Nos. 120427 & 120433 (consolidated)

IN THE SUPREME COURT OF ILLINOIS

THE CARLE FOUNDATION, an Illinois not-for-profit corporation,

Plaintiff–Appellant,

v.

THE ILLINOIS DEPARTMENT OF REVENUE and CONSTANCE BEARD, in her official capacity as Director of the Illinois Department of Revenue,

Defendants–Appellants,

and

CUNNINGHAM TOWNSHIP; DAN STEBBINS, in his official capacity as Cunningham Township Assessor; THE CITY OF URBANA; THE CHAMPAIGN COUNTY BOARD OF REVIEW; DIANNE HAYS and ELIZABETH BURGENER-PATTON, in their official capacities as members of the Champaign County Board of Review; PAULA BATES, in her official capacity as Champaign County Supervisor of Assessments; DANIEL J. WELCH, in his official capacity as Champaign County Treasurer; and CHAMPAIGN COUNTY,

Defendants–Appellees.

On appeal from the Illinois Appellate Court, Fourth District, Case Nos. 4-14-0795 & 4-14-0845 (consolidated)

There on appeal from the Sixth Judicial Circuit Court, Champaign County, Illinois, Case No. 08 L 0202, Hon. Chase M. Leonhard, Judge Presiding

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AMICUS CURIAE BRIEF OF THE ILLINOIS HEALTH AND HOSPITAL ASSOCIATION

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POINTS AND AUTHORITIES

STATEMENT OF INTEREST

The Illinois Health and Hospital Association ("IHA"), on behalf of its member institutions, submits this amicus curiae brief in support of Plaintiff–Appellant the Carle Foundation ("Carle"). The IHA is a statewide not-for-profit association with a membership of over 200 hospitals and nearly 50 health systems. For over 80 years, the IHA has served as a representative and advocate for its members, addressing the social, economic, political, and legal issues affecting the delivery of high-quality healthcare in Illinois. As the representative of almost every hospital in the state, the IHA has a profound interest in this case. The IHA respectfully offers this amicus curiae brief in hopes of providing information not addressed by the litigants that will help the Court evaluate the litigants' arguments more thoroughly.

INTRODUCTION

Charitable property-tax exemption has been a cornerstone of the Illinois hospital community for over 100 years. It traditionally has involved satisfying two requirements: charitable ownership, required by statute, and charitable use, required by the Illinois Constitution.

After this Court's decision in *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368 (2010), Illinois hospitals and other interested parties worked with the General Assembly to create a new category of charitable ownership for not-for-profit hospitals and hospital affiliates. Their efforts led to the enactment of Section 15–86 of the Property Tax Code, which imposes a quantifiable service- and activity-based standard as a statutory precondition to property-tax exemption. *See* 35 ILCS 200/15–86(c), (e). To be eligible for an exemption under Section 15–86, the value of a hospital's

qualifying services or activities for a given year must equal or exceed the hospital's estimated property-tax liability.

Section 15–86 was not enacted to replace or modify the Illinois Constitution's charitable-use requirement. Yet, that is how the appellate court in this case interpreted the statute. By finding Section 15–86 facially unconstitutional, the appellate court disregarded the careful work of the General Assembly, the Illinois hospital community, and other key stakeholders to create tax-exemption standards that are clear to hospitals and public officials, promote the provision of healthcare services to low-income or underserved individuals, and ensure that society receives a measurable benefit for bestowing property-tax exemption on hospitals.

Section 15–86, which is entitled to a presumption of constitutionality, imposes a condition on property-tax exemption separate and independent from the Illinois Constitution's charitable-use requirement. The statute need not expressly incorporate that requirement to comport with it. Instead, the statute and the Constitution can, and must, be construed consistently with one another to ensure that the statutory requirement of charitable ownership does not displace the constitutional requirement of charitable use. *See infra* Arg., § I(E)(1).

Alternatively, even if Section 15–86 is not construed in this way, there are, by the appellate court's own admission, at least some circumstances in which an exemption under Section 15–86 would be constitutional. *See Carle Found. v. Cunningham Twp.*, 2016 IL App (4th) 140795, ¶ 160. In particular, during a given tax year, a hospital might provide qualifying services sufficient to satisfy Section 15–86 *and* use its property primarily for charitable purposes, even if Section 15–86 is not construed to require

charitable use. This possibility alone warrants upholding the statute. *See infra* Arg., § I(E)(2).

In addition to reversing the appellate court's declaration that Section 15–86 of the Property Tax Code is unconstitutional, this Court should address the fundamental question left unresolved by the *Provena* decision and provide much-needed guidance on the charitable-use test that Illinois not-for-profit hospitals must satisfy to qualify for property-tax exemption under the Illinois Constitution. This guidance is critical to the hospital community, the Department of Revenue ("DOR"), county boards of review, and local taxing districts as they continue to navigate this area of the law. It also is important to charitable organizations other than hospitals, given that all charitable organizations seeking property-tax exemption are subject to the constitutional requirement of charitable use.

The constitutional charitable-use test should depend on whether property is used for one or more of the charitable purposes that Illinois courts have recognized for decades. It should not impose a minimum monetary quantum of charitable care on hospitals across the state, an issue the General Assembly already has addressed with Section 15–86's statutory charitable-ownership requirement. *See infra* Arg. § II(A)(1)–(2). It also should not implicate the factors set forth in *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 156–57 (1968), which pertain to defining an "institution[] of public charity" under Section 15–65 of the Property Tax Code, not to the constitutional charitable-use requirement. *See infra* Arg., § II(A)(3).

