." *Id.* at 100.

The court reached a similar conclusion with regard to fraternities and sororities under the constitutional exemption allowing an exemption for property used exclusively for school purposes. *Id.* at 100-02. The court again concluded that the legislation's intended purpose was to merely identify the "type of property that might qualify, under appropriate circumstances, as property used exclusively for school purposes." *Id.* at 101. The court resolved the facial challenge against the plaintiff, stating that "we cannot say that school-owned fraternity houses per se may never qualify for a property tax exemption as property used exclusively for school purposes. The availability of the exemption depends on questions of fact such as how students become

eligible to use the facility, and no such evidence has been presented in this facial challenge to the statute." *Id.* at 102.

Similarly, in *Chicago Bar Association v. Department of Revenue*, 163 Ill. 2d 290 (1994), the court construed a statute that purportedly exempted the Chicago Bar Association headquarters from taxation because, in addition to meeting other statutory criteria, those facilities operated as a professional association "adjacent to" the John Marshall Law School and served "the advancement of learning in a field or fields of study taught by the school." *Id.* at 293-94 (quoting Ill. Rev. Stat. 1991, ch. 120, ¶ 500.1). The Department denied the exemption because, although the property met the statutory requirements, it did not fall within the exclusive use requirements of Article IX, section 6. *Id*. at 296.

But the circuit court, on administrative review, went further in denying the taxpayer an exemption. It found the entire statutory exemption provision was facially unconstitutional because, by allowing an exemption for "adjacent" school property, the legislature had exceeded the scope of the exemption for schools permitted by article IX, section 6. *Id.* at 297. In the circuit court's view, the statutory provision was facially invalid because it would allow an exemption for property next to a school even though the contiguous property was not, itself, used exclusively for school purposes — as Article IX, section 6 required. *Id.* at 298.

This Court reversed the circuit court and reinstated the Department's decision because there was a possible alternative reading of the statute that allowed it to be constitutional, as the Department had suggested:

> If the circuit court's construction of the statute were accepted, its conclusion would be correct. The "adjacent property" clause . . . would be invalid on its face. In our view, however, the circuit court's analysis does not adequately consider that when evaluating the constitutionality of a legislative enactment, a court must presume that the statute is constitutional.

Id. The court noted its obligation to construe acts of the legislature so as to affirm their constitutionality, with all reasonable doubts resolved in favor of upholding a statute's validity. *Id.* The statute provided only that qualifying adjacent property was included within the types of property that were exempt from taxation, and the court concluded that, by using the word "including," the General Assembly signaled that it did not mean to displace the fact-based constitutional test because there was no inherent reason why property adjacent to a school and otherwise compliant with the statutory conditions could not also conform to the constitutional standard. *Id.* Some parcels might well qualify as being used exclusively for school purposes as the Constitution requires, while others might not. *Id.* "Whether a given piece of property is exempt will turn on the evidence showing how it is used." *Id.* at 300. Accordingly, the court was unable to say that the "adjacent property" clause was unconstitutional on its face. *Id.* 300. The Department's decision was affirmed.

Subsequently, in *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 272 (2004), the court again harmonized a statutory enactment granting an exemption with the exclusive-use requirements of Article IX, section 6. There, at issue was a provision in the Code providing a tax exemption to retirement homes when the facility was federally tax-exempt and had bylaws providing for a waiver or reduction of fees for those unable to pay. *See* 35 ILCS 200/15-65(c) (2016). The lower courts each read the statute as evidencing an intent by the General Assembly to eliminate the requirement that a tax exemption applicant show that its property had been used exclusively for a charitable purpose, thus unconstitutionally bypassing the necessary constitutional analysis. *Eden*, 213 Ill. 2d at 290; *see Eden Ret. Ctr., Inc. v. Dep't of Revenue*, 346 Ill. App. 3d 252, 256 (5th Dist. 2004). But the court rejected the lower courts' statutory analysis because it undermined the constitutional requirement of exclusive use.

