No. 122203

IN THE
SUPREME COURT OF ILLINOIS

CONSTANCE OSWALD,	)
	)
Plaintiff-Appellant,	)
	)
v.	)
	)
BRIAN HAMER, in his Official Capacity as the Director of the Illinois Department of Revenue, and the ILLINOIS DEPARTMENT OF REVENUE,	)
	)
Defendants-Appellees,	)
	)
and	)
	)
ILINOIS HOSPITAL ASSOCIATION,	)
	)
Intervenor-Defendant-Appellee.	)
	)

Appeal from the Appellate Court of Illinois, First District, Appeal No. 1-15-2691.
There heard on appeal from the Circuit Court of Cook County, Illinois,
County Department (transferred to Law Division), No. 2012 CH 42723.
The Honorable **Robert Lopez-Cepero**, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLANT

Edward T. Joyce
Kenneth Flaxman
The Law Offices of
Edward T. Joyce & Associates, P.C.
135 South LaSalle Street
Suite 2200
Chicago, Illinois 60603
(312) 641-2600
ejoyce@jocyelaw.com
kflaxman@joycelaw.com

Joan M. Mannix
Joan M. Mannix, Ltd.
135 South LaSalle Street
Suite 2200
Chicago, IL 60603
(312) 521-4845
jmannix@joanmannixltd.com
jmannixlaw@gmail.com

Attorneys for Plaintiff-Appellant

ORAL ARGUMENT REQUESTED

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Carolyn Taft Grosboll
SUPREME COURT CLERK

POINTS AND AUTHORITIES

NATURE OF THE ACTION

Plaintiff, Constance Oswald ("Plaintiff"), a Cook County real property taxpayer, filed this action seeking a declaration that Section 15-86 of the Property Tax Code (35 ILCS 200/15-86) ("Section 15-86") is unconstitutional. Article IX, section 6, of the Illinois Constitution permits the legislature to exempt from taxation only those kinds of property specifically enumerated, including those "used exclusively for *** charitable purposes." Ill. Const. 1970, art. IX, §6. Section 15-86(c), however, mandates a property tax exemption to hospitals if the value of certain services they provide equals or exceeds a hospital's estimated property tax liability for the year in which it seeks an exemption, irrespective of whether the property is used *exclusively* for charitable purposes as required by the Illinois Constitution.

Before the Circuit Court, Plaintiff moved for summary judgment, asserting that Section 15-86 is facially unconstitutional because it purports to create a property tax exemption unauthorized by the Illinois Constitution. Defendants-Appellees, Brian Hamer, Director of Illinois Department of Revenue, and the Illinois Department of Revenue (collectively, "the Department"), as well as Defendant-Intervenor-Appellee, the Illinois Hospital Association ("IHA"), filed cross-motions for summary judgment arguing that Section 15-86 is not facially unconstitutional.

The Circuit Court held that Section 15-86 is not facially unconstitutional based on its reading of the word "shall," as used in the statute, to mean "may." The Circuit Court granted the Department's and IHA's motions for summary judgment, and denied Plaintiff's motion for summary judgment. Plaintiff appealed.

On appeal, the Appellate Court affirmed the summary judgments entered by the Circuit Court finding that, as used in Section 15-86(c), the word "shall" means "may," the constitutional "exclusively used for charitable purposes" requirement must be read into Section 15-86, and that Section 15-86 is merely descriptive or illustrative of property that might satisfy the constitutional "exclusive charitable use" requirement. *Oswald v. Hamer*, 2016 IL App (1st) 152691, ¶¶22, 26-27. The Appellate Court further concluded that, even if Section 15-86 is unconstitutional as written because it purports to mandate property tax exemptions without regard for the "exclusive charitable use" requirement, it is not facially unconstitutional because it is hypothetically possible a hospital might both be entitled to a property tax emption pursuant to Section 15-86 and meet the used "exclusively … for charitable purposes" constitutional requirement. *Oswald*, ¶47.

ISSUES PRESENTED FOR REVIEW

1. Whether Section 15-86 of the Property Tax Code is facially unconstitutional under the Illinois Constitution of 1970.

2. Whether Section 15-86 fails to meet the "no set of circumstances" test, even if Section 15-86 as written violates the Illinois Constitution by mandating a property tax exemption irrespective of whether property is used exclusively for charitable purposes, because it is possible that a hospital exists that is entitled to an exemption under Section 15-86 that also satisfies the constitutional "exclusive charitable use" requirement.

JURISDICTION

On June 23, 2015, the Circuit Court entered an Order and Opinion denying Plaintiff's motion for summary judgment and granting the Department's motion for summary judgment. (C468). The Circuit Court's June 23, 2015 Order and Opinion did

not address IHA's motion for summary judgment. Consequently, on June 26, 2015, IHA filed a motion to clarify the Circuit Court's June 23, 2015 Order and Opinion. (C459). On August 18, 2015, the Circuit Court entered an Order denying Plaintiff's motion for summary judgment, granting the Department's motion for summary judgment, and granting IHA's motion for summary judgment. (C465). The Circuit Court's August 18, 2015 order finally disposed of all claims as to all parties. On September 17, 2015 (within 30 days of the entry of the Circuit Court's August 18, 2015 order), Plaintiff filed her notice of appeal.

The Appellate Court properly exercised jurisdiction over Plaintiff pursuant to Supreme Court Rules 301 and 303. On December 22, 2016, without hearing oral argument, the Appellate Court of Illinois, First District ("Appellate Court") issued its Opinion in this cause affirming the Circuit Court's judgments entered in favor of the Department and IHA. Plaintiff timely filed her Petition For Rehearing on January 12, 2017. Following briefing on Plaintiff's Petition For Rehearing and oral argument, on March 29, 2017, the Appellate Court denied Plaintiff's Petition For Rehearing.

On May 24, 2017, within the time allowed by Supreme Court Rule 315, as extended by Order of this Court dated May 8, 2017, Plaintiff filed her Petition For Leave To Appeal. By Order dated September 27, 2017, this Court granted Plaintiff's Petition For Leave To Appeal. This Court has jurisdiction over Plaintiff's appeal pursuant to Supreme Court Rule 315.

STATUTES INVOLVED

The Illinois Constitution of 1970 provides, in relevant part:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes. The General Assembly by law may grant homestead exemptions or rent credits. Ill. Const. 1970, art. IX, §6.

35 ILCS 200/ 15-86(c) provides:

> (c) 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. For purposes of making the calculations required by this subsection (c), if the relevant hospital entity is a hospital owner that owns more than one hospital, the value of the services or activities listed in subsection (e) shall be calculated on the basis of only those services and activities relating to the hospital that includes the subject property, and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to the properties comprising that hospital. In the case of a multi-state hospital system or hospital affiliate, the value of the services or activities listed in subsection (e) shall be calculated on the basis of only those services and activities that occur in Illinois and the relevant hospital entity's estimated property tax liability shall be calculated only with respect to its property located in Illinois.
>
> Notwithstanding any other provisions of this Act, any parcel or portion thereof, that is owned by a for-profit entity whether part of the hospital system or not, or that is leased, licensed or operated by a for-profit entity regardless of whether healthcare services are provided on that parcel shall not qualify for exemption. If a parcel has both exempt and non-exempt uses, an exemption may be granted for the qualifying portion of that parcel. In the case of parking lots and common areas serving both exempt and non-exempt uses those parcels or portions thereof may qualify for an exemption in proportion to the amount of qualifying use.

The entire text of 35 ILCS 200/15-86 is set forth in the Appendix hereto at App. 37.

STATEMENT OF FACTS

I. Background Facts.

Plaintiff is an Illinois resident, property owner and taxpayer, whose property tax bills increased because of the grant or approval of charitable exemptions under Section 15-86. (C45).

II. Procedural History.

A. The Circuit Court's entry of summary judgment in favor of the Department and IHA.

Plaintiff filed a one-count complaint against the Department for declaratory and injunctive relief, challenging the constitutionality of Section 15-86. (C3). The Department appeared and moved to dismiss.

IHA filed a petition for leave to intervene asserting that it represents the interests of as many as 200 not-for-profit hospitals, that it was "intimately involved in the negotiations and drafting" of Section 15-86, and that it wished to defend the constitutionality of Section 15-86. (C45). Plaintiff opposed the intervention, asserting that IHA, as a special interest lobbyist (that spent over $1.175 million dollars on Illinois state campaigns in furtherance of enacting Section 15-86), did not possess any interest greater than that of the general public and thus lacked standing. Over Plaintiff's objection, the Circuit Court granted IHA leave to intervene and to move to dismiss the complaint. (C182).

The Circuit Court denied the Department's and IHA's motions to dismiss. (C183). The Circuit Court found that Plaintiff's complaint sufficiently alleged a cause of action that Section 15-86 violated the constitution, but declined to address the ultimate constitutional question at that time. (C186).

The parties then filed cross-motions for summary judgment regarding the constitutionality of Section 15-86. (C244). The Circuit Court denied Plaintiff's motion, and granted the motions of the Department and IHA. (C468; C486). In support of her motion for summary judgment, Plaintiff submitted an "Application for Hospital Property Tax Exemption – County Board of Review Statement of Facts" (Form PTAX-300-H), which the IHA published on its website for the use of its members and the public. Neither the Department nor the IHA disputed that that form is used by hospitals to apply for property tax exemptions. The form requires only information regarding the factors set forth in Section 15-86(e) as the basis for "calculate[ing] and determin[ing] the exemption." The form does not require any information that would allow for a determination of whether the applicant meets the constitutional "exclusive charitable use" requirement. (R. C414-422).

The Circuit Court found that the legislature enacted Section 15-86 "to determine how much of a claimant's charitable actions are enough to grant [it] a tax exemption." (C472). The Circuit Court stated, "[t]o establish that a claimant is entitled to an exemption, [it] has to show the actual value of [its] charitable acts and contributions, and that those acts amount to a level that satisfies the standard under Section 15-86", with "the claimant's charitable acts hav[ing] to be either equal to the total dollar value of the property tax liability or higher. 35 ILCS 200/15-86(c) (2012)." (C472-473). The Circuit Court, however, concluded that an exemption applicant was still required to meet the factors set forth in *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), in the first instance, in order "to determine charitable use, *i.e.*, is the claimant's property actually being used for charitable purposes." *Id.* The Circuit Court concluded that

Plaintiff's facial challenge to the constitutionality of Section 15-86 failed because Plaintiff did not establish Section 15-86 is unconstitutional in all circumstances and "while there may be some hypothetical situations that might be unconstitutional, it does not render Section 15-86 unconstitutional in its entirety." (C474-475).

B. The Appellate Court's decision affirming summary judgment in The Department's and IHA's favor.

The Appellate Court affirmed the summary judgments the Circuit Court entered in favor of the Department and IHA. *Oswald,* ¶50. Although the Appellate Court recognized statutes are to be construed to effectuate legislative intent and the best indicator of legislative intent is the language of the statute, the Appellate Court held that, as used in Section 15-86(c), the word "shall" means "may." *Oswald v. Hamer*, 2016 IL App (1st) 152691, ¶22. The Appellate Court additionally concluded the prior decisions of this Court stand for the proposition that statutes regarding the issuance of charitable exemptions from property taxes are "considered alongside the constitutional requirements" because such statutes are merely descriptive or illustrative of the property that might satisfy the constitutional "exclusive charitable use" requirement. *Oswald*, ¶27. Notwithstanding "the best evidence of legislative intent" (the actual language of the statute), the Appellate Court "decline[d] to read section 15-86 literally such that [the] absence of any exclusivity language suggests that the statute was meant to be read separate from the constitutional requirement." *Oswald*, ¶¶22, 45.

The Appellate Court also found Plaintiff could not satisfy the "no set of circumstances" test. The Appellate Court held, "even if we agreed with plaintiff's interpretation section 15-86 required the issuance of a charitable exemption based only on the satisfaction of the statute," Plaintiff would not have satisfied the "no set of

circumstances" test because it is "hypothetically possible" for a hospital to satisfy the requirements of section 15-86(c) (by providing services and activities listed in subsection (e) that equal or exceed its estimated property tax liability) and to satisfy the used "exclusively … for charitable purposes" constitutional requirement. *Oswald*, ¶47.

STANDARD OF REVIEW

The constitutionality of a statute presents a question of law which this Court reviews *de novo*. *In re Pension Reform Litigation*, 2015 IL 118585, ¶43 (2015). Where statutory provisions contravene the clear language of the constitution, this Court is obligated to declare those provisions invalid. *See In re Pension Reform Litigation* at ¶47.

ARGUMENT

I. SECTION 15-86 IS UNCONSTITUTIONAL.

A. The Requirements Of Article IX, Section 6 of the Illinois Constitution.

Article IX, section 6 of the Illinois Constitution of 1970 allows the General Assembly to exempt from taxation "only the property of the State, units of local government and school districts and property *used exclusively for* agricultural and horticultural societies, and for school, religious, cemetery and *charitable purposes*." [Emphasis added.] As this Court explained in *Eden Retirement Center, Inc. v. Dept. of Revenue*, 213 Ill.2d 273, 286 (2004):

> Section 6 of article IX divides property that the legislature may exempt from taxation into two classes: (1) property owned by "the State, units of local government and school districts"; and (2) property used exclusively for the purposes defined in the second clause of the section. By enumerating the classes of property that the legislature may exempt from taxation, section 6 of article IX limits the legislature's authority to exempt; such enumeration excludes all other subjects of property tax exemption. The legislature cannot add to or broaden the exemptions that section 6 of article IX specifies. [Citations omitted throughout.]