For these reasons, the IHA requests that this Court reverse the appellate court's ruling that Section 15–86 of the Property Tax Code is facially unconstitutional, clarify the

test for determining whether hospital property meets the Illinois Constitution's charitable-use requirement, and remand the case to the circuit court for further proceedings consistent with the Court's decision.

FACTS ABOUT ILLINOIS HOSPITALS

I. Hospital Ownership

Illinois has 222 hospitals serving its 12.8 million citizens. These hospitals fall into the following categories:

- 155 Illinois hospitals are operated by not-for-profit charitable organizations.
- 31 Illinois hospitals are operated by for-profit, investor-owned corporations.
- 36 Illinois hospitals are operated by the federal, state, or local government.

See IHA Member Profile Database; *see also* Ill. Dep't Pub. Health Annual Hosp. Questionnaire (2014).

II. Types of Hospitals

In addition to differences in ownership, Illinois hospitals vary tremendously in other ways. They generally fall into the following categories:

- **Community hospitals** range in size from 150 to over 400 beds. These are general acute-care hospitals, typically found in cities and suburbs, that offer a wide variety of services.
- **Critical Access Hospitals ("CAHs")** are located in rural communities and have 25 or fewer beds. A CAH often is the only

hospital in a county and may have a medical staff of 5 to 10 physicians. There are 51 CAHs in Illinois.

- **Disproportionate-share hospitals** or **safety-net hospitals** usually are located in inner-city areas or rural counties. They are referred to in this way because they treat a disproportionately high number of Medicaid and uninsured patients.
- **Specialty hospitals** focus on particular areas of care such as rehabilitation, psychiatric treatment, or pediatric treatment.
- **Academic medical centers** are several-hundred-bed teaching hospitals affiliated with medical schools. Illinois has 5 academic medical centers.

See IHA Member Profile Database.

III. General Statistics

In 2014, the most recent year for which statistics are available, Illinois hospitals:

- Admitted 1.4 million inpatients, *see* Ill. Dep't Pub. Health Annual Hosp. Questionnaire (2014);
- Treated 89,190 outpatients every day, *see id.*;
- Treated 5.3 million patients in their emergency departments, *see id.*;
- Provided over $1 billion in charity care measured at cost, *see id.*; and
- Employed over 264,000 people in Illinois, *see* Am. Hosp. Ass'n/Health Forum Annual Survey of Hosps. (2014).

IV. Financial Challenges

Illinois hospitals face tremendous financial challenges, as demonstrated by the following statistics for the year 2014:

- 1.2 million Illinoisans (9.7% of the population) were uninsured. *See* United States Census Bureau, *American Factfinder, Community Facts, available at*: http://factfinder.census.gov/faces/tabLeservices/jsf/pages/productview.xthml?src+bkmk.
- 41% of Illinois hospitals had negative or thin (less than 2%) operating margins. *See* Medicare Cost Reports, *Healthcare Cost Report Information System (HCRIS)* (March 2016).
- 29% of patients at the typical Illinois hospital were covered by Medicare, which, on average, paid 89% of the cost of treating Medicare patients. In other words, the typical hospital lost money on Medicare and subsidized the federal government's operation of this program. *See* Ill. Dep't Pub. Health Annual Hosp. Questionnaire (2014); Medicare Cost Reports, *Healthcare Cost Report Information System* **(***HCRIS*) (2014).
- 21% of patients at the typical Illinois hospital were covered by Medicaid, which pays far less than cost. *See* Ill. Dep't Pub. Health Annual Hosp. Questionnaire (2014).
- Illinois hospitals paid a special assessment of $1.181 billion to the State of Illinois to help support the Medicaid program, meaning that

a portion of Medicaid reimbursement to the hospitals was contributed by the hospitals themselves. *See* 305 ILCS 5/5A–2.

- For the typical Illinois hospital, 50% of its patients were insured by federal or state programs that did not cover the cost of treating those patients. For some hospitals, especially in inner-city and rural communities, as many as 70% to 80% of their patients were covered by Medicare or Medicaid. *See* Ill. Dep't Pub. Health Annual Hosp. Questionnaire (2014).

ARGUMENT

I. Section 15–86 of the Property Tax Code is constitutional.

As explained in further detail below, understanding the origin, operation, and constitutionality of Section 15–86 of the Property Tax Code requires understanding two phrases that permeate the law of charitable property-tax exemption in Illinois: "charitable-use test" and "charitable-ownership test."

The phrase "charitable-use test" is shorthand for the provision in Article IX, Section 6, of the Illinois Constitution that says the General Assembly may exempt property from taxation if it is "used exclusively for . . . charitable purposes." Ill. Const. 1970, art. IX, § 6. The charitable-use test is constitutional in nature and cannot be overridden by the General Assembly.

The phrase "charitable-ownership test" is shorthand for the requirement in Section 15–65 of the Property Tax Code that property must be owned by an "institution[] of public charity" to be entitled to an exemption. 35 ILCS 200/15–65(a). Hospitals relied on Section 15–65 to obtain exemptions before Section 15–86 was enacted. That statute has

not been repealed, and many types of charitable organizations still rely on it to seek property-tax exemption. The charitable-ownership test is a statutory requirement created by the General Assembly.

In very simplistic terms, these two tests have been characterized as follows:

- The constitutional charitable-use test looks at the *use* of property for charitable purposes.
- Courts have suggested that the constitutional charitable-use test falls within the purview of the judiciary.
- The statutory charitable-ownership test looks at characteristics of the property's *owner*.
- The statutory charitable-ownership test falls within the purview of the legislature, which may add requirements that go beyond the constitutional charitable-use test.