In reversing, the court emphasized that it was ultimately and exclusively a judicial function to enumerate what the constitutional test required, as the court had done in earlier cases. *See*, *e.g.*, *Korzen*. 39 Ill. 2d at 156-57 (describing "guidelines and criteria" that provide the constitutional "frame of reference to which we must apply plaintiff's use of its property to arrive at a determination of whether or not such use is in fact exclusively for charitable purposes"). Thus, although the General Assembly had the authority to identify in legislation the types of applicants eligible to meet the

constitutional test, ultimately it would remain "for the courts, and not for the legislature, to determine whether property in a particular case is used for a constitutionally specified purpose." *Eden*, 213 Ill. 2d at 290.

"Further," the court observed, the lower courts had actually misread the statutory language because section 15-65 itself contained language that "reveals that the legislature *did not* intend to remove the constitutional requirement of charitable use in the context of facilities such as plaintiff operates." *Id.* at 291 (emphasis in original). The statute then identifies, the court stated, the types of properties that are eligible for the charitable exemption allowed by the Illinois Constitution. *Eden*, 213 Ill. 2d at 292. "When read as a whole," the court concluded, section 15-65 "obviously applies the charitable use requirement to each of the types of properties identified therein." *Id.*

Eden then turned to the question of whether the Department, in denying the applicant's request for a tax exemption at the administrative level, had applied the "constitutional principles" correctly. *Id.* at 293. Of the various criteria, the court agreed with the Department that the retirement home had shown only that it was a non-profit corporation, with no capital, capital stock, or shareholders. *Id.* But because the taxpayer failed to satisfy the other criteria, the Department properly denied the application, despite the applicant's demonstrated ability to meet the statutory test. *Id.* The Department's administrative decision was thus affirmed. *Id.*

These exemption cases reflect a case-by-case application of the constitutional criteria as part of the taxpayer's prima facie case. Because the General Assembly understood that both the statutory *and* constitutional tests must be met for a hospital to receive a tax exemption, it did not intend for local taxing bodies to abandon the constitutional analysis, ensuring that section15-86 is not facially unconstitutional.

B. The Use of the Word "Shall" in Section 15-86(c) Is Not Mandatory, Consistent with the Doctrine of *In Pari Materia*.

It is true, as Oswald complains, AT Br. 10, and as the Fourth District decision observed in *Carle*, 2016 IL App (4th) 140795, ¶ 79, that section 15-86(c) provides that a hospital applicant that satisfies the conditions for exemption under section 15-86 "shall be issued a charitable exemption for that property." That provision, and its use of the word "shall," was the linchpin of the Fourth District's now-vacated decision, and it remains Oswald's argument here. As the appellate court recognized, however, the word "shall," is not determinative in deciding whether a statutory provision is mandatory or directory. *Oswald*, 2016 IL App (1st) 152691, ¶¶ 21-27. Instead, the meaning given that word turns on an assessment of the legislature's intent. *Sec'y of State v. Ill. Labor Relations Bd.*, 2012 IL App (4th) 111075, ¶¶ 61-62.

And here, the legislative finding in section 15-86 that the exemption test is not to be applied "ipso facto" demonstrates that the "shall" language was intended to be directory. If it were mandatory, then section 15-86 would

effectively declare hospital uses exempt ipso facto, contrary to the constitutional requirements. The arguments made above are thus sufficient to affirm the lower courts on grounds that section 15-86(c) is unambiguous in not dispensing with the requirement that taxing bodies continue to apply the exclusive-use test.

But even if it were uncertainty in whether the General Assembly intended the word "shall" to be given a mandatory meaning, its statement that the new exemption test should be applied on a case-by-case basis creates, at most, ambiguity. And where a statute is ambiguous, this Court looks to tools of statutory interpretation — such as the doctrine of *in pari materia* — to ascertain the intended meaning of a questionable provision. *People v. Taylor*, 221 Ill. 2d 157, 163 (2006). Under that doctrine, two statutes dealing with the same subject will be considered with reference to one another to give them harmonious effect. *Id.* at 161 n.1. The doctrine also is applicable to different sections of the same statute and is consistent with the fundamental rule of statutory interpretation that all the provisions of a statute must be viewed as a whole. *People v. McCarty*, 223 Ill. 2d 109, 133-34 (2006); *Land v. Bd. of Educ. of the City of Chi.*, 202 Ill. 2d 414, 422 (2002).