In *Eden*, the Court reaffirmed that the criteria set forth in *Korzen* govern a determination of whether property satisfies the constitutional "used exclusively for charitable purposes" requirement. *Eden*, 213 Ill. 2d at 290. Those factors are:

> (1) the benefits derived are for an indefinite number of persons for their general welfare or in some way reducing the burdens on government; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the organization's charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) and the exclusive, *i.e.*, primary, use of the property is for charitable purposes. *Eden*, 213 Ill.2d at 287, citing *Korzen*, 39 Ill.2d 149, 156–57.

B. Section 15-86 of the Property Tax Code.

Section 15-86(c) provides: "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) [35 ILCS 200/15-86(e)] for the hospital year equals or exceeds the relevant hospital entity's estimated property tax liability, as determined under subsection (g) [(35 ILCS 200/15-86(g))], for the year for which exemption is sought." Subsection 15-86(c) contemplates the comparison of two numbers.

The first number is the total dollar amount of "[s]ervices that address the health care needs of low-income or underserved individuals or relieve the burden of government with regard to health care services." 35 ILCS 200/15-86(e). Subsection (e) (35 ILCS 200/15-86(e)) lists the services and activities to be counted as charity for purposes of application of Section 15-86. They include "[c]harity care," defined as "[f]ree or discounted services provided pursuant to the relevant hospital entity's financial assistance

policy, measured at cost, including discounts provided under the Hospital Uninsured Patient Discount Act." 35 ILCS 200/15-86(e)(1). Off-site subsidies also count, including financial support to unaffiliated hospitals (35 ILCS 200/15-86(e)(2)), financial or in-kind support to community clinics (*Id.*), and direct subsidies to the state government or to local governments to pay for activities or programs related to health care for low-income or underserved individuals (35 ILCS 200/15-86(e)(3)). The hospital had to provide these services during the "hospital year," defined as the hospital's fiscal year ending in the year for which the exemption is sought (35 ILCS 200/15-86(b)(9)).

The second number is the estimated property tax liability for the year for which an exemption is sought. 35 ILCS 200/15-86(c).

Pursuant to the express language of Section 15-86(c), if the first number equals or exceeds the second number, "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." 35 ILCS 200/15-86(c).

C. Section 15-86 Violates Article IX, section 6 of the Illinois Constitution.

As this Court made clear in *Eden*:

> The legislature could not declare that property, which satisfied a *statutory* requirement, was *ipso facto* property used exclusively for a tax-exempt purpose specified in section 6 of article IX of the Illinois Constitution. 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. [Citations omitted.]

Section 15-86, however, does exactly that – it declares that property that satisfies the test set forth in Section 15-86(c) "shall be issued a charitable exemption for that property." 35 ILCS 200/15-86(c). Section 15-86 is unconstitutional because it purports to award a property tax exemption based on satisfaction of statutory criteria without regard to

whether the property satisfies the constitutional "exclusive charitable use" requirement. Section 15-86 fails to incorporate the constitutional requirement. Section 15-86 lacks any general reference to the constitutional "exclusively used for charitable purposes" requirement or any specific reference to the *Korzen* factors.[1] Unlike statutory provisions which this Court has affirmed are constitutional, such as Section 15-65 of the Property Tax Code (35 ILCS 200/15-65) ("Section 15-65"), nowhere does section 15-86 provide, as a condition for the charitable exemption, the property must be used "exclusively for … charitable purposes." See *Eden*, 213 Ill.2d at 287-288.

1. "Shall" as used in Section 15-86(c) is Mandatory.

Although the Appellate Court acknowledged, "[g]enerally, the use of the word 'shall' indicates a mandatory intent…." (*Oswald*, ¶23), it concluded the use of the word "shall" in Section 15-86(c) is directory rather than mandatory. (*Oswald*, ¶22). In so doing, the Appellate Court confused the question of whether the language of Section 15-86(c) is mandatory or permissive, with the question of whether the statute is mandatory or directory. In *People v. Ousley*, 235 Ill.2d 299, 311 (2009), relying on its earlier decision in *People v. Robinson*, 217 Ill.2d 43 (2005), this Court reiterated the distinction between those separate issues, explaining:

> Whether statutory language is mandatory or directory is a separate question from whether a statute is mandatory or permissive. With regard to the mandatory-permissive question, this court in *Robinson* explained, "'[T]he term "mandatory" refers to an obligatory duty which a governmental entity is required to perform, as opposed to a permissive power which a governmental entity may exercise or not as it chooses.'" In contrast, " 'the "directory" or "mandatory" designation does not refer to whether a particular statutory requirement is "permissive" or "obligatory,"

[1] In fact, it appears that in enacting Section 15-86, the legislature intended to supplant the *Korzen* factors, stating that its intent, in part, was "to establish quantifiable standards for the issuance of charitable exemptions for such property." 35 ILCS 200/15-86(a)(5).

> but instead simply denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates.'" [Citations omitted throughout.]

In this case, the issue is whether Section 15-86(c) is mandatory or permissive; not, contrary to the Appellate Court's analysis, whether it is mandatory or directory.

Section 18-56(c) establishes an obligatory duty which a governmental entity (the Department) is required to perform, rather than a discretionary power which the Department "'may exercise or not as it chooses.'" *People v. Ousley*, 235 Ill.2d at 313. In this case, there is no reason to ascribe a different meaning to the word "shall" than that generally ascribed to it in "the context of the mandatory-permissive dichotomy." See *Id.* There is nothing in the language of Section 15-86(c), or the legislative intent expressed in Section 15-86(a), which suggests that if the requirements of 15-86(c) are met (*i.e.*, "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), an applicant may nonetheless be deemed not to have satisfied the requirements for an exemption under Section 15-86(c), and may be refused the charitable exemption provided under Section 15-86(c).

The analysis conducted by the Appellate Court regarding the meaning of the word "shall" as used in Section 15-86(c) was flawed because it was expressly based on the inapplicable mandatory-directory analysis and because it exclusively relied upon cases addressing the consequences triggered by the failure to comply with procedural steps (absent in this action). (*Oswald*, ¶¶23-26). Moreover, even if a mandatory-directory analysis did apply, the Appellate Court's analysis would still be erroneous. Contrary to its conclusion that no negative consequence "is triggered by the failure to issue a

charitable exemption under the language of section 15-86(c)," the obvious consequence for failure to comply is a hospital applicant will not be issued a Section 15-86(c) exemption.

2. Nothing in the language of Section 15-86(c) suggests it is "descriptive" or "illustrative."

Citing prior decisions of this Court, the Appellate Court concluded Section 15-86(c) is merely illustrative or descriptive of property that *might* be eligible for a property tax exemption provided it also satisfied the constitutional "exclusive charitable use" requirement. See *Oswald*, ¶¶27-40, citing *McKenzie v. Johnson*, 98 Ill.2d 87 (1983); *Chicago Bar Assoc. v. Dept. of Revenue*, 163 Ill.2d 290 (1994); *MacMurray College v. Wright*, 38 Ill.2d 272 (1967); and *Eden Retirement Center, Inc. v. Dept. of Revenue*, 213 Ill.2d 273 (2004). In *McKenzie*, *Chicago Bar Assoc.* and *MacMurray College*, this Court analyzed statutory exemption language that defined the exemptions at issue as illustrative or "including" certain types of property. See *Chicago Bar Assoc.*, 163 Ill.2d at 293-294, 299. This Court found that by using the word "including" the legislature signaled it was merely providing a description or illustration of the types of property that might be entitled to an exemption under article IX, section 6. See *Chicago Bar Assoc.*, 163 Ill.2d at 299-300.

However, nothing in the language of Section 15-86(c) supports the conclusion that the legislature intended it to be merely illustrative or descriptive; there are no signifiers of descriptive or illustrative intent, such as "including," in the text of Section 15-86(c). Instead, Section 15-86(c) expressly states an 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 applicant makes the required

showing that "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."

As discussed *infra*, the Appellate Court's reliance on this Court's decision in *Eden* is similarly misplaced.

3. Section 15-86(c) does not incorporate the constitutional "exclusive charitable use" requirement.

In construing Section 15-86 to be constitutional, the Appellate Court ignored the plain language of Section 15-86(c) and concluded that compliance with Section 15-86(c) does not entitle an applicant to a tax exemption because:

> "Charitable use is a constitutional requirement.' (Emphasis in original)." The operation of section 15-86 does not and cannot remove that requirement. As the *Eden* court held, the satisfaction of a statutory requirement is not sufficient and does not end the analysis, as the hospital seeking an exemption must establish that the subject property is used exclusively for charitable purposes as article IX, section 6 mandates. *Oswald*, at ¶46, quoting *Eden Retirement Center, Inc. v. Dept. of Revenue*, 213 Ill.2d 273, 287 (2004)).

Eden, however, establishes Section 15-86 is unconstitutional precisely because it does *not* incorporate any exclusive charitable use requirement. Contrary to the Appellate Court's circular reasoning, in *Eden* this Court did not hold that, because exclusive charitable use is a constitutional requirement, that requirement must be read into every provision of the Property Tax Code.

The Appellate Court's decision runs afoul of fundamental principles of statutory construction, which the Appellate Court acknowledged but then ignored. (See *Oswald*, ¶21). As this Court has explained:

> When construing a statute, this court's primary objective is to ascertain and give effect to the intent of the legislature. The best signal of

> legislative intent is the language used in the statute, which must be given its plain and ordinary meaning. Where the statutory language is clear and unambiguous, the court must give it effect without resort to other tools of interpretation. It is never proper for a court to depart from the plain language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent. *Beggs v. Board of Education of Murphysboro Community Unit School Dist. No. 186*, 2016 IL 120236, ¶52. [Citations omitted throughout.]

Unlike Section 15-65, which was at issue in *Eden*, Section 15-86 purports to award a property tax exemption based on satisfaction of statutory criteria without regard to whether the property satisfies the constitutional "exclusive charitable use" requirement. Section 15-65 expressly incorporates the constitutional "exclusive charitable use" requirement by preconditioning any exemption upon a showing that the subject property is used "exclusively for … charitable purposes." Unlike Section 15-86, Section 15-65 expressly provides for exemptions for properties "when actually and exclusively used for charitable or beneficent purposes" that also meet the statutory criteria set forth in Section 15-65. In *Eden*, this Court relied on Section 15-65's explicit "when actually and exclusively used for charitable or beneficent purposes" requirement, finding, "the plain language of section 15–65 reveals that the legislature *did not* intend to remove the constitutional requirement of charitable use in the context of facilities such as plaintiff operates." *Eden*, 213 Ill.2d at 291-292. [Emphasis in original.]

By contrast, Section 15-86 contains no similar language, an omission indicating a legislative intent to exclude from Section 15-86(c) the constitutional "exclusive charitable use" requirement. See *People v. Ousley*, 235 Ill.2d at 313-314 ("It is well established that, by employing certain language in one instance, and entirely different language in another, the legislature indicated that different results were intended." [Citation omitted.]) If the

legislature intended to include the constitutional "exclusive charitable use" requirement into Section 15-86(c), it would have done so as it did in Section 15-65.[2]

Similarly, there is simply no support for the Appellate Court's suggestion that the legislature omitted such language from Section 15-86(c) through an oversight, and that, despite the express language of Section 15-86(c), it should be read to include language the legislature could have, but did not include in that provision. (See *Oswald*, ¶45). The Appellate Court's construction of Section 15-86 impermissibly departs from the plain language used by the legislature and reads into Section 15-86 "exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent." *Beggs*, ¶52.

Section 15-86(c) does not reference or purport to incorporate any "exclusive charitable use" requirement. There is nothing in the text of Section 15-86(c) that suggests it is meant to be merely permissive or simply illustrative or descriptive of the circumstances under which an exemption may be allowed. Instead, it unequivocally provides, "[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" upon meeting the criteria set forth in Section 15-86(c). Nothing in the actual language used by the legislature supports the conclusion that Section 15-86(c) incorporates or

[2] The Appellate Court relied on the following statement from Section 15-86(a) to read into Section 15-86(c) an exclusive charitable use limitation: "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." (*Oswald*, ¶¶42-43). That statement only indicates an intent to establish criteria to be applied, on a case-by-case basis, to each property as to which an exemption is claimed. Section 15-86(c) sets forth the criteria the legislature intended to be applied on a case-by-case basis, but they do not include a showing of exclusive charitable use.

conditions issuance of a charitable property tax exemption on satisfaction of any other criteria.