The meaning of and differences between constitutional charitable use and statutory charitable ownership support the conclusion that the General Assembly did not intend to ignore or abrogate the constitutional charitable-use requirement for property-tax exemption when it enacted Section 15–86. The General Assembly merely was exercising its authority to establish a new statutory charitable-ownership test to be applied in addition to, *not* in place of, the constitutional charitable-use test.

A. To qualify for a charitable exemption, the constitutional charitable-use requirement must be met.

Article IX, section 6, of the Illinois Constitution states:

> 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 (emphases added).

Article IX, section 6, does not require as a condition of a charitable exemption that the property be owned by a charitable institution or by any particular type of owner. It requires merely that the property be "used exclusively for . . . charitable purposes." *See id*. Charitable ownership is an additional statutory prerequisite to exemption, which the legislature has imposed. *See, e.g.,* 35 ILCS 200/15–65(a); 35 ILCS 200/15–86(a)(1); *see also N. Shore Post No. 21 of the Am. Legion v. Korzen*, 38 Ill. 2d 231, 233 (1967) ("[I]n exempting property the legislature may place restrictions, limitations, and conditions on [property-tax] exemptions as may be proper by general law.").

B. For over a decade, confusion and turmoil have existed over the meaning of the constitutional charitable-use requirement.

Beginning in 2002, a controversy erupted over whether the constitutional charitable-use test required hospitals to provide a specific amount of so-called "charity care" (i.e., free or discounted services to low-income individuals). This Court had never held that the Illinois Constitution required a specific quantum of charity care. To the contrary, in *Quad Cities Open v. City of Silvis*, 208 Ill. 2d 498 (2004), the Court ruled that "[a] charity is not defined by percentages" and upheld the charitable exemption of a golf tournament from a municipal amusement tax even though the tournament donated only an "exceedingly small fraction" of its revenue to charity. *Id*. at 516.

Despite this clear guidance from the Court, in 2006, the DOR's then-Director based the DOR's denial of Provena Covenant Medical Center's ("Provena") property-tax exemption on the small percentage of Provena's charity care compared to its overall

budget. The DOR's administrative-law judge had recommended granting the exemption, correctly explaining that "[t]he Supreme Court . . . specifically rejected the argument that the percentage of charity care should be determinative of whether an institution is entitled to a charitable purposes exemption." *Dep't of Revenue v. Provena Covenant Med. Ctr.*, No. 04-PT-0014, Tax Year 2002, ALJ Recommendation (Oct. 17, 2005) at 50; *see also Provena Covenant Med. Ctr. v. Dep't of Revenue*, 384 Ill. App. 3d 734, 736 (4th Dist. 2008). The Director nevertheless ruled that "[t]o obtain the exemption [Provena] was required to prove that its primary purpose was *charitable care*. [Provena's] financial figures fall far short of meeting the primary purpose standard." *Provena*, 384 Ill. App. 3d at 753 (emphasis added) (internal quotation marks omitted).

The Director's decision did two things. First, it transformed the constitutional requirement of using property primarily for "charitable purposes" to using property primarily for "charity care"—a significant shift. Second, it appeared to establish a new quantitative charitable-exemption test based on the amount of free and discounted care provided by a hospital. In doing so, the decision did not specify the amount of free and discounted care required to pass the test, just that Provena had provided too little.

On judicial review, the circuit court reversed the Director's decision, concluding that Provena was entitled to a charitable exemption. *Id*. at 737. The appellate court subsequently reversed the circuit court's decision and upheld the Director's decision. *Id*. at 769.

As the *Provena* case made its way through the various layers of administrative and judicial review, the uncertainty over the test for tax exemption threatened the entire financial foundation of not-for-profit hospital care. Hospitals were on notice that the DOR would focus on the percentage of their free and discounted care, but they had no

idea what amount would be deemed adequate. In 2006, the hospital-bond market stopped functioning in Illinois from fear that loss of tax exemption would weaken the financial condition and creditworthiness of hospitals. Construction and modernization projects worth hundreds of millions of dollars came to a halt, and the effects rippled out to workers, vendors, suppliers, and, most importantly, patients and communities that depended on hospitals for up-to-date healthcare.

C. In *Provena*, this Court was unable to determine the proper test for deciding whether a hospital satisfies the constitutional charitable-use requirement.

In *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368 (2010), a majority of this Court held that, based on the evidence of record, the DOR properly concluded that the property in question was not *owned by* a charitable institution and therefore was not entitled to a charitable exemption under the *statutory test*. *Id*. at 390–93, 411–12. In doing so, the majority clarified that five of the criteria first set forth in *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 156–57 (1968), apply to determining whether property is owned by a "charitable institution" as required by Section 15–65 of the Property Tax Code. *See Provena*, 236 Ill. 2d at 390, 411. The majority stated:

> In *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 156–57 (1968), we identified the distinctive characteristics of a charitable institution as follows: (1) it has no capital, capital stock, or shareholders; (2) it earns no profits or dividends but rather derives its funds mainly from private and public charity and holds them in trust for the purposes expressed in the charter; (3) it dispenses charity to all who need it and apply for it; (4) it does not provide gain or profit in a private sense to any person connected with it; and (5) it does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Id.

Crucially, the Court in *Provena* reached no majority on the proper test for deciding whether a hospital satisfies the Illinois Constitution's charitable-use requirement. Three justices considered whether the plaintiff engaged in activity that helped reduce the government's burden of caring for needy individuals and whether the plaintiff provided more than a "*de minimis*" amount of "free or discounted care." *Id*. at 397–408. Two justices rejected the adoption of these criteria in evaluating charitable use. *Id*. at 412–17. And two justices did not participate in the Court's deliberations. *Id*. at 411.