Subsection 15-86(a)(1) recites the background of why the General Assembly enacted the new law. It recognized that there was "considerable uncertainty . . . regarding the application of a quantitative . . . threshold" in determining a hospital entity's entitlement to a property tax exemption. 35

ILCS 200/15-86(a)(1) (2016). This language highlights that, though the Department has the benefit of reviewing the prior exemption cases when evaluating tax exemption applications, the General Assembly remained concerned that there were no existing "quantitative or "monetary" standards available for it to use. 35 ILCS 200/15-86(a) (2016). The new statute adds them.

With this as prelude, subsection (a)(5) explains the statute's intended purpose to create a "new category of ownership" for hospitals and their affiliates in lieu of the existing category of "institutions of public charity." 35 ILCS 200/15-86(a)(5) (2016). The reference to "categor[ies] of ownership" and to "institutions of public charity" in section 15-86 (the latter phrase in quotation marks in the statute) are direct references to the more general charitable exemption statute, section 15-65. 35 ILCS 200/15-65 (2016). As described above, that section lists six categories of owners entitled to seek charitable property tax exemptions in Illinois: (1) institutions of public charity (the category that has traditionally included hospitals seeking exemption), (2) beneficent organizations, (3) retirement homes, (4) health maintenance organizations, (5) free public libraries, and (6) historical societies. *Id*. By enacting section 15-86, the legislature added a seventh and "new category of ownership" to the list of entities set out by section 15-65 entitled to be issued charitable exemptions. 35 ILCS 200/15-86(a) (2016).

When sections 15-86 and 15-65 are read together, as the language of section 15-86(a)(5) itself suggests is appropriate, section 15-86 is consistent with Article IX, section 6, just as section 15-65 is consistent with the constitution's requirements. Properly construed, section 15-86 provides only a new, broader definition of statutory charitable ownership for those hospitals and hospital affiliates that can meet the requirements of section 15-86(e). It follows that applicants under the new ownership category (non-profit hospitals and their affiliates) are intended to *also* meet the constitutional criteria the court has recognized as maintaining that statute's facial validity in the context of exemptions for other applicants, such as schools and retirement homes. *See Chicago Bar Ass'n*, 163 Ill. 2d at 298; *Eden*, 213 Ill. 2d at 291-92. This construction gives section 15-86 independent legal effect — redefining charitable *ownership* — without doing damage to the exclusive-use criteria. And this construction allows section 15-86 to operate constitutionally consistent with Article IX, section 6, in precisely the same way the exemptions enumerated in section 15-65 do.

In other words, the General Assembly, in enacting section 15-86, did not do so in a vacuum. There is now a long line of precedent regarding the "used exclusively" language. And this body of law establishes that the statutory exemption of property in nearly all cases, as one commentator has noted, "depends upon its actual use, which is primarily a factual determination. . . . " Braden and Cohn, *The Illinois Constitution: An Annotated and Comparative*

Analysis (1969), at 438-39.

When section 15-86(c) is read consistently with both its introductory paragraphs and the applicable precedent, it is clear that a hospital applicant invoking the new section must continue to meet *both* the statutory tests established by section 15-86 *and* the constitutional criteria. This dooms Oswald's claim of facial invalidity of the statute because the constitutional requirement of exclusive charitable use continues to apply. Accordingly, the circuit court's grant of summary judgment in favor of the Department, which the appellate court affirmed, should be affirmed.

CONCLUSION

For the reasons argued above, State Defendants-Appellees, the Illinois Department of Revenue and its Director, request that this Court affirm the judgments of the circuit and appellate courts.

February 14, 2018

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CERTIFICATE OF COMPLIANCE

I certify that this **Brief of State Defendants-Appellees** conforms to the requirements of Rule 315(d) and Rule 341(a). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of filing and service, and those matters to be appended to the petition under Rule 342(a), is 28 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on February 14, 2018, I electronically filed the foregoing **Brief of State Defendants-Appellees** with the Clerk of the Court for the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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I further certify that other participants in this appeal, named below, are not registered service contacts on the Odyssey eFileIL system, and thus were served by transmitting a copy from my e-mail address on February 14, 2018, to all primary and secondary e-mail addresses of record designated by those participants.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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