III. Plaintiff Has Satisfied The "No Set Of Circumstances" Test.

The Appellate Court held, "[E] ven if we agreed with plaintiff's interpretation that section 15-86 required the issuance of a charitable exemption based only on the satisfaction of the statute, plaintiff cannot sustain her burden that section 15-86 is facially unconstitutional under the no-set-of-circumstances test." (*Oswald*, ¶47). The Appellate Court based this determination of the potential existence of a hypothetical hospital that might satisfy the criteria of Section 15-86(c) and also satisfy the constitutional "used exclusively for charitable purposes" requirement. *Id.*

Although the Court will seek to construe a statute as constitutional, it will do so only if such a construction is reasonable. *Eden*, 213 Ill.2d at 291. The courts "must construe and apply statutory provisions as they are written and cannot rewrite them to make them consistent with the judiciary's view of orderliness and public policy." *Prazen v. Shoop*, 2013 IL 115035, ¶35 (2013) [Citation omitted.]. Where statutory provisions contravene the clear language of the constitution, the court is obligated to declare those provisions invalid. *In re Pension Reform Litigation*, 2015 IL 118585, ¶47 (2015).

The Appellate Court misapplied the "no set of circumstances" test. This Court has held, "[A]n enactment is facially invalid only if no set of circumstances exists under which it would be valid." *Napleton v. Village of Hinsdale*, 229 Ill.2d 296, 306 (2008) [Citation omitted.] See also, *Lebron v. Gottlieb Memorial Hosp.*, 237 Ill.2d 217, 228 (2010). Section 15-86 meets this standard. It is not valid under any circumstances because it provides, in all cases, for exemptions not based on any consideration of

whether the constitutionally mandated "exclusive charitable use" requirement has been satisfied.

Contrary to the Appellate Court's conclusion, Section 15-86(c) is not constitutional merely because it is conceivably possible that that a hypothetical hospital applicant might be entitled to an exemption under Section 15-86(c) and also meet the constitutional requirement of exclusive charitable use. (*Oswald*, ¶47). That analysis ignores that, under such circumstances, the exemption would be constitutional in spite of Section 15-86, not because of it.

CONCLUSION

Wherefore, Plaintiff-Appellant respectfully requests that this Court: (1) declare Section 15-86 unconstitutional; (2) reverse the judgment of the Appellate Court affirming the judgment of the Circuit Court; (3) reverse the summary judgments entered by the Circuit Court in favor of Defendants-Appellees and Intervenor-Defendant-Appellee; and (4) for such additional or other relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ Kenneth Flaxman
One of the Attorneys for Plaintiff-Appellant

Edward T. Joyce
Kenneth Flaxman
The Law Offices of
Edward T. Joyce & Associates, P.C.
135 South LaSalle Street, Suite 2200
Chicago, Illinois 60603
(312) 641-2600
ejoyce@joycelaw.com
kflaxman@joycelaw.com

Joan M. Mannix
Joan M. Mannix, Ltd.
135 South LaSalle Street, Suite 2200
Chicago, IL 60603
(312) 521-5845
jmannix@joanmannixltd.com
jmannixlaw@gmail.com

CERTIFICATE OF COMPLIANCE

I, Kenneth D. Flaxman, certify that this brief conforms to the requirements of Rules 315 and 341(a) and (b). The length of this brief is 18 pages excluding the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service and the Rule 342(a) appendix.

Attorney for Plaintiff-Appellant,

/s/ Kenneth D. Flaxman

APPENDIX

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
ADMINISTRATIVE REVIEW DIVISION

CONSTANCE OSWALD, et al.	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 12 CH 042723**
	)	
BRIAN HAMER, DIRECTOR, ILLINOIS DEPARTMENT OF REVENUE, et al.	)	
	)	
Defendants.	)	

ORDER and OPINION

I. ORDER

This matter having been fully briefed and the Court being fully apprised of the facts, law and premises contained herein, it is ordered as follows:

A. Plaintiff's Motion for Summary Judgment is denied;

B. Defendant's Motion for Summary Judgment is granted.

II. OPINION

Plaintiff Constance Oswald ("Oswald") filed this action against Defendant, collectively Brian Hamer ("Hamer"), the Director of the Illinois Department of Revenue ("DOR"), alleging that 35 ILCS 200/15-86 (2012) ("Section 15-86"), of the Illinois Property Tax Code which guides the DOR in deciding whether a hospital entity may be granted property tax exemption on charitable grounds is facially unconstitutional.

FACTS

In *Provena Covenant Med. Ctr. v. Dep't of Revenue*, the Illinois Supreme Court held that petitioner Provena did not qualify for property tax exemption, regardless of Provena's claim that it delivered charitable healthcare to low-income and underserved persons. *Provena Covenant Med. Ctr. v. Dep't of Revenue* (*Provena II*), 236 Ill. 2d 368, 373-374 (2010). Despite its holding, the Court did not establish a quantifiable standard, leaving that task to the Illinois legislature. In response to *Provena II*, the Illinois General Assembly enacted Section 15-86. 35 ILCS 200/15-86(a)(1) (2012).

On November 29, 2012, Oswald filed her action against Hamer, claiming that Section 15-86 is facially unconstitutional because it violates Article IX, Section 6 of the Illinois Constitution. Oswald now moves for summary judgment and asks this Court to find Section 15-

86 unconstitutional. In response, Hamer also moves for summary judgment, claiming that Section 15-86 is not facially unconstitutional and that Oswald cannot overcome the burden of showing that Section 15-86 is facially unconstitutional. After careful review, this Court holds that Section 15-86 does not violate the Illinois Constitution. Oswald's summary judgment motion is denied and Hamer's summary judgment motion is granted.

DISCUSSION

There are two issues in this case; does Section 15-86 violate the Illinois Constitution, as Oswald claims and has she overcome the burden of showing that Section 15-86 is facially unconstitutional? The Court holds that Section 15-86 is not facially unconstitutional and Oswald has not overcome the facial constitutional challenge burden.

A. Standard for Summary Judgment.

"Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Howle v. Aqua Ill., Inc.*, 2012 IL App (4th) 120207, ¶ 41. "Whether a statute is unconstitutional is a question of law." *Lebron v. Gottlieb Mem. Hosp.*, 237 Ill. 2d 217, 227 (2010). In the case at hand, neither party is challenging or disputing facts. Instead, both parties' contention rests solely on the interpretation of the statute, making summary judgment appropriate.

B. Section 15-86 is not Unconstitutional Because it Does not Waive the Constitutional Requirements for Property Tax Exemption Under the Illinois Constitution

Oswald's argument is that Section 15-86 sidesteps any constitutional requirements that the Illinois Constitution mandates before a hospital entity is granted property tax exemption. Section 15-86 however, establishes a set of criteria that the DOR may use to determine the quantity of charitable services and acts that a hospital claimant has performed, which is then used to grant that hospital claimant property tax exemption. Throughout this determination, the DOR must still evaluate the hospital's claim for tax exemption under Illinois Constitutional requirements and precedent.

1. The Legislature Has the Constitutional Authority to Grant Tax Exemptions.

The Illinois legislature has the inherent power to enact statutes and did so here under its authorized power. In Illinois, "all property is subject to taxation unless specifically exempted by statute." *Chicago & Northeast Ill. Dist. Council of Carpenters Apprentice & Trainee Program v. Dep't of Revenue* (*Carpenters Apprentice*), 293 Ill. App. 3d 600, 605 (1st Dist. 1997). "[T]axation is the rule [and] tax exemption is the exception." *Id.* The Illinois Constitution expressly grants this power to the legislature. Illinois Const. art. IX, § 4 (a). However, the Constitution also grants the legislature the power to enact statutes exempting property from being taxed for charitable purposes. Illinois Const. art. IX, § 6.

Tax exemption authority is strictly relegated to the legislature, not the courts. *Eden Ret. Ctr., Inc. v. Dep't of Revenue*, 213 Ill. 2d 273, 286 (2004). In addition, Section 6 is permissive, meaning the legislature may grant tax exemptions if it so choses. *Provena II*, 236 Ill. 2d at 389. Through its statutory authority, the legislature can "place restrictions, limits and conditions" in order to obtain those exemptions. *Id.* at 390. Most importantly, even though the legislature may grant exemptions, it can only do so within the constitutional limitations under Section 6. *Id.* If no other types of exemptions are allowed under the Illinois Constitution, "the legislature cannot add or broaden the exemptions" the Constitution permits. *Id.*

As an example of its authority, the Illinois legislature has enacted 35 ILCS 200/15-65 (2009), which grants property owners tax exemptions when they use that property for charitable purposes. 35 ILCS 200/15-65. (2009). Section 15-65 allows for property tax exemptions to institutions of public charity and charitable organizations whose owner uses the property for charitable activities. 35 ILCS 200/15-65(b). (2009).

Generally, "statutes granting tax exemptions [are strictly construed] in favor of taxation." *Carpenters Apprentice*, 293 Ill. App. 3d at 605. A person claiming his property is statutorily exempt has the burden of proof and any doubts are deferred in favor of taxation. *Id.* at 605-606. Exemption claims are usually determined on a case-by-case basis. *Id.* at 606. Because charitable use is a constitutional requirement for tax exemption, statutory compliance with exemption statutes is strict and unequivocal and the courts have no power to extend exemption beyond what the Constitution grants. *Eden Ret. Ctr., Inc.*, 213 Ill. 2d at 287-288.

In the case at hand, pursuant to its Constitutional authority, the Illinois legislature passed Section 15-86, titled "Exemptions related to access to hospital and health care services by low-income and underserved individuals." On its face, the statute's plain meaning relates to tax exemption, making it a legislative act allowed by the Illinois Constitution. This shows the legislature had the proper authority to enact this statute. To determine if Section 15-86 is within its constitutional scope, it must be analyzed under Illinois' definition of charity.

2. What Is Considered Charitable Use As Interpreted by Illinois Courts

Charity is generally defined as a gift intended for the general welfare of an indefinite number of persons or a gift that relieves the government's burden of providing assistance to the public. *Provena II*, Ill. 236 2d at 390-391. The gift itself must be available to everyone who requests it. *Provena Covenant Med. Ctr. v. Dep't of Revenue* (*Provena I*), 384 Ill. App. 3d 734, 744 (4th Dist. 2008). "Charity is an act of kindness or benevolence…toward the needy or [those in] suffering." *Id.* at 750. "Services extended for value received" is not charity. *Id.* at 744. Because a "gift is by definition [the giving of] free goods or services," an act is charitable if a person makes a gift where he does not charge for goods or services, or gives those goods or services at a reduced[1] cost. *Id.* at 751.

[1] The rationale behind reduced cost as charity is that by not charging the full price for those goods or services, the donor is "giving that portion away" without expecting compensation. *Provena I*, 384 Ill. App. 3d at 751.

Article IX, section 6 of the Illinois Constitution states tax exemption is granted if the property is exclusively used for charitable purposes, but does not expressly state what amounts to charity. *Id.* at 754. This has been interpreted to mean whether the "primary use" of the property is used for charity. *Id.* Though "charity is not defined by percentages…it does not follow that percentages are irrelevant." *Id.* at 753. Determining if a property qualifies for tax exemption depends on the facts of each case. *Id.* at 754.

To find Section 15-86 unconstitutional, Oswald has to show that Section 15-86 has changed the definition of charity as mentioned above or has bypassed the charitable use constitutional requirement. Section 15-86 however, does neither; rather, Section 15-86 employs a set of quantitative criteria in order to determine the total amount of charity performed by an applicant.

3. The Section 15-86 Criteria for Quantity Are Within the Constitutional Scope.

In its plurality opinion the Illinois Supreme Court noted that Provena had performed charitable services, but the amount spent was not enough.[2] *Id.* at 397. When compared to the amount Provena spent on charitable services in relation to its claimed tax exemption, Provena's total services and activities spent on charity was roughly .7%. *Id.* at 381. The Court, however, did not give any indication or direction when enough charity was shown or how much was enough to qualify for a tax exemption.

a) The Plain Purpose of Section 15-86 is not Ambiguous

This Court will first look at Section 15-86 for its plain and obvious meaning before venturing further. By default statutes are presumed to be constitutional and the challenging party carries the heavy burden of rebutting the presumption of a statute's validity. *Davis v. Brown*, 221 Ill. 2d 435, 443 (2006). Because statutes have a presumption of constitutionality, courts will construe statutes as constitutional where such an interpretation is reasonable. *Id.* at 442.

In construing statutes, courts will look to the legislature's intent by looking at the "plain and ordinary meaning" of the language of the statute itself. *Bartlow v. Costigan*, 2014 IL 115152, ¶ 18. "Where the language of a statute is clear and unambiguous," courts will construe the statute without interpreting anything the legislature did not expressly state. *Swank v. Dep't of Revenue*, 336 Ill. App. 3d 851, 857 (2nd Dist. 2003).

Subsection (a)(1) sets out the background information why the legislature enacted the statute. It states that despite the *Provena II* decision, there is still "considerable uncertainty…regarding the application of a quantitative…threshold" to determine at what point is a hospital entity entitled to property tax exemption. 35 ILCS 200/15-86(a)(1) (2012). In addition to *Provena II*, the statute highlights that the DOR currently lacks criteria for measuring when a claimant has established a charitable threshold. *Id.*

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[2] The Court characterized Provena's level of charitable care as "*de minimus*." *Provena II*, 236 Ill. 2d at 397.