D. In response to *Provena*, the General Assembly, with input from other key stakeholders, enacted Section 15–86.

In response to this Court's decision in *Provena*, following extensive negotiations among the Governor's Office, the DOR, the Illinois Attorney General, Cook County, patient-advocacy organizations, and the Illinois hospital community, the General Assembly enacted Section 15–86 of the Property Tax Code. 35 ILCS 200/15–86.

Section 15–86's legislative findings expressly reference this Court's *Provena* decision. The findings indicate that, "[d]espite 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 . . . ." 35 ILCS 200/15–86(a)(1) (emphasis added). They further note that, "[i]n *Provena*, two Illinois Supreme Court justices opined that 'setting a monetary or quantum of care standard is a complex decision which should be left to our legislature, should it so choose.'" 35 ILCS 200/15–86(a)(2).

The findings go on to describe the state of the modern healthcare system in relation to tax-exemption law, noting that:

> 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 communities benefit disproportionately by these activities. . . .

35 ILCS 200/15–86(a)(3). They also identify the legislative backdrop against which Section 15–86 was conceived:

> 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.

35 ILCS 200/15–86(a)(5).

Finally, the findings clearly set forth the General Assembly's intent in enacting Section 15–86:

> 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) (emphases added).

E. Section 15–86 can be applied validly as written.

Under Section 15–86:

> 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 in which the exemption is sought.

35 ILCS 200/15–86(c). Section 15–86 can be applied validly as written and should not have been overturned.

1. Section 15–86 must be construed to supplement the Illinois Constitution's charitable-use requirement.

In analyzing Section 15–86, the statute must be "presumed constitutional," and this Court must uphold its constitutionality if "reasonably possible." *McElwain v. Office of Ill. Sec'y of State*, 2015 IL 117170, ¶ 14; *see Hayashi v. Ill. Dep't of Prof'l & Fin. Regulation*, 2014 IL 116023, ¶ 22 ("A statute is presumed to be constitutional, and . . . . [a] court has a duty to construe a statute in a manner that upholds its validity and constitutionality if it can reasonably be done."); *People v. Boeckmann*, 238 Ill. 2d 1, 6 (2010) ("[S]tatutes are presumed constitutional. . . . [, and] [t]his court must construe a statute in a manner upholding its constitutionality if reasonably possible.").

Section 15–86 also must be read *in pari materia* with the provisions of article IX, section 6, of the Illinois Constitution. *Citizens Opposing Pollution v. ExxonMobile Coal U.S.A.*, 2012 IL 111286, ¶ 24 ("Under 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."); *see City of Champaign v. Hill*, 29 Ill. App. 2d 429, 445 (4th Dist. 1961) (applying *in pari materia* doctrine to related statutory and constitutional provisions); *see also McCullough v. Commonwealth of Virginia*, 172 U.S. 102 (1898) ("It is elementary law that every statute is to be read in the light of the constitution. However broad and general its language, it cannot be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach."); *Cooper Mfg. Co. v. Ferguson*, 113 U.S. 727, 733 (1885) ("As the

clause in the constitution and the act of the legislature relate to the same subject, like statutes *in pari materia*, they are to be construed together.").

Taking these well-established principles of statutory construction into consideration, Section 15–86 of the Property Tax Code need not expressly incorporate the Illinois Constitution's charitable-use requirement to comport with that requirement. Instead, the statute and the Constitution can, and must, be construed consistently with one another to ensure that the statutory requirement of charitable ownership does not displace the constitutional requirement of charitable use.

This approach is straightforward. A party seeking a property-tax exemption must prove that its property satisfies both the exempting statute and the constitutional charitable-use requirement. *See, e.g., Provena*, 236 Ill. 2d at 388 (party claiming exemption must show that property meets both statutory and constitutional requirements). The legislature cannot, by statute, declare property to be "ipso facto" exempt, *see Eden Ret. Center, Inc. v. Dep't of Revenue*, 213 Ill. 2d 273, 290 (2004), and it has not done so here, *see* 35 ILCS 200/15–86(a)(5) ("It is not the intent of the General Assembly to declare any property exempt ipso facto . . . ."). On the contrary, Section 15–86 sets forth the statutory standard for charitable "ownership" of property by not-for-profit hospitals, *see* 35 ILCS 200/15–86(a)(5), and the Illinois Constitution, which must be "considered with reference to" Section 15–86, *see ExxonMobile*, 2012 IL 111286, ¶ 24, sets forth the standard for charitable use of such property, as it always has. These standards are to be applied "on a case-by-case basis" in determining whether particular property qualifies for a charitable exemption. *See* 35 ILCS 200/15–86(a)(5).

Section 15–86's use of the language "shall issue" does not alter this analysis. Whether the word "shall" is mandatory or directory depends on the legislature's intent. *See People v. Robinson*, 217 Ill. 2d 43, 54 (2005). Here, the legislature's finding that Section 15–86 was not intended "to declare any property exempt ipso facto" illustrates that the statute's use of the "shall issue" language is directory. If the language were mandatory, then Section 15–86 would, contrary to the legislature's intent, declare uses that meet the requirements of Section 15–86 exempt ipso facto. Section 15–86 also does not prescribe any consequence for the government's failure to issue an exemption, further suggesting that the legislature did not intend exemption to be mandatory. *See Robinson*, 217 Ill. 2d at 54 ("[W]hen the statute expressly prescribes a consequence for failure to obey a statutory provision, that is very strong evidence the legislature intended that consequences to be mandatory.").

For these reasons, Section 15–86 must be construed to supplement, not negate, the Illinois Constitution's charitable-use requirement. Because the statute supplements the constitutional requirement, it is facially constitutional and should have been upheld.