Subsection (a)(2) acknowledges the fact that the *Provena II* Court did not establish what amounts to sufficient charitable acts, leaving that task to the legislature. 35 ILCS 200/15-86(a)(2) (2012). Subsection (a)(3) notes that modern healthcare systems are not clear and simple but involve various types, levels and amounts. 35 ILCS 200/15-86(a)(3) (2012). Subsection (a)(4) acknowledges that charity is about providing a benefit to the public and by assisting the government to relieve its burden to provide for the public. 35 ILCS 200/15-86(a)(4) (2012).

Subsection (a)(5) directly indicates the statute's intent and purpose. 35 ILCS 200/15-86(a)(5) (2012). Here the statute reads, "it is the intent of the General Assembly to establish *quantifiable standards* for the issuance of charitable [property tax] exemptions." 35 ILCS 200/15-86(a)(5) (2012) (emphasis added). This language alone establishes the legislature's intent. However, the very last sentence of subsection (a)(5) adds further, expressly stating that the legislature's intent is not "to declare any property [in and of itself] exempt, but rather *to establish criteria* to be applied to the facts on a *case-by-case basis*." 35 ILCS 200/15-86(a)(5) (2012) (emphasis added).

Subsection (a)(1)-(5)'s plain and ordinary meaning communicates to the reader that the legislature did not enact Section 15-86 to establish what charity is or should be, but to determine how much of the claimant's charitable actions are enough to grant her a tax exemption. Moreover, the legislature expressly added that this quantitative determination is not a one-size-fits-all formula, inferring that the legislature did not want a claimant to automatically claim exemption simply because of the presence of any criteria. To establish that a claimant is entitled to an exemption, she has to show the actual value of her charitable acts and contributions, and that those acts amount to a level that satisfies the standard under Section 15-86.

Oswald however, claims that Section 15-86 prevents the DOR from performing its duties in determining whether a claimant may qualify for tax exemption because Section 15-86(c) overrides the DOR's function.

b) Viewing Section 15-86 as a Whole Together With the Other Subsections Shows it is Within the Constitutional Scope.

Oswald argues that subsection 15-86(c) states that the DOR must grant an exemption to a claimant because the DOR must accept the criteria in subsection 15-86(e). Oswald points to the language in subsection (c) which reads, "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)" meet or exceed the hospital's property tax liability for the claimed year. 35 ILCS 200/15-86(c) (2012). Oswald places emphasis on the word "shall", however, Oswald misinterprets the subsection.

"Statute[s] should be evaluated as a whole, with each provision construed in connection with every other section." *Swank*, 336 Ill. App. 3d at 858. "While shall ordinarily suggests [something is] mandatory, it may properly be construed in a directory sense to carry out...the intent of the legislature." *In re Application of Rosewell*, 97 Ill. 2d 434, 440 (1983). Because shall

does not always have a fixed meaning, shall can sometimes be interpreted as "must and may depending upon the legislative intent." *Cooper v. Hinrichs*, 10 Ill. 2d 169, 272 (1957).

Additionally, "when judging the constitutionality of a [] statute, common sense cannot and should not be suspended." *City of Chicago v. Pooh Bah Enter.*, 224 Ill. 2d 390, 444 (2006). This is especially important because, when "interpreting statutes [courts] must avoid constructions which would produce absurd results." *People v. Swift*, 202 Ill. 2d 378, 385 (2002).

Subsection 15-86(c) establishes that in order for a claimant to even get a tax exemption, the claimant's charitable acts have to be either equal to the total dollar value of the property tax liability or higher. 35 ILCS 200/15-86(c) (2012). In order to make that determination subsection 15-86(e) applies. *Id.*

Subsection 15-86(e) allows the DOR to make an evaluation based on certain criteria that may or may not be present during the analysis. To determine if the claimant's acts are enough to satisfy subsection (c), subsection (e) lists certain services and activities which "shall be *considered* for the purposes of making the calculations required by subsection (c)." 35 ILCS 200/15-86(e) (2012) (emphasis added). The language in subsection (e) is permissive, not mandatory; the mere presence of these criteria do not automatically make them claimable or entitle a claimant to exemption, but are merely items that may be considered by the DOR's evaluation of the total overall dollar amount actually spent on charitable healthcare.

For example, in *In re Armour* a juvenile statute stated that an adjudicatory hearing shall be set within 30 days after a delinquency petition was filed. *In re Armour*, 59 Ill. 2d 102, 103 (1974). However, Armour's hearing was scheduled to be held 32 days after his delinquency petition was filed. *Id.* Because his hearing was not held within 30 days, Armour argued his action should be discharged. *Id.* The Court rejected his interpretation and said that looking at the overall nature and scope of the statute, shall did not mandate that a hearing be held, but that a hearing should be scheduled within 30 days. *Id.* at 104-105.

Looking at the statute here, the task is still left to the DOR's discretion who must ultimately determine if the claimed item(s) has a tangible charitable value, i.e. do those items provide a charitable benefit to people through actual free or reduced health services. If the DOR finds the claimed items fall within the scope of charity, that is, free or reduced cost health and health-related services available to all who ask for those services, then those items will apply toward the overall dollar value to satisfy subsection (c). Whatever services or activities the hospital wishes to claim for exemption, the DOR must first evaluate those activities, take those services or activities under advisement and then determine whether they qualify as charitable.

Moreover, Section 15-86 does not repeal the *Methodist Old Peoples Home* criteria, as Oswald argues. Illinois courts have routinely held that before a claimant may be granted property tax exemption, she has to show that her property is used for charitable purposes. *Eden*, 213 Ill. 2d at 287. To make that determination courts evaluate the claimant's case under the *Methodist*

Old Peoples Home criteria[3]. *Id.* Because "charitable use is a constitutional requirement," the *Methodist Old Peoples Home* criteria are first used to determine charitable use, i.e. is the claimant's property actually being used for charitable purposes. *Id.*

But the *Methodist Old Peoples Home* criteria do not state *how much* charitable use is enough. This then brings us to the same issue of *Provena II*, which dealt with the fact that even if a hospital entity *does* qualify under charitable use, it may still be disqualified because its amount of charitable use is not enough. This is the very issue that Section 15-86 addresses by establishing a statutory quantitative standard.

Oswald argues however, that Section 15-86 by default determines that a claimant's property qualifies for charitable use and that all that is left is for the subsection (e) criteria to be applied. But as stated above in section 3. a) of this opinion, the legislature's express intent was to establish a set of quantifiable criteria, not redefine charity or charitable use, but how much of it is enough.

In addition, the legislature even went so far as to point out that it was enacting Section 15-86 to directly address *Provena II* and because there were no quantifiable standards the DOR could rely upon. "Where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law." *Burrell v. S. Truss*, 176 Ill. 2d 171, 176 (1997). Nothing else besides this was expressed in the statute and nothing else need be expressed because the scope of Section 15-86 is limited to that purpose. Section 15-86 does not state that it is replacing court precedent, it does not state that the *Methodist Old Peoples Home* criteria do not apply, nor does Section 15-86 state that it is lowering the constitutional requirement for charitable use. Section 15-86 fills a void that the Illinois Supreme Court declined to fill and that is within the legislature's power. Oswald's interpretation of Section 15-86 would produce an odd result.

Lastly, Oswald's argument that Section 15-86's enactment resulted from the *Provena II* dissent is immaterial. As Hamer points out, the plurality in *Provena II* did not expressly state that the legislature could not set an amount that is enough for exemption and, moreover, the legislature did not need precedent to enact a statute establishing a quantifiable standard. Not only that, it does not matter that the legislature enacted Section 15-86 either from the recommendation of the plurality or the dissent and Oswald cites no cases showing that a legislature is prohibited from drafting legislation from suggestions in a dissenting opinion.

4. Oswald Cannot Overcome the High Burden of Showing Section 15-86 is Facially Unconstitutional.

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[3] These include: (1) the benefits go to an indefinite number of persons for their general welfare or the benefits relieve the government's burden, (2) the entity has no capital, capital stock, or shareholders and is non-profit, (3) funds are derived from private or public charity and are held in trust for the entity's expressed charter, (4) the entity gives charity to all who ask for it and are in need, (5) the entity does not place obstacles to people who ask for charity, (6) the primary purpose of the property use is for charity. *Eden*, Ill. 2d at 287.

In order for Oswald to prevail, she must overcome the burden of showing that the statute is facially unconstitutional. When a challenger claims a statute is facially unconstitutional, she is arguing the statute is void in its entirety, in comparison to an as-applied challenge where she is claiming the statute is unconstitutional as applied to her. *Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 306 (2008).

However, facial constitutional challenges are "the most difficult [] to mount successfully, [because] the challenger must establish that no set of circumstances exist[] under which the [statute] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). If there are any doubts about the constitutionality of a statute, courts resolve that doubt in favor of finding the statute constitutional.[4] *Davis*, 221 Ill. 2d at 442.

a) Section 15-86 is not Unconstitutional in All Circumstances

To succeed on her facial constitutional challenge, Oswald has to show that Section 15-86 has no circumstances under which it can be constitutional. But as mentioned in this opinion, the statute's legislative intent is not vague and the statute is within the scope of the Illinois Constitution. Moreover, Section 15-86 must be applied on a case-by-case basis and does not operate as a default exemption statute. Because Oswald has not shown that Section 15-86 is "[inherently flawed] no matter what the circumstances," Section 15-86 is not facially unconstitutional in all circumstances. *People v. One 1998 GMC*, 2011 IL 110236, ¶ 58.

b) Hypothetical Circumstances that May be Unconstitutional Are not Enough to Void Section 15-86

Hamer argues that even if Section 15-86 were unconstitutional in some situations, this does not render it facially unconstitutional. Hamer's argument is correct because the mere fact that a statute *might* be unconstitutional "under some conceivable set of circumstances" is not enough to declare the whole statute void. *Davis*, 221 Ill. 2d at 442.

For example, *Valdivia* involved a facial challenge to the Illinois Parentage Act that established statutory paternity where the court held that merely suggesting hypothetical situations that could be unconstitutional is not enough to find the statute void "in all instances." *Valdivia v. Izaguirre (In re John M)*, 212 Ill. 2d 253, 271-72 (2004). See also *Salerno*, 481 U.S. at 745 (1987) ("The fact that the Bail Reform Act might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid."). Here, though there may be some hypothetical situations that may arise, they are hypothetical and not concrete enough to render Section 15-86 entirely unconstitutional.

Hamer also adds that, even if Section 15-86 allows exemptions without proof of the charitable use requirement, Section 15-86 still should be constitutional. This is not accurate. Because charitable use is a requirement for exemption, Section 15-86 cannot simply disregard it. In the case at hand, Section 15-86 is not facially unconstitutional because, as shown above in this

[4] Courts generally do not like facially unconstitutional challenges to statutes. *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998).

opinion, Section 15-86 does not disregard the charitable use requirement, but rather addresses the quantity of charitable use and, while there may be some hypothetical situations that might be unconstitutional, it does not render Section 15-86 void in its entirety.

CONCLUSION

For the reasons herein stated, Plaintiff's motion for summary judgment is denied and Defendant's motion for summary judgment is granted.

ENTERED: _____

Judge Robert Lopez Cepero

Judge Robert Lopez Cepero

JUN 23 2015

Circuit Court - 1627

THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

CONSTANCE OSWALD,

Plaintiff,

v.

BRIAN HAMER, Director of the Illinois Department of Revenue, and the ILLINOIS DEPARTMENT OF REVENUE,

Defendants,

and

ILLINOIS HOSPITAL ASSOCIATION,

Intervenor-Defendant.

No. 2012-CH-042723

Hon. Robert Lopez-Cepero

ORDER

This matter coming before the Court on Illinois Hospital Association's unopposed motion to clarify order on cross-motions for summary judgment, all parties appearing through counsel, and the Court being duly informed of the premises,

IT IS HEREBY ORDERED that:

For the reasons set forth in this Court's June 23, 2015, Order and Opinion,

1. The motion for summary judgment by Plaintiff, Constance Oswald, is denied;

2. The motion for summary judgment by Defendants, Brian Hamer and the Illinois Department of Revenue, is granted; and

3. The motion for summary judgment by Intervenor-Defendant, Illinois Hospital Association, is granted.

Firm ID No. 13739
Steven F. Pflaum
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
21464121.4

ENTERED: Judge Robert Lopez Cepero

AUG 18 2015

Judge Judge's No.