2. Section 15–86 passes the no-set-of-circumstances test.

Alternatively, regardless of whether Section 15–86 is construed to require compliance with the constitutional charitable-use requirement, there are, by the appellate court's own admission, at least some circumstances in which an exemption under Section 15–86 would be constitutional. As a result, the statute is facially constitutional.

For over two decades, including as recently as June of this year, this Court has applied the no-set-of-circumstances test to evaluate facial challenges to a statute's constitutionality. *See, e.g., In re C.E.*, 161 Ill. 2d 200, 210–11 (1994); *People v. Rizzo*,

2016 IL 118599, ¶ 24. Under that test, "a facial challenge requires a showing that the statute is unconstitutional under any set of facts . . . . So long as there exists a situation in which the statute could be validly applied, a facial challenge must fail." *Rizzo*, 2016 IL 118599, ¶ 24 (internal quotation marks omitted). In contrast, "[a]n as-applied challenge requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party." *Id*. (internal quotation marks omitted).

Here, there is nothing in the record on which to premise an as-applied challenge to Section 15–86. The circuit court ruled, as a matter of law, that Carle could seek a charitable exemption by invoking Section 15–86 retroactively in a declaratory-judgment action. No evidence was presented on Section 15–86's application to the properties in question; no findings of fact were made. The circuit court did not even rule on the merits of Carle's exemption applications.

Instead, on appeal, the appellate court declared Section 15–86 facially unconstitutional, which it should not have done. As the appellate court acknowledged, there are at least some circumstances in which an exemption under Section 15–86 would be constitutional as written. *See Carle Found. v. Cunningham Twp.*, 2016 IL App (4th) 140795, ¶ 160. In particular, during a given tax year, a hospital might provide qualifying services sufficient to satisfy Section 15–86 *and* use its property primarily for charitable purposes, even if Section 15–86 is not construed to require charitable use. *See id*. ("We can imagine a hospital applicant that, during the hospital year, provided services and activities listed in subsection (e) that equaled or exceeded its estimated property tax liability and that *also* used its subject property exclusively for charitable purposes (although section 15–86, by its terms does not require such exclusively charitable use as a

condition of the charitable exemption).") (emphasis in original). Because Section 15–86 passes the no-set-of-circumstances test, which the appellate court disregarded, the statute is facially constitutional.

II. The constitutional charitable-use test should depend on whether property is used for one or more of the charitable purposes that Illinois courts have recognized for decades.

The Court's inability to agree in *Provena* on the test for the constitutional charitable-use requirement engendered "considerable uncertainty surrounding the test for charitable property tax exemption . . . ." *See* 35 ILCS 200/15–86. Although Section 15–86 was intended to eliminate that uncertainty for hospitals by imposing a quantifiable statutory charitable-ownership requirement, the appellate court's decision in this case returned the law to the state of confusion that existed before Section 15–86's enactment.

If this Court upholds Section 15–86 and acknowledges the need to satisfy the constitutional charitable-use requirement under that statute, then it also should provide guidance on how to apply the requirement after the case is remanded. *See Eden Ret. Center, Inc. v. Dep't of Revenue*, 213 Ill. 2d 273, 287 (2004) (noting that "[c]haritable use is a *constitutional* requirement" for the courts to address) (emphasis in original); *see also Pielet v. Pielet*, 2012 IL 112064, ¶ 56 ("Courts of review possess considerable discretion with respect to the disposition of cases such as this one which must be remanded for further proceedings. When appropriate, a reviewing court may address issues that are likely to recur on remand in order to provide guidance to the lower court and thereby expedite the ultimate termination of the litigation."); *In re Estate of Poole*, 207 Ill. 2d 393, 407 (2003) (commenting on an issue "not technically before [the Court]" in order "to provide guidance to the lower courts"); *People v. Fierer*, 124 Ill. 2d 176, 191 (1988)

("We have engaged in this rather lengthy discussion to provide guidance for the trial court upon retrial").

Indeed, the need for this guidance extends beyond this case. Since the appellate court's decision was announced, the DOR has suspended consideration of exemption applications under Section 15–86 pending this Court's decision here. To process those applications, the DOR needs to be instructed on the constitutional test for charitable use. This guidance also will benefit county boards of review (which make non-binding recommendations to the DOR on exemption applications), local taxing districts, and hospitals. Acknowledging the need to satisfy the constitutional charitable-use requirement under Section 15–86 without clarifying the test for doing so is not enough to provide that guidance.

As set forth below, the constitutional charitable-use test should depend on whether property is used for one or more of the charitable purposes that Illinois courts have recognized for decades. It should not impose a minimum monetary quantum of charitable care on hospitals across the state. The General Assembly resolved that public-policy debate when it created a minimum monetary requirement under Section 15–86 in accordance with the dissent's observation in *Provena* that "[s]etting a monetary or quantum standard is a complex decision which should be left to our legislature, should it so choose." *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 236 Ill. 2d 368, 415 (2010); *see* 35 ILCS 200/15–86(a)(2).

The wisdom of that observation is underscored by the fact that the constitutional charitable-use requirement applies not just to hospitals, but to every type of charitable organization seeking exemption under the Property Tax Code. This includes, among

others, YMCAs and YWCAs, scouting organizations, environmental and conservation organizations, and cultural organizations. Monetary standards that may be relevant to hospitals likely are not relevant to scout camps, standards that work for scout camps likely do not apply to art museums, and so on. Courts should avoid the public-policy morass of establishing metrics for every type of charitable organization.

The constitutional charitable-use test also should not implicate the factors set forth in *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 156–57 (1968). Those factors pertain to defining an "institution[] of public charity" under Section 15–65 of the Property Tax Code. *See* 35 ILCS 200/15–65(a). They do not pertain to the constitutional charitable-use requirement.