Circuit Court - 1627

Exhibit A

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOR THE FIRST DISTRICT

FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

CONSTANCE OSWALD,	)	
	)	
Plaintiff-Appellant,	)	No. 2012 CH 42723
	)	
v.	)	Transferred to Tax &
	)	Miscellaneous Remedies
BRIAN HAMER, Director of Illinois Department of Revenue; ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendants-Appellees	)	
	)	
and	)	
	)	
ILLINOIS HOSPITAL ASSOCIATION,	)	
	)	
Intervenor-Defendant - Appellee.	)	

NOTICE OF APPEAL

Appellant's Name: Constance Oswald
Appellant's Attorney: The Law Offices of Edward T. Joyce & Associates, P.C.
Address: 135 South LaSalle Street, Suite 2200
City/State/Zip: Chicago, Illinois 60603
Telephone Number: 312.641.2600
Cook County Attorney Code: 47922

Appellee's Name: Brian Hamer; Illinois Department of Revenue
Appellee's Attorney: Illinois Attorney General
Address: 100 W. Randolph, 13th Floor
City/State/Zip: Chicago, Illinois 60601
Telephone Number: 312-814-4142
Cook County Attorney Code: 99000

Appellee's Name: Illinois Hospital Association
Appellee's Attorney: Neal, Gerber & Eisenberg LLP
Address: Two North LaSalle Street, Suite 1700
City/State/Zip: Chicago, Illinois 60602
Telephone Number: 312-269-8000
Cook County Attorney Code: 13739

Plaintiff/Appellant, Constance Oswald. ("Plaintiff"), hereby appeals to the Illinois Appellate Court, First District ("Appellate Court"), from the following orders entered by the Circuit Court of Cook County, Illinois, County Department, Law Division ("the Circuit Court"):

(a) April 24, 2013 order (attached as Exhibit A);

(b) June 23, 2015 order (attached as Exhibit B);

(c) August 18, 2015 order (attached as Exhibit C);

By this appeal, Plaintiff will ask the Illinois Appellate Court reverse the Circuit Court's Order of April 24, 2013 allowing Intervenor-Defendant-Appellee, Illinois Hospital Association ("Intervenor"), to intervene, reverse the Circuit Court's June 23 and August 18, 2015 Orders denying Plaintiff's Motion for Summary Judgment and granting summary judgment in favor of Defendants-Appellees, and Intervenor, and enter judgment in Plaintiff's favor, and for such additional relief as this Court deems just and appropriate.

In the alternative, Plaintiff will request that the Illinois Appellate Court reverse the Circuit Court's April 24, 2013 Order allowing Intervenor to intervene, reverse the Circuit Court's June 23 and August 18, 2015 Orders denying Plaintiff's Motion for Summary Judgment and granting summary judgment in favor of Defendants and Intervenor, and remand this cause to the Circuit Court for additional proceedings, including a trial on the merits, and for such additional relief as this Court deems just and appropriate.

Respectfully Submitted,

By: _____
One of Plaintiff-Appellant's Attorneys

Edward T. Joyce
Kenneth Flaxman
The Law Offices of Edward T. Joyce & Associates, P.C.
135 South LaSalle Street, Suite #2200
Chicago, Illinois 60603
Atty. No: 47922
(312) 641-2600

2016 IL App (1st) 152691

FOURTH DIVISION
December 22, 2016

No. 1-15-2691

CONSTANCE OSWALD,	)	Appeal from the
	)	Circuit Court
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 12 CH 42723
BRIAN HAMER, in His Official Capacity as Director of Revenue, and THE ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendants-Appellees,	)	
	)	
(Illinois Hospital Association,	)	Honorable
	)	Robert Lopez Cepero,
Intervening Defendant-Appellee).	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court, with opinion.
Justices Howse and Rochford concurred in the judgment and opinion.

OPINION

¶ 1 On appeal, plaintiff Constance Oswald, as a Cook County real property taxpayer, argues that section 15-86 of the Property Tax Code (Code) (35 ILCS 200/15-86 (West 2012)) is unconstitutional on its face because section 15-86(c) purports to grant a property tax exemption to a hospital applicant without regard to whether the property is used exclusively for charitable purposes, as required under article IX, section 6, of the Illinois Constitution (Ill. Const. 1970, art. IX, § 6).

¶ 2 In November 2012, plaintiff filed an action for declaratory judgment in the trial court, challenging the constitutionality of section 15-86. Section 15-86 details the process to seek a property tax exemption for certain Illinois hospitals and their affiliates. Plaintiff asserted that

section 15-86 violates article IX, section 6, of the Illinois Constitution and, therefore, was unconstitutional on its face. Following cross-motions for summary judgment, the trial court granted summary judgment in favor of defendants, Brian Hamer, as Director of Revenue, and the Illinois Department of Revenue (collectively "the Department"), and intervening defendant, the Illinois Hospital Association, finding that section 15-86 was not facially unconstitutional.

¶ 3 There is no factual dispute in this case. The only issue before this court, whether section 15-86 is facially constitutional, is purely a question of law. We review a statute's constitutionality *de novo*. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 200 (2009).

¶ 4 "Under Illinois law, taxation is the rule. Tax exemption is the exception." *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 388 (2010) (plurality opinion). Article IX of the Illinois Constitution "generally subjects all real property to taxation." *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 273, 285 (2004). "[T]he state's inherent power to tax is vested in the General Assembly. The legislature's power to tax is plenary; it is restricted only by the federal and state constitutions." *Id.* "The Illinois Constitution does not grant power to the legislature, but rather restricts the legislature's power to act." *Id.* at 284.

¶ 5 Article IX, section 6, of the constitution provides, in relevant part:

> "The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes." Ill. Const. 1970, art. IX, § 6.

¶ 6 "Section 6 is not self-executing. It merely authorizes the General Assembly to enact legislation exempting certain property from taxation." *Provena*, 236 Ill. 2d at 389. "By designating the classes of property which may be exempted from taxation, section 6 of article IX has placed a restriction on the legislature's authority to exempt." *Chicago Bar Ass'n v. Department of Revenue*, 163 Ill. 2d 290, 297 (1994). "Accordingly, a property tax exemption created by statute cannot be broader than the provisions of the constitution, and no property except that mentioned in the exemption provisions of the constitution can be exempted by any laws passed by the legislature." *Id.* "While the General Assembly has no authority to 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.' " *Provena*, 236 Ill. 2d at 390 (quoting *North Shore Post No. 21 of the American Legion v. Korzen*, 38 Ill. 2d 231, 233, (1967)).

¶ 7 "One class of property that the legislature may exempt from taxation is property used for charitable purposes. Charitable use is a *constitutional* requirement. An applicant for a charitable-use property tax exemption must 'comply unequivocally with the constitutional requirement of exclusive charitable use.' " (Emphasis in original.) *Eden*, 213 Ill. 2d at 286-87 (quoting *Small v. Pangle*, 60 Ill. 2d 510, 516 (1975)). Illinois courts have held that a "property satisfies the exclusive-use requirement for tax exemption purposes if it is *primarily* used for the exempted purpose." (Emphasis in original.) *Chicago Bar Ass'n*, 163 Ill. 2d at 300. Illinois courts have also concluded that "a 'hospital not owned by the State or any other municipal corporation, but which is open to all persons, regardless of race, creed or financial ability,' qualifies as a charitable institution under Illinois law provided certain conditions are satisfied." *Provena*, 236 Ill. 2d at 391 (quoting *People ex rel. Cannon v. Southern Illinois Hospital Corp.*, 404 Ill. 66, 69-70

(1949)). "There is, however, no blanket exemption under the law for hospitals or health-care providers. Whether a particular institution qualifies as a charitable institution and is exempt from property tax is a question which must be determined on a case-by-case basis." *Id.*

¶ 8 The Illinois Supreme Court first found not-for-profit hospitals to qualify for charitable property tax exemptions in the 1907 decision of *Sisters of the Third Order of St. Francis v. Board of Review*, 231 Ill. 317 (1907). In that case, the supreme court held that the hospital was an institution of public charity under a statutory predecessor to section 15-65, which granted property tax exemption to " '[a]ll property of institutions of public charity, when actually and exclusively used for such charitable purposes, not leased or otherwise used with a view to profit.' " *Id.* at 319 (quoting Ill. Rev. Stat. 1905, ch. 120, ¶ 2). The court discussed the purpose and work of the hospital as an institution of public charity.

> "In this hospital charity is extended to all the members of the community and is not confined to any particular class of individuals. It is an institution of public charity, and where an institution devoted to beneficence of that character is, under the law, exempt from taxation, it does not lose its immunity by reason of the fact that those patients received by it who are able to pay are required to do so, or by reason of the fact that it receives contributions from outside sources, so long as all the money received by it is devoted to the general purposes of the charity, and no portion of the money received by it is permitted to inure to the benefit of any private individual engaged in managing the charity." *Id.* at 320-21.

¶ 9 The court rejected an argument about the disparity between the number of charity patients in comparison with the number of patients who paid for service.

> "This objection seems to us without merit, so long as charity was dispensed to all those who needed it and who applied therefor, and so long as no private gain or profit came to any person connected with the institution, and so long as it does not appear that any obstacle, of any character, was by the corporation placed in the way of those who might need charity of the kind dispensed by this institution, calculated to prevent such persons making application to or obtaining admission to the hospital. The institution could not extend its benefactions to those who did not need them, or to those who did not seek admission." *Id.* at 322.

¶ 10 Nearly a century later in *Provena*, the supreme court considered whether a hospital was entitled to the charitable property tax exemption under section 15-65 of the Code (35 ILCS 200/15-65 (West 2002)). Section 15-65 granted property tax exemption for institutions of public charity for the subject property "when actually and exclusively used for charitable or beneficent purposes." 35 ILCS 200/15-65(a) (West 2002). With two justices recusing, the majority of the court concluded that the hospital failed to establish by clear and convincing evidence that it satisfied the requirements for the statutory charitable institution exemption. *Provena*, 236 Ill. 2d at 393. Specifically, the hospital failed to establish that "it dispensed charity to all who needed it and applied for it and did not appear to place any obstacles in the way of those who needed and would have availed themselves of the charitable benefits it dispenses." *Id.*

¶ 11 The supreme court explained the rationale behind providing exemptions for charitable institutions.

> "Conditioning charitable status on whether an activity helps relieve the burdens on government is appropriate. After all, each tax dollar lost to a charitable exemption is one less dollar affected governmental bodies will have to meet their obligations directly. If a charitable institution wishes to avail itself of funds which would otherwise flow into a public treasury, it is only fitting that the institution provide some compensatory benefit in exchange. While Illinois law has never required that there be a direct, dollar-for-dollar correlation between the value of the tax exemption and the value of the goods or services provided by the charity, it is a *sine qua non* of charitable status that those seeking a charitable exemption be able to demonstrate that their activities will help alleviate some financial burden incurred by the affected taxing bodies in performing their governmental functions." *Id.* at 395.

¶ 12 However, the justices disagreed on the question of charitable use. *Id.* at 412 (Burke, J., concurring in part and dissenting in part, joined by Freeman, J.). The plurality of the court found the hospital's charitable care was *de minimis*, as the evidence presented failed to show that the hospital used the property at issue "actually and exclusively for charitable purposes." *Id.* at 397 (plurality opinion). The plurality observed that while the hospital did not turn anyone away for treatment, it did not advertise its charity services and billed patients as a matter of course. Unpaid bills were referred to collection agencies. Discounts or waivers in costs were only made after it

was established that the patient lacked private insurance, did not have Medicare or Medicaid, lacked the ability to pay, and had qualified for the hospital's charity program. *Id.* at 398. The court had observed that in 2002, the hospital had "waived $1,758,940 in charges, representing an actual cost to it of only $831,724. This was equivalent to only 0.723% of PCMC's revenues for that year and was $268,276 less than the $1.1 million in tax benefits which [the hospital] stood to receive if its claim for a property tax exemption were granted." *Id.* at 381. "[B]oth the number of uninsured patients receiving free or discounted care and the dollar value of the care they received were [*de minimis*]. With very limited exception, the property was devoted to the care and treatment of patients in exchange for compensation through private insurance, Medicare and Medicaid, or direct payment from the patient or the patient's family." *Id.* at 397.

¶ 13 Justice Burke dissented on the issue of charitable use, joined by Justice Freeman. In her dissent, Justice Burke wrote, "By imposing a quantum of care requirement and monetary threshold, the plurality is injecting itself into matters best left to the legislature." *Id.* at 412 (Burke, J., concurring in part and dissenting in part, joined by Freeman, J.). The dissenting justices did not believe that

> "this court can, under the plain language of section 15-65, impose a quantum of care or monetary requirement, nor should it invent legislative intent in this regard. Setting a monetary or quantum standard is a complex decision which should be left to our legislature, should it so choose. The plurality has set a quantum of care requirement and monetary requirement without any guidelines. This can only cause confusion, speculation, and

> uncertainty for everyone: institutions, taxing bodies, and the courts." *Id.* at 415.

¶ 14 In response to the supreme court's decision in *Provena*, the General Assembly enacted section 15-86 (35 ILCS 200/15-86 (West 2012)), which is the statute at issue in this case. The General Assembly expressly discussed *Provena* and its intent behind the enactment of the statute. The General Assembly observed that "despite" the decision in *Provena*, "there is considerable uncertainty surrounding the test for charitable property tax exemption, especially regarding the application of a quantitative or monetary threshold." 35 ILCS 200/15-86(a)(1) (West 2012). The legislature further reasoned:

> "(3) It is essential to ensure that tax exemption law relating to hospitals accounts for the complexities of the modern health care delivery system. Health care is moving beyond the walls of the hospital. In addition to treating individual patients, hospitals are assuming responsibility for improving the health status of communities and populations. Low-income and underserved communities benefit disproportionately by these activities." 35 ILCS 200/15-86(a)(3) (West 2012).