A. Illinois jurisprudence supports a broad, non-quantitative conception of charitable use.

Illinois jurisprudence supports a broad, non-quantitative conception of the constitutional charitable-use requirement. Central to that conception are the principles that (i) a charitable hospital's property is a gift to the community as a whole, and (ii) charitable use involves providing hospital care to everyone in a community who needs it, regardless of their ability to pay.

1. A charitable hospital's property is a gift to the community for the benefit of the community as a whole.

There is a well-known phrase in the jurisprudence of charitable property-tax exemption: "[A] charity is a gift to the general public." It is repeated in some form in virtually every Illinois Supreme Court case discussing charities from 1893 to 2010. *See Crerar v. Williams,* 145 Ill. 625, 648 (1893); *Congregational Sunday Sch. & Publ'g Soc. v. Bd. of Review*, 290 Ill. 108, 113 (1919); *People v. Young Men's Christian Ass'n of*

Chi., 365 Ill. 118, 122 (1936); *People ex rel. Hellyer v. Morton*, 373 Ill. 72, 77 (1940); *People ex rel. Cannon v. S. Ill. Hosp. Corp.*, 404 Ill. 66, 69 (1949); *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 156–57 (1968); *Quad Cities Open, Inc. v. City of Silvis*, 208 Ill. 2d 498, 510–11 (2004); *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 236 Ill. 2d 368, 400–01 (2010).

Understanding this phrase is essential to understanding the Illinois Constitution's mandate that exempt property must be used for "charitable purposes." Ill. Const. 1970, art. IX, § 6. Unfortunately, repeated misunderstanding of the phrase, and especially the word "gift," has led to much of the confusion over the constitutional charitable-use requirement.

Some courts have applied the common vernacular definition of the word "gift" to conclude that charitable organizations exist to "give gifts"—that is, to "give away" free goods and services to individual members of the public. Under this approach, in the case of hospitals, the "gift" that must be "given away" is free or discounted medical care to low-income patients. This gives rise to the mistaken instinct to look at the percentage of charity care provided by a hospital in determining whether the hospital qualifies for property-tax exemption.

a. The "gift" terminology originated in the law of wills and trusts.

In considering the word "gift" and the phrase "a gift to the general public," it is essential to recall that this terminology did not originate in tax-exemption cases, but rather in the law of wills and trusts. This Court's seminal case on the issue, *Crerar v. Williams*, 145 Ill. 625 (1893), involved a challenge to the will of industrialist John Crerar, who made a bequest to establish a library. *Id.* at 637 ("I give, devise, and bequeath all the

rest, remainder, and residue of my estate, both real and personal, for the erection, creation, maintenance, and endowment of a free public library, to be called 'The John Crerar Library,' and to be located in the city of Chicago, Illinois . . . ."). Mr. Crerar's relatives challenged that provision of the will, preferring to receive the money devoted to the bequest for themselves. *Id*. at 635.

The "gift" under consideration in *Crerar* was John Crerar's "gift" of a library to the people of Chicago. *See id*. at 648–49. The question before the Court was whether that "gift" was for a purpose recognized as charitable. *See id*. The Court concluded that Mr. Crerar's gift was, in fact, for a recognized "charitable purpose" and therefore survived the challenge by his relatives. *See id*. *Crerar* thus establishes that the word "gift" has nothing to do with "giving gifts" in the present tense. Rather, it relates to the creation or establishment of a charitable organization by means of a gift.

b. Every charitable hospital began as a gift.

Like the John Crerar Library, every charitable hospital began as a gift. Researching the history of any charitable hospital in Illinois will reveal that some person or group of persons made a charitable gift for the purpose of establishing a hospital for the benefit of the community. Sometimes it was a wealthy farmer donating land, sometimes a merchant donating money, sometimes a widow leaving her house, or sometimes a group of people (like an ethnic group) pooling their meager resources. Whatever the circumstances, charitable hospitals all began when someone gave "a gift to the general public" for the purpose of establishing a hospital. The hospital itself is the gift, and the community—an "indefinite number of persons," to use *Crerar*'s phrase—is the beneficiary. *See Crerar*, 145 Ill. at 643.

That gift, which may be, among other things, land, money, or a building, is held in trust and in perpetuity for its beneficiaries, the people of the community. That is why charities, including charitable hospitals, are known as "charitable trusts" under Illinois law. *See* 760 ILCS 55/1 *et seq*. Their property is held in trust to carry out the original donor's charitable purpose.

In the case of charitable hospitals, the charitable purpose of the original gift is providing healthcare to the community. Thus, a charitable hospital's board of trustees holds the hospital's property in trust for the community's benefit. The property is not owned by shareholders or private individuals for their own profit.

The original gift certainly can grow over the years. A $10,000 cash donation or a two-story house or 10 acres of land donated to establish a hospital 100 years ago may have grown into a $100 million enterprise thanks to the careful stewardship of a board of trustees. But the $100 million dollar enterprise still is the "gift" held in trust for the members of the community.

c. A gift to the general public has characteristics that distinguish it from private property.

Confusion over the meaning of the phrase "a gift to the general public" is illustrated by the appellate court's statement in *Provena* that "[a] new Wal-Mart would be a gift in a comparable sense—with the added bonus that it would pay property taxes." *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 384 Ill. App. 3d 734, 747 (4th Dist. 2008). A new Wal-Mart may be a "gift" in the sense that a community feels lucky to have one, but that store is owned 100% by the shareholders of Wal-Mart. Wal-Mart does not relinquish ownership of the property when it builds a store in a community. The store exists for one reason only—to generate a profit for Wal-Mart's shareholders. Wal-Mart's

board of directors owes a fiduciary obligation to the *shareholders* to maximize their profit. The community has no voice in whether the company's store will remain open, how the company's property is used, whether that property will be sold, or what happens to the sale proceeds. If the financial interests of Wal-Mart's shareholders are better served by closing the store, then the store will be closed, the property will be sold, and the proceeds will belong to the *shareholders*.