¶ 15 The General Assembly explicitly codified its intent in section 15-86 in the statutory text.

> "(5) Working with the Illinois hospital community and other interested parties, the General Assembly has developed a comprehensive combination of related legislation that addresses hospital property tax exemption, significantly increases access to free health care for indigent persons, and strengthens the Medical

> Assistance program. It is the intent of the General Assembly 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'. It is also the intent of the General Assembly to establish quantifiable standards for the issuance of charitable exemptions for such property. 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." 35 ILCS 200/15-86(a)(5) (West 2012).

¶ 16 The crux of plaintiff's argument that section 15-86 is facially unconstitutional is one sentence in subsection (c) which quantifies the charitable exemption for the respective property. Section 15-86(c) provides, in relevant part:

> "(c) 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." (Emphasis added.) 35 ILCS 200/15-86(c) (West 2012).

¶ 17 Subsection (e) details the "[s]ervices that address the health care needs of low-income or underserved individuals or relieve the burden of government with regard to health care services."

35 ILCS 200/15-86(e) (West 2012). The subsection then lists the services and activities that would be considered in making the calculations under subsection (c). These services and activities include charity care, health services to low-income and underserved individuals, subsidy of state and local governments, support for state health care programs for low-income individuals, subsidy for treating dual-eligibility Medicare/Medicaid patients, relief of the burden of government related to health care of low-income individuals, and any other activity by the relevant hospital entity that the Department determines relieves the burden of government or addresses the health of low-income or underserved individuals. 35 ILCS 200/15-86(e) (West 2012). The statute provided additional details and explanations for how the applicable service or activity can be utilized by the hospital applicants in seeking a property tax exemption.

¶ 18 According to plaintiff, section 15-86(c) is unconstitutional on its face because "it creates a statutory standard for charitable exemption that conflicts with article IX, section 6 of the Illinois constitution." Plaintiff points out that section 15-86 does not mention explicitly the constitutional requirement of "exclusive" for charitable use. Plaintiff argues that the section 15-86 in operation would grant charitable exemption without regard to the constitutional requirement of exclusive charitable use so long as the hospital established that its value of the designated services or activities was equal or greater than the amount of property tax assessed for the subject property.

¶ 19 " 'Facial invalidation "is, manifestly, strong medicine" that "has been employed by the court sparingly and only as a last resort." ' " *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009) (quoting *National Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998), quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973)). "Statutes carry a strong presumption of constitutionality." *Walker v. McGuire*, 2015 IL 117138, ¶ 12. "To overcome this

presumption, the party challenging the statute must clearly establish the statute's invalidity." *Id.* "This court has a duty to construe a statute in a manner that upholds its constitutionality, if reasonably possible to do so." *Id.*

¶ 20 "A statute is facially invalid only if there is no set of circumstances under which the statute would be valid." *In re M.A.*, 2015 IL 118049, ¶ 39 (citing *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305-06 (2008)). "The fact that a statute could be found unconstitutional under some circumstances does not establish its facial invalidity." *Id.* "Consequently, a facial challenge to the constitutionality of a legislative enactment is the most difficult challenge to mount successfully." *Id.* In contrast, an "as applied" constitutional challenge is limited to how the statute was applied in the plaintiff's specific circumstances. *Id.* ¶ 40. "If a plaintiff prevails in an 'as applied' challenge, enforcement of the statute is enjoined only against the plaintiff, while a finding that a statute is facially unconstitutional voids the statute in its entirety and in all applications." *Id.*

¶ 21 Plaintiff contends that section 15-86 is facially unconstitutional because it mandates the issuance of a charitable exemption to property taxes if the requirements under subsection (c) are met. According to plaintiff, section 15-86(c) requires the exemption without consideration of whether the property at issue was exclusively for charitable purposes, as required under article IX, section 6, of the constitution. Plaintiff bases this argument on her interpretation of the word "shall" as used in section 15-86(c) as mandatory rather than directory.

¶ 22 We reject plaintiff's interpretation that the legislature intended the word "shall" to be mandatory rather than directory in nature in section 15-86(c). The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 16. The best evidence of

legislative intent is the language of the statute, and when possible, the court should interpret the language of a statute according to its plain and ordinary meaning. *Id.* "In determining the plain meaning, we must consider the statute in its entirety, the subject it addresses, and the apparent intent of the legislature in enacting it." *Id.*

¶ 23 "A mandatory provision and a directory provision are both couched in obligatory language, but they differ in that noncompliance with a mandatory provision vitiates the governmental action, whereas noncompliance with a directory provision has no such effect." *People v. Four Thousand Eight Hundred Fifty Dollars ($4,850) United States Currency*, 2011 IL App (4th) 100528, ¶ 24. Generally, the use of the word "shall" indicates a mandatory intent, but "in no case regarding the mandatory-directory dichotomy has 'shall' controlled the outcome." *People v. Robinson*, 217 Ill. 2d 43, 53 (2005). The designation of a statute as mandatory or directory " 'simply denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates.' " *Id.* at 51-52 (quoting *Morris v. County of Marin*, 559 P.2d 606, 610-11 (Cal. 1977) (*en banc*)).

¶ 24 Statutes are mandatory when the legislative intent dictates a particular consequence for failure to comply with the provision. *People v. Delvillar*, 235 Ill. 2d 507, 514-15 (2009). "In the absence of such intent the statute is directory and no particular consequence flows from noncompliance. That is not to say, however, that there are no consequences. A directory reading acknowledges only that no specific consequence is triggered by the failure to comply with the statute." (Emphasis omitted.) *Id.* at 515.

¶ 25 The supreme court has held that "we presume that language issuing a procedural command to a government official indicates an intent that the statute is directory." *Id.* at 517.

This presumption may be overcome by either of two conditions to show that provision is mandatory: first, "when there is negative language prohibiting further action in the case of noncompliance," or second, "when the right the provision is designed to protect would generally be injured under a directory reading." *Id.* (citing *Robinson*, 217 Ill. 2d at 58).

¶ 26 Turning to the language of section 15-86(c), we find that the use of "shall" in this context is directory in nature. First, the section does not contain any negative language prohibiting noncompliance. No consequence is triggered by the failure to issue a charitable exemption under the language of section 15-86(c), and noncompliance with the statute offers no direct injury. Further, given the presumption that taxation is the rule, this statute is not protecting a right. Tax exemption is an exception, and section 15-86(c) directs the Department on its consideration of a hospital applicant's property tax status.

¶ 27 We also find that our construction of section 15-86(c) as directory is in line with prior cases considering the issuance of charitable exemption from property taxes, such that statutes are considered alongside the constitutional requirements. The Illinois Supreme Court has consistently held that statutes detailing types of property subject to exemption are descriptive and illustrative of property that might qualify under the "exclusive" requirement of article IX, section 6, of the constitution.

¶ 28 In *McKenzie v. Johnson*, 98 Ill. 2d 87 (1983), the plaintiff challenged section 19.1of the Revenue Act of 1939 as facially unconstitutional for failing to comply with article IX, section 6, of the constitution. The statutory language at issue provided,

> " 'The Occupancy, in whole or in part, of a school-owned and operated dormitory or residence hall by students who belong to one or more fraternities, sororities, or other campus organizations shall

> not defeat the exemption for such property under the terms of this Section.' " (Emphasis omitted.) *Id.* at 100 (quoting Ill. Rev. Stat. 1981, ch. 120, ¶ 500.1).

¶ 29 The supreme court upheld the statute as facially constitutional, finding that "the legislature's addition of the sentence referring to fraternities was merely a description or illustration of another type of property that might qualify, under appropriate circumstances, as property used exclusively for school purposes." *Id.* at 101. The plaintiff challenged the statute on the basis that fraternities and sororities are exclusively social organizations and cannot be used "exclusively" for charitable purposes, as required under the constitution. The supreme court held that it could not 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.

¶ 30 In *Chicago Bar Ass'n v. Department of Revenue*, 163 Ill. 2d 290 (1994), the supreme court considered the constitutionality of another portion of section 19.1. In that case, the Chicago Bar Association (CBA) had sought a finding that its new headquarters adjacent to the John Marshall Law School was exempt from property taxes. The CBA based its claim on the following language from section 19.1, which granted an exemption for school property,

> " 'including, in counties of over 200,000 population which classify real property, property (including interests in land and other facilities) on or adjacent to (or adjacent to, except separated by a public street, alley, sidewalk, parkway or other public way from) the grounds of a school which property is used by an

> academic, research or professional society, institute, association or organization which serves the advancement of learning in a field or fields of study taught by the school and which property is not used with a view to profit.' " *Id.* at 293-94 (quoting Ill. Rev. Stat. 1991, ch. 120, ¶ 500.1).

¶ 31 The Department denied the CBA's request for an exemption. The circuit court affirmed the denial and held that portion of section 19.1 was unconstitutional on its face because it exceeded the scope of the school exemption provided in article IX, section 6, of the constitution. *Id.* at 296-97.

¶ 32 On appeal, the supreme court considered the circuit court's conclusion that portion of section 19.1 was facially unconstitutional. The supreme court observed that the circuit court reasoned that the "adjacent property" clause of section 19.1 violated the constitution by expanding the provisions set forth in the constitution requiring exclusive use. Under the circuit court's interpretation, "it would allow an exemption for property adjacent to a school, provided the various statutory conditions have been satisfied, even though the adjacent property was not, itself, used 'exclusively for *** school *** purposes' as article IX, section 6, requires." *Id.* at 298. "If the circuit court's construction of the statute were accepted, its conclusion would be correct. The 'adjacent property' clause of section 19.1 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.*

¶ 33 The supreme court did not believe that "the 'adjacent property' clause of section 19.1 should be construed as eliminating the requirement that property must in fact be used exclusively

for school purposes in order to qualify for an exemption under section 6 of article IX (Ill. Const. 1970, art. IX, § 6). The language of the clause identifies the property entitled to the school exemption as 'including' property adjacent to school which has certain specified characteristics." *Id.* The court continued by considering the portion at issue in previous cases.

> "[W]e believe that the 'adjacent property' clause in section 19.1 merely provides a description or illustration of a type of property that may be entitled to exemption under article IX, section 6. It in no way modifies the limitations imposed by our constitution. The exclusive-school-use requirement of article IX, section 6, therefore still pertains. For this reason, a party seeking to invoke the exemption still has the burden of proving clearly and conclusively that the property in question not only falls within the terms of the statute under which the exemption is claimed, but also that it comports with the constitutional authorization." *Id.* at 299-300.

See also *McKenzie*, 98 Ill. 2d at 96-97; *MacMurray College v. Wright*, 38 Ill. 2d 272, 277-78 (1967) (finding that a clause in section 19.1 addressing dormitories was descriptive and illustrative, "not with a declaratory intendment," and the statute did not remove the burden of establishing "exclusive[ ]" for school purposes under the constitution).

¶ 34 The supreme court reiterated that "[t]he primary use of property, not its incidental uses, determines its tax-exempt status." *Chicago Bar Ass'n*, 163 Ill. 2d at 300. "There is no inherent reason why property which is adjacent to a school and which otherwise meets the conditions of section 19.1 cannot conform to this standard. Some parcels may well qualify as being used 'exclusively for *** school *** purposes' as the constitution requires, while others will not.

Whether a given piece of property is exempt will turn on the evidence showing how it is used." *Id.*

¶ 35 The supreme court concluded that the circuit court erred in finding section 19.1 to be unconstitutional on its face but agreed with its decision to affirm the Department's decision to deny an exemption to the CBA. *Id.* "The circuit court noted that in the proceedings before the administrative agency, the entire focus of the CBA's presentation was on establishing compliance with the terms of section 19.1. It did not address the additional question of whether the headquarters satisfied the constitutional requirement that the property be used 'exclusively for *** school *** purposes.' Rather, it assumed that property which met the statutory exemption fell within the constitutional authorization because, in enacting the statute, the legislature declared that it would." *Id.* at 300-01.

¶ 36 However, the supreme court found this assumption to be in error, noting that "[w]hether particular property is used 'exclusively for *** school *** purposes' within the meaning of the constitution is a matter for the courts, and not the legislature, to ascertain." *Id.* at 301. "The legislature cannot, by its enactment, make that a school purpose which is not in fact a school purpose." *Id.* "Each individual claim must be determined from the facts presented. In applying the law to the facts, the court must be mindful that taxation is the rule. Tax exemption is the exception. Article IX, section 6 [citation], and any statutes enacted under its provisions must be resolved in favor of taxation." *Id.* The court found that the property primarily served as a place for members to meet, and any educational use was secondary and incidental. Accordingly, the court concluded that the exemption was properly denied. *Id.* at 302.

¶ 37 In subsequent decisions considering the requirements of exclusive use requirements of article IX, section 6, in tandem with the statutes enacted by the General Assembly, the supreme

court maintained that the constitutional requirement is paramount. As we previously observed, "[c]haritable use is a *constitutional* requirement. An applicant for a charitable-use property tax exemption must 'comply unequivocally with the constitutional requirement of exclusive charitable use.' " (Emphasis in original.) *Eden*, 213 Ill. 2d at 287 (quoting *Small*, 60 Ill. 2d at 516).

¶ 38 The *Eden* court examined whether a nursing home was eligible for a property tax exemption under section 15-65 of the Code. Section 15-65 exempts a specific list of property from tax "when actually and exclusively used for charitable or beneficent purposes," including

> "Old people's homes *** if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or (ii) the home or facility is qualified, built or financed under Section 202 of the National Housing Act of 1959, as amended." 35 ILCS 200/15-65(c) (West 2000).

¶ 39 The Department had denied the exemption, which the circuit and appellate court set aside. The lower courts found that the plaintiff qualified for the charitable use property tax exemption based "solely on plaintiff's (1) exemption from federal income taxes, and (2) bylaw provision allowing for the reduction or waiver of charges based on residents' inability to pay."

Eden, 213 Ill. 2d at 289. The supreme court found this analysis to be erroneous, as it failed to consider the constitutional requirements under article IX, section 6.

> "The legislature could not declare that property, which satisfied a *statutory* requirement, was *ipso facto* property used exclusively for a tax-exempt purpose specified in section 6 of article IX of the Illinois Constitution. 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." (Emphasis in original.) *Id*. at 290.

The supreme court further reasoned that "the legislature was free to include in section 15-65(c) of the Property Tax Code a requirement that the facility be exempt from federal income tax. However, a federal income tax exemption does not provide material facts about exclusive charitable use of property required by section 6 of article IX of the Illinois Constitution, and does not determine the constitutional issue." *Id.* at 291.

¶ 40 The supreme court in *Eden* also observed that section 15-65 included the constitutional requirement of exclusive use for charitable purposes in the opening of the section. The court found that the plain language of the statute conforms to article IX, section 6, of the constitution. *Id.* at 292.

¶ 41 In the present case, we acknowledge that section 15-86 does not contain the constitutional language relating to the exclusive use for charitable purposes set forth in article IX, section 6. However, as the *Eden* court stated, "[i]t is equally familiar that 'a court presumes that the legislature intended to enact a constitutional statute. Accordingly, a court will construe a statute as constitutional, if it is reasonable to do so. [Citation.] If a statute's construction is doubtful, a

court will resolve the doubt in favor of the statute's validity.' " *Id.* at 291-92 (quoting *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 397 (1994)).

¶ 42 The General Assembly heeded the supreme court's decision in *Eden* while drafting section 15-86. The legislative intent codified in section 15-86(a) directly references language used by the *Eden* court.

> "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." 35 ILCS 200/15-86(a)(5) (West 2012).

¶ 43 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* held the legislature cannot do. Rather, the General Assembly intended for the requirements of section 15-86 to be considered on a case-by-case basis, along with the constitutional requirements. Moreover, "[u]nder the doctrine of *in pari materia*, two legislative acts that address the same subject are considered with reference to one another, so that they may be given harmonious effect." *Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 2012 IL 111286, ¶ 24. "The doctrine is consistent with our acknowledgment that one of the fundamental principles of statutory construction is to view all of the provisions of a statute as a whole." *Id.*

¶ 44 Under section 15-65, the legislature had included "institutions of public charity" as one of the types of property exempted from taxes. 35 ILCS 200/15-65(a) (West 2012). The General Assembly noted in section 15-86(a)(5) that the statute was intended to create "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) (West 2012). If we consider both sections together, section 15-86 was added in reference to section 15-65, to carve out a new category in light of the evolving health care system in Illinois. After *Provena*, the General Assembly sought to address the limited nature of the category "institutions of public charity" under section 15-65 when considering modern hospitals. As detailed above, section 15-86(a) detailed the General Assembly's intent and response to the problems in determining charitable exemption for property tax for hospitals. The General Assembly was clearly mindful of recent supreme court decisions as well as the language previously used in determining charitable exemption. The dissent in *Provena* recognized that "[s]etting a monetary or quantum standard is a complex decision which should be left to our legislature, should it so choose." *Provena*, 236 Ill. 2d at 415. The General Assembly quoted this language in its preamble to section 15-86(a) to illustrate its intent and to help explain the reason it chose to enact a quantifiable calculation to use as part of the process in determining a charitable exemption. We do not believe the legislature had any intent for section 15-86(c) to supplant the constitution, supreme court precedent, or prior legislative enactments. Such an interpretation runs afoul of the presumption that statutes are constitutional, and we should err on the side of constitutionality if reasonably possible to do so.

¶ 45 We do not believe the absence of language indicating that the property must be used exclusively for charitable purposes in accordance with article IX, section 6, of the constitution alters our interpretation. "Where the intent of the legislature is otherwise clear, the judiciary possesses the authority to read language into a statute which has been omitted through legislative oversight." *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 510 (2007). "When a literal interpretation of a statutory term would lead to consequences that the legislature could not have contemplated and surely did not intend, this court will give the statutory language

a reasonable interpretation." *Id.* We decline to read section 15-86 literally such that absence of any exclusivity language suggests that the statute was meant to be read separate from the constitutional requirement. Given the inclusion of such language in section 15-65, we believe the General Assembly meant for the construction of section 15-86 to be under the constitutional requirements. Further, since section 15-86 created a new category of ownership in addition to those listed in section 15-65, it logically follows we could read the exclusive language from section 15-65 as applicable to section 15-86. Thus, any error in the absence of this exclusivity language was a mere legislative oversight and does not negate its compliance with the constitutional requirements of exclusive use for charitable purposes.

¶ 46 Based on our analysis of constitutional principles, supreme court case law, and the language of the legislature, we conclude that section 15-86 is facially constitutional. Under the guidelines of cases discussed above, we decline to interpret section 15-86 in such a way that its application negates the constitutional requirement. The Illinois Supreme Court has consistently found that statutes detailing property tax exemption were descriptive and illustrative of property that may qualify under the constitutional requirements of exclusive use. "Charitable use is a *constitutional* requirement." (Emphasis in original.) *Eden*, 213 Ill. 2d at 287. The operation of section 15-86 does not and cannot remove that requirement. As the *Eden* court held, the satisfaction of a statutory requirement is not sufficient and does not end the analysis, as the hospital seeking an exemption still must establish that the subject property is used exclusively for charitable purposes, as article IX, section 6, mandates.

¶ 47 Moreover, even if we agreed with plaintiff's interpretation that section 15-86 required the issuance of a charitable exemption based only on the satisfaction of the statute, plaintiff cannot sustain her burden that section 15-86 is facially unconstitutional under the no-set-of-

circumstances test. While it is conceivable that a hospital may be able to satisfy the requirements of section 15-86 but not article IX, section 6, of the constitution, that is not the test in Illinois. As we have previously observed, the supreme court has held that a "statute is facially invalid only if there is no set of circumstances under which the statute would be valid." *In re M.A.*, 2015 IL 118049, ¶ 39. "The fact that a statute could be found unconstitutional under some circumstances does not establish its facial invalidity." *Id.* Plaintiff concedes that it is "hypothetically possible" for a hospital to satisfy the requirements of section 15-86(c), in that the provided services and activities listed in subsection (e) equaled or exceeded the estimated property tax liability, and used its property exclusively for charitable purposes under article IX, section 6, of the constitution. We cannot say that a hospital applicant *per se* may not satisfy the requirement of section 15-86 with property used exclusively for charitable purposes. See *McKenzie*, 98 Ill. 2d at 102. As both the General Assembly and the supreme court have noted, that analysis is left to the courts on a case-by-case basis. Thus, section 15-86 is facially constitutional, and the trial court properly granted summary judgment in favor of the defendants.

¶ 48 We acknowledge that plaintiff relied on the Fourth District's recent decision in *Carle Foundation v. Cunningham Township*, 2016 IL App (4th) 140795, *appeal allowed*, No. 120427 (Ill. May 25, 2016), for support. In that case, the Fourth District concluded that section 15-86 was unconstitutional on its face. For the reasons discussed in our decision, we have reached a different conclusion and respectfully disagree with the court's decision.

¶ 49 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 50 Affirmed.

35 ILCS 200/15-86

200/15-86. Exemptions related to access to hospital and health care services by low-income and underserved individuals.

§ 15-86. Exemptions related to access to hospital and health care services by low-income and underserved individuals.

(a) The General Assembly finds:

(1) Despite the Supreme Court's decision in *Provena Covenant Medical Center v. Dept. of Revenue*, 236 Ill.2d 368, there is considerable uncertainty surrounding the test for charitable property tax exemption, especially regarding the application of a quantitative or monetary threshold. In *Provena*, the Department stated that the primary basis for its decision was the hospital's inadequate amount of charitable activity, but the Department has not articulated what constitutes an adequate amount of charitable activity. After *Provena*, the Department denied property tax exemption applications of 3 more hospitals, and, on the effective date of this amendatory Act of the 97th General Assembly, at least 20 other hospitals are awaiting rulings on applications for property tax exemption.

(2) In *Provena*, two Illinois Supreme Court justices opined that "setting a monetary or quantum standard is a complex decision which should be left to our legislature, should it so choose". The Appellate Court in *Provena* stated: "The language we use in the State of Illinois to determine whether real property is used for a charitable purpose has its genesis in our 1870 Constitution. It is obvious that such language may be difficult to apply to the modern face of our nation's health care delivery systems". The court noted the many significant changes in the health care system since that time, but concluded that taking these changes into account is a matter of public policy, and "it is the legislature's job, not ours, to make public policy".

(3) It is essential to ensure that tax exemption law relating to hospitals accounts for the complexities of the modern health care delivery system. Health care is moving beyond the walls of the hospital. In addition to treating individual patients, hospitals are assuming responsibility for improving the health status of communities and populations. Low-income and underserved communities benefit disproportionately by these activities.

(4) The Supreme Court has explained that: "the fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens". Hospitals relieve the burden of government in many ways, but most significantly through their participation in and substantial financial subsidization of the Illinois Medicaid program, which could not operate without the participation and partnership of Illinois hospitals.

(5) Working with the Illinois hospital community and other interested parties, the General Assembly has developed a comprehensive combination of related legislation

that addresses hospital property tax exemption, significantly increases access to free health care for indigent persons, and strengthens the Medical Assistance program. It is the intent of the General Assembly 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". It is also the intent of the General Assembly to establish quantifiable standards for the issuance of charitable exemptions for such property. 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.

(b) For the purpose of this Section and Section 15-10, the following terms shall have the meanings set forth below:

(1) "Hospital" means any institution, place, building, buildings on a campus, or other health care facility located in Illinois that is licensed under the Hospital Licensing Act and has a hospital owner.

(2) "Hospital owner" means a not-for-profit corporation that is the titleholder of a hospital, or the owner of the beneficial interest in an Illinois land trust that is the titleholder of a hospital.

(3) "Hospital affiliate" means any corporation, partnership, limited partnership, joint venture, limited liability company, association or other organization, other than a hospital owner, that directly or indirectly controls, is controlled by, or is under common control with one or more hospital owners and that supports, is supported by, or acts in furtherance of the exempt health care purposes of at least one of those hospital owners' hospitals.

(4) "Hospital system" means a hospital and one or more other hospitals or hospital affiliates related by common control or ownership.

(5) "Control" relating to hospital owners, hospital affiliates, or hospital systems means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through ownership of assets, membership interest, other voting or governance rights, by contract or otherwise.

(6) "Hospital applicant" means a hospital owner or hospital affiliate that files an application for a property tax exemption pursuant to Section 15-5 and this Section.

(7) "Relevant hospital entity" means (A) the hospital owner, in the case of a hospital applicant that is a hospital owner, and (B) at the election of a hospital applicant that is a hospital affiliate, either (i) the hospital affiliate or (ii) the hospital system to which the hospital applicant belongs, including any hospitals or hospital affiliates that are related by common control or ownership.

(8) "Subject property" means property for which a hospital applicant files an application for an exemption pursuant to Section 15-5 and this Section.

(9) “Hospital year” means the fiscal year of the relevant hospital entity, or the fiscal year of one of the hospital owners in the hospital system if the relevant hospital entity is a hospital system with members with different fiscal years, that ends in the year for which the exemption is sought.

(c) 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. For purposes of making the calculations required by this subsection (c), if the relevant hospital entity is a hospital owner that owns more than one hospital, the value of the services or activities listed in subsection (e) shall be calculated on the basis of only those services and activities relating to the hospital that includes the subject property, and the relevant hospital entity’s estimated property tax liability shall be calculated only with respect to the properties comprising that hospital. In the case of a multi-state hospital system or hospital affiliate, the value of the services or activities listed in subsection (e) shall be calculated on the basis of only those services and activities that occur in Illinois and the relevant hospital entity’s estimated property tax liability shall be calculated only with respect to its property located in Illinois.