In contrast to Wal-Mart, the board of trustees of a charitable hospital owes a fiduciary duty to the community to ensure that the gift given to the community is used to fulfill the original donor's charitable purpose: the provision of healthcare services to all persons in the community. The board is not free to do what it pleases with the property of the charitable hospital. And the community has a voice in the person of the Illinois Attorney General to ensure that the property is used only for its intended charitable purposes. *See, e.g., Riverton Area Fire Protection Dist. v. Riverton Volunteer Fire Dep't*, 208 Ill. App. 3d 944, 948 (4th Dist.1991) (attorney general filed action seeking accounting of charitable assets and injunctive relief to ensure that corporate purpose of charitable trust was fulfilled).

This is why, when an Illinois charitable hospital is closed, the Illinois Attorney General may intervene on the community's behalf to ensure that the gift—the charitable property—continues to serve its intended purpose. Typically, the sale proceeds are used to establish a charitable foundation that continues to support the community's healthcare needs. *See, e.g., Madigan Hails Creation of Charitable Foundation to Benefit Medically-Needy Residents of Northern Lake County*, Illinois Attorney General Press Release, June 23, 2006 ("Attorney General Lisa Madigan today hailed the court approval of a new

charitable foundation intended to ensure that the proceeds from the sale of two not-for-profit hospitals in Waukegan will be used for the benefit of the underserved residents of Waukegan and the surrounding area. . . . Madigan's office was responsible for ensuring that the primary purpose of the Access Health Care Foundation will be for the benefit of Waukegan's neediest population. In addition, Madigan's staff negotiated the terms of the foundation to make certain that the board of directors will be broadly representative of the community served.").

The fact that certain property is held in trust for the community provides half the answer to why the property of charitable organizations, including charitable hospitals, is not taxed. Society only taxes private property. It does not tax public schools, public libraries, public parks, or public facilities such as fire stations or town halls. By the same token, it does not tax the property of a charitable trust because that property is dedicated to accomplishing a specific charitable purpose for society's benefit. Taxing the charitable entity would diminish the ability of the gift—the corpus of the trust—to satisfy the original donor's charitable intent.

2. Charitable use involves providing hospital care to everyone in a community who needs it, regardless of their ability to pay.

To qualify for charitable property-tax exemption, it is not enough that charitable property long ago was donated to a community. The property also must continue to be used for the "charitable purpose" for which it originally was donated. In the case of a charitable hospital, that "charitable purpose," the reason that the donor made the gift in the first place, is the provision of healthcare to *everyone* in the community who needs it, regardless of their ability to pay.

a. Illinois courts define "charity" broadly.

This conception of charitable use is consistent with Illinois courts' historical recognition that "charity" should be, and is, defined broadly. For example, in *School of Domestic Arts & Sciences v. Carr*, 322 Ill. 562 (1926), this Court synthesized its prior case law on the definition of "charity" as follows:

> This court approved and adopted the following legal definition of a charity in *Crerar v. Williams*, 145 Ill. 625, [643 (1893)]: "A charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the bur[d]ens of government."
>
> In *Congregational Sunday School and Publishing Society v. Board of Review*, 290 Ill. 108, [113 (1919)], it was said that charity, in a legal sense, is not confined to mere almsgiving or the relief of poverty and distress but has wider signification, which embraces the improvement and promotion of the happiness of man. A charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man.

Carr, 322 Ill. 562 at 568–69; *see also People ex rel. Scott v. George F. Harding Museum*, 58 Ill. App. 3d 408, 415 (1st Dist. 1978) (quoting *Carr*).

Similarly, in *People ex rel Hartigan v. National Anti-Drug Coalition*, 124 Ill. App. 3d 269 (1st Dist. 1984), the appellate court defined "charity" as "includ[ing] almost anything that tends to promote the improvement, well doing and well being of social man." *Id*. at 274.

In accordance with these principles, Illinois courts have held a wide variety of specific purposes to be "charitable," including, among others, aiding the poor-and-needy fund of a religious organization, *In re Estate of Muhammad*, 165 Ill. App. 3d 890, 895–98 (1st Dist. 1987); supporting a church or disseminating religious doctrine, *People ex rel.*

Smith v. Braucher, 258 Ill. 604, 608 (1913); endowing a school or promoting education, *Bd. of Educ. of City of Rockford v. City of Rockford*, 372 Ill. 442, 449 (1939); endowing a public library, *Vill. of Hinsdale v. Chi. City Missionary Soc'y*, 375 Ill. 220, 231 (1940); creating a scholarship fund for needy students, *Morgan v. Nat'l Trust Bank of Charleston*, 331 Ill. 182, 190–91 (1928); endowing a home for orphans or foundlings, *First Nat'l Bank of Chi. v. Elliott*, 406 Ill. 44, 56 (1950); creating a public museum, *Harding*, 58 Ill. App. 3d at 415–16; donating public open space or parkland, *Stowell v. Prentiss*, 323 Ill. 309, 318 (1926); advocating on issues of public importance, *Garrison v. Little*, 75 Ill. App. 402, 414–16 (2d Dist. 1897); donating gifts to municipal bodies or for governmental purposes, *Dickenson v. City of Anna*, 310 Ill. 222, 231–32 (1923); and, most significantly for purposes of this case, promoting health and combating disease, *In re Estate of Tomlinson*, 65 Ill. 2d 382, 388 (1976). *See also* Restatement (Second) of Trusts §§ 368–375 (1959).

b. Trust law defines "charity" broadly.