Notwithstanding any other provisions of this Act, any parcel or portion thereof, that is owned by a for-profit entity whether part of the hospital system or not, or that is leased, licensed or operated by a for-profit entity regardless of whether healthcare services are provided on that parcel shall not qualify for exemption. If a parcel has both exempt and non-exempt uses, an exemption may be granted for the qualifying portion of that parcel. In the case of parking lots and common areas serving both exempt and non-exempt uses those parcels or portions thereof may qualify for an exemption in proportion to the amount of qualifying use.

(d) The hospital applicant shall include information in its exemption application establishing that it satisfies the requirements of subsection (c). For purposes of making the calculations required by subsection (c), the hospital applicant may for each year elect to use either (1) the value of the services or activities listed in subsection (e) for the hospital year or (2) the average value of those services or activities for the 3 fiscal years ending with the hospital year. If the relevant hospital entity has been in operation for less than 3 completed fiscal years, then the latter calculation, if elected, shall be performed on a pro rata basis.

(e) Services that address the health care needs of low-income or underserved individuals or relieve the burden of government with regard to health care services. The following services and activities shall be considered for purposes of making the calculations required by subsection (c):

(1) Charity care. Free or discounted services provided pursuant to the relevant hospital entity’s financial assistance policy, measured at cost, including discounts provided under the Hospital Uninsured Patient Discount Act.

(2) Health services to low-income and underserved individuals. Other unreimbursed costs of the relevant hospital entity for providing without charge, paying for, or subsidizing goods, activities, or services for the purpose of addressing the health of low-income or underserved individuals. Those activities or services may include, but are not limited to: financial or in-kind support to affiliated or unaffiliated hospitals, hospital affiliates, community clinics, or programs that treat low-income or underserved individuals; paying for or subsidizing health care professionals who care for low-income or underserved individuals; providing or subsidizing outreach or educational services to low-income or underserved individuals for disease management and prevention; free or subsidized goods, supplies, or services needed by low-income or underserved individuals because of their medical condition; and prenatal or childbirth outreach to low-income or underserved persons.

(3) Subsidy of State or local governments. Direct or indirect financial or in-kind subsidies of State or local governments by the relevant hospital entity that pay for or subsidize activities or programs related to health care for low-income or underserved individuals.

(4) Support for State health care programs for low-income individuals. At the election of the hospital applicant for each applicable year, either (A) 10% of payments to the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) under Medicaid or other means-tested programs, including, but not limited to, General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program or (B) the amount of subsidy provided by the relevant hospital entity and any hospital affiliate designated by the relevant hospital entity (provided that such hospital affiliate's operations provide financial or operational support for or receive financial or operational support from the relevant hospital entity) to State or local government in treating Medicaid recipients and recipients of means-tested programs, including but not limited to General Assistance, the Covering ALL KIDS Health Insurance Act, and the State Children's Health Insurance Program. The amount of subsidy for purposes of this item (4) is calculated in the same manner as unreimbursed costs are calculated for Medicaid and other means-tested government programs in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly; provided, however, that in any event unreimbursed costs shall be net of fee-for-services payments, payments pursuant to an assessment, quarterly payments, and all other payments included on the schedule H of the IRS form 990.

(5) Dual-eligible subsidy. The amount of subsidy provided to government by treating dual-eligible Medicare/Medicaid patients. The amount of subsidy for purposes of this item (5) is calculated by multiplying the relevant hospital entity's unreimbursed costs for Medicare, calculated in the same manner as determined in the Schedule H of IRS Form 990 in effect on the effective date of this amendatory Act of the 97th General Assembly, by the relevant hospital entity's ratio of dual-eligible patients to total Medicare patients.

(6) Relief of the burden of government related to health care of low-income individuals. Except to the extent otherwise taken into account in this subsection, the portion of unreimbursed costs of the relevant hospital entity attributable to providing, paying for, or subsidizing goods, activities, or services that relieve the burden of government related to health care for low-income individuals. Such activities or services shall include, but are not limited to, providing emergency, trauma, burn, neonatal, psychiatric, rehabilitation, or other special services; providing medical education; and conducting medical research or training of health care professionals. The portion of those unreimbursed costs attributable to benefiting low-income individuals shall be determined using the ratio calculated by adding the relevant hospital entity's costs attributable to charity care, Medicaid, other means-tested government programs, Medicare patients with disabilities under age 65, and dual-eligible Medicare/Medicaid patients and dividing that total by the relevant hospital entity's total costs. Such costs for the numerator and denominator shall be determined by multiplying gross charges by the cost to charge ratio taken from the hospitals' most recently filed Medicare cost report (CMS 2252-10 Worksheet C, Part I). In the case of emergency services, the ratio shall be calculated using costs (gross charges multiplied by the cost to charge ratio taken from the hospitals' most recently filed Medicare cost report (CMS 2252-10 Worksheet C, Part I)) of patients treated in the relevant hospital entity's emergency department

(7) Any other activity by the relevant hospital entity that the Department determines relieves the burden of government or addresses the health of low-income or underserved individuals.

(f) For purposes of making the calculations required by subsections (c) and (e):

(1) particular services or activities eligible for consideration under any of the paragraphs (1) through (7) of subsection (e) may not be counted under more than one of those paragraphs; and

(2) the amount of unreimbursed costs and the amount of subsidy shall not be reduced by restricted or unrestricted payments received by the relevant hospital entity as contributions deductible under Section 170(a) of the Internal Revenue Code.

(g) Estimation of Exempt Property Tax Liability. The estimated property tax liability used for the determination in subsection (c) shall be calculated as follows:

(1) "Estimated property tax liability" means the estimated dollar amount of property tax that would be owed, with respect to the exempt portion of each of the relevant hospital entity's properties that are already fully or partially exempt, or for which an exemption in whole or in part is currently being sought, and then aggregated as applicable, as if the exempt portion of those properties were subject to tax, calculated with respect to each such property by multiplying:

(A) the lesser of (i) the actual assessed value, if any, of the portion of the property for which an exemption is sought or (ii) an estimated assessed value of the exempt

portion of such property as determined in item (2) of this subsection (g), by:

(B) the applicable State equalization rate (yielding the equalized assessed value), by

(C) the applicable tax rate.

(2) The estimated assessed value of the exempt portion of the property equals the sum of (i) the estimated fair market value of buildings on the property, as determined in accordance with subparagraphs (A) and (B) of this item (2), multiplied by the applicable assessment factor, and (ii) the estimated assessed value of the land portion of the property, as determined in accordance with subparagraph (C).

(A) The "estimated fair market value of buildings on the property" means the replacement value of any exempt portion of buildings on the property, minus depreciation, determined utilizing the cost replacement method whereby the exempt square footage of all such buildings is multiplied by the replacement cost per square foot for Class A Average building found in the most recent edition of the Marshall & Swift Valuation Services Manual, adjusted by any appropriate current cost and local multipliers.

(B) Depreciation, for purposes of calculating the estimated fair market value of buildings on the property, is applied by utilizing a weighted mean life for the buildings based on original construction and assuming a 40-year life for hospital buildings and the applicable life for other types of buildings as specified in the American Hospital Association publication "Estimated Useful Lives of Depreciable Hospital Assets". In the case of hospital buildings, the remaining life is divided by 40 and this ratio is multiplied by the replacement cost of the buildings to obtain an estimated fair market value of buildings. If a hospital building is older than 35 years, a remaining life of 5 years for residual value is assumed; and if a building is less than 8 years old, a remaining life of 32 years is assumed.

(C) The estimated assessed value of the land portion of the property shall be determined by multiplying (i) the per square foot average of the assessed values of three parcels of land (not including farm land, and excluding the assessed value of the improvements thereon) reasonably comparable to the property, by (ii) the number of square feet comprising the exempt portion of the property's land square footage.

(3) The assessment factor, State equalization rate, and tax rate (including any special factors such as Enterprise Zones) used in calculating the estimated property tax liability shall be for the most recent year that is publicly available from the applicable chief county assessment officer or officers at least 90 days before the end of the hospital year.

(4) The method utilized to calculate estimated property tax liability for purposes of this Section 15-86 shall not be utilized for the actual valuation, assessment, or taxation of property pursuant to the Property Tax Code.

(h) Application. Each hospital applicant applying for a property tax exemption pursuant to Section 15-5 and this Section shall use an application form provided by the

Department. The application form shall specify the records required in support of the application and those records shall be submitted to the Department with the application form. Each application or affidavit shall contain a verification by the Chief Executive Officer of the hospital applicant under oath or affirmation stating that each statement in the application or affidavit and each document submitted with the application or affidavit are true and correct. The records submitted with the application pursuant to this Section shall include an exhibit prepared by the relevant hospital entity showing (A) the value of the relevant hospital entity's services and activities, if any, under paragraphs (1) through (7) of subsection (e) of this Section stated separately for each paragraph, and (B) the value relating to the relevant hospital entity's estimated property tax liability under subsections (g)(1)(A), (B), and (C), subsections (g)(2)(A), (B), and (C), and subsection (g)(3) of this Section stated separately for each item. Such exhibit will be made available to the public by the chief county assessment officer. Nothing in this Section shall be construed as limiting the Attorney General's authority under the Illinois False Claims Act.

(i) Nothing in this Section shall be construed to limit the ability of otherwise eligible hospitals, hospital owners, hospital affiliates, or hospital systems to obtain or maintain property tax exemptions pursuant to a provision of the Property Tax Code other than this Section.

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No. 122203

IN THE
SUPREME COURT OF ILLINOIS

CONSTANCE OSWALD, Plaintiff-Appellant, v. BRIAN HAMER, Director of the Illinois Department of Revenue, and the ILLIOIS DEPARTMENT OF REVENUE, Defendant-Appellee, and ILLINOIS HOSPITAL ASSOCIATION, Intervenor-Defendant-Appellee.	On Appeal from the Appellate Court of Illinois, First District, No. 1-15-2691. There heard on appeal from the Circuit Court of Cook County, County Department (transferred to Law Division), No. 2012 CH 42723. The Honorable Robert Lopez-Cepero, Judge Presiding.

NOTICE OF FILING

TO: Lisa Madigan, Attorney General
David L. Franklin, Solicitor General
Carl J. Elitz, Asst. Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601
civilappeals@atg.state.il.us
celitz@atg.state.il.us

Mark D. Deaton
Senior Vice-President and General Counsel
Illinois Health and Hospital Association
1151 East Warrenville Road
P.O. Box 315
Naperville, IL 60566
mdeaton@team-iha.org

Steven F. Pflaum
Tonya G. Newman
Collette A. Brown
Neal, Gerber & Eisenberg, LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801
spflaum@nge.com
tnewman@nge.com
cbrown@nge.com

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Carolyn Taft Grosboll
SUPREME COURT CLERK

PLEASE TAKE NOTICE that on November 1, 2017, Plaintiff-Appellant electronically submitted her Brief of Plaintiff-Appellant to the Clerk of the Supreme Court of Illinois via the electronic filing system to be filed electronically. A copy of the Brief of Plaintiff-Appellant is attached and hereby served upon you.

Dated: November 1, 2017

Respectfully submitted,

/s/ Kenneth D. Flaxman
Attorneys for Plaintiff-Appellant,
Constance Oswald

Edward T. Joyce
Kenneth Flaxman
The Law Offices of Edward T. Joyce & Associates, P.C.
135 South LaSalle Street, Suite 2200
Chicago, Illinois 60603
(312) 641-2600
ejoyce@jocyelaw.com
kflaxman@joycelaw.com

Joan M. Mannix
Joan M. Mannix, Ltd.
135 South LaSalle Street, Suite 2200
Chicago, IL 60603
(312) 521-5845
jmannix@joanmannixltd.com
jmannixlaw@gmail.com

CERTIFICATE OF SERVICE

Kenneth Flaxman, an attorney, hereby certifies that on November 1, 2017, he caused copies of the aforementioned Brief of Plaintiff-Appellant to be served upon by following by electronic mail:

Lisa Madigan, Attorney General Carolyn E. Shapiro, Solicitor General Carl J. Elitz, Asst. Attorney General 100 W. Randolph Street, 12th Floor Chicago, IL 60601 civilappeals@atg.state.il.us celitz@atg.state.il.us	Steven F. Pflaum Tonya G. Newman Collette A. Brown Neal, Gerber & Eisenberg, LLP Two North LaSalle Street, Suite 1700 Chicago, IL 60602 spflaum@nge.com tnewman@nge.com cbrow@nge.com
Mark D. Deaton, Senior Vice President & General Counsel Illinois Hospital Association 1151 East Warrenville Road P.O. Box 315 Naperville, IL 60566 mdeaton@team-iha.org	Caroline Chapman Miriam Hallbauer LAF 120 S. LaSalle Street, Suite 900 Chicago, IL 60603 mhalbauer@lafchiago.org
John M. Izzo Eugene C. Edwards Hauser Izzo, LLC 19730 Governor's Highway, Suite 10 Flossmoor, IL 60422 eedwards@hauserizzo.com	

Under penalties provided by law pursuant to Section 1-109 of the Rules of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Kenneth D. Flaxman