Illinois courts' recognition that promoting health and combating disease is a charitable purpose accords with established principles of trust law. As one well-known scholarly commentator has noted, one "class of eleemosynary charitable trusts is that concerned with the improvement of public health and the cure or alleviation of disease. These causes are of great public interest and their advancement is regarded as highly advantageous to mankind." G. Bogert, *The Law of Trusts and Trustees* § 374 (3d ed. rev. 2008) (hereinafter "Bogert"). Trusts of this nature have a long history. The Statute of Charitable Uses, enacted in 1601, contains a preamble mentioning multiple gifts relating to public health. *Id.*

When a settlor establishes a charitable trust to promote public health and combat disease, "[t]he settlor may provide for the relief of sickness in general, or he may limit his aid to those members of a described large group who suffer from illness or those who are victims of certain diseases . . . ." *Id*. The particular variations of such trusts all share a key commonality: "[I]t is not necessary that [they] be limited to assistance to the poor. It is to the advantage of the state to have as many agencies as possible operating to bring about health for the entire community. Society is interested in having all its members, rich and poor, in good physical condition, capable of being productive, caring for themselves and enjoying life." *Id*.

c. Using property to operate a hospital satisfies the constitutional charitable-use requirement if the property was donated for that purpose and remains accessible to the entire community.

The use of property to operate a hospital falls within the general principles articulated above—namely, promoting people's "well-doing and well-being" and promoting society's interest "in having all its members, rich and poor, in good physical condition, capable of being productive, caring for themselves and enjoying life." *Carr*, 322 Ill. 562 at 568–69; *Hartigan*, 124 Ill. App. 3d at 274; Bogert, § 374. It also falls within the specific charitable purpose recognized in *Tomlinson*—promoting health and combating disease. *See Tomlinson*, 65 Ill. 2d at 388.

Within the scope of this well-recognized charitable purpose, hospital property satisfies the constitutional charitable-use requirement as long as it is used to provide hospital care to everyone in the community who needs it, regardless of their ability to pay. *See, e.g., Lutheran Gen. Health Care Sys. v. Dep't of Revenue*, 231 Ill. App. 3d 652, 660, 664 (1st Dist. 1992) (hospital property that met accessibility requirement was used

for charitable purposes). In an unbroken string of cases dating back to 1893, *see Crerar*, 145 Ill. at 644, this Court expressly has rejected the approach that a property's charitable use is determined by the dollar value of free goods and services provided to individual citizens. As recently as 2004, this Court noted that "[a] charity is not defined by percentages . . . ." *Quad Cities Open, Inc. v. City of Silvis*, 208 Ill. 2d 498, 516 (2004). Although *Quad Cities* did not involve property taxation, the Court in *Quad Cities* relied on the same line of cases used in property-tax-exemption cases in analyzing what it means to be "charitable," including *Crerar v. Williams*, 145 Ill. 625 (1893), and *People v. Young Men's Christian Association of Chicago*, 365 Ill. 118 (1936).

Indeed, a careful reading of this Court's case law teaches that a "charitable purpose" is not limited to "mere almsgiving," but rather "benefits the rich as well as the poor." *Congregational Sunday Sch. & Publ'g Soc. v. Bd. of Review*, 290 Ill. 108, 113 (1919). A donor who gives money or land to build a hospital does so for the benefit of everyone in the community, not just for the poor. As long as the hospital remains accessible to the entire community, it need not provide a particular minimum monetary amount of free care to retain its charitable property-tax exemption.

This well-established case law supports defining charitable use to mean open access to everyone in the community who needs medical care, notwithstanding their socioeconomic status. It does not support imposing a minimum monetary quantum of charitable care on hospitals across the state. That is a condition that may be prescribed by the legislature in defining charitable ownership, as it has done in Section 15–86, not a condition that must—or should—be imposed by the courts in applying the Illinois Constitution's charitable-use requirement.

3. Charitable use does not depend on the *Korzen* factors.

In the courts below, various parties suggested that the constitutional charitable-use requirement depends on the *Korzen* factors. It does not.

In *Korzen*, the plaintiff, an Illinois not-for-profit corporation, filed a complaint seeking a declaratory judgment that the "old peoples home" it operated was tax exempt. *Korzen*, 39 Ill. 2d at 150. The complaint was based on Section 19.7 of the Revenue Act of 1939, which is now codified at Section 15–65 of the Property Tax Code. *See id*. at 153–54. Under Section 19.7, the following property was exempt from taxation:

> All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, and all property of old people's homes, when such property is actually and exclusively used for such charitable and beneficent purposes, and not leased or otherwise used with a view to profit, and all free public libraries.

Id. at 154.

The circuit court denied the plaintiff's request for an exemption and dismissed the plaintiff's complaint. *Id*. at 150. On direct appeal, this Court affirmed. *Id*. at 543. Among other things, the Court emphasized that the plaintiff imposed stringent health requirements on residents seeking admission, charged residents an admission fee and a monthly service charge that determined the nature of their accommodations, and did not guarantee the residents ongoing care. *See id*. at 157–59. These factors militated against granting the plaintiff a charitable exemption. *See id*.

In its analysis, the Court distinguished between the constitutional charitable-use requirement and the requirements of Section 19.7 of the Revenue Act, noting that "[t]he legislature could not declare that property used by an old peoples home is . . . ipso facto property used exclusively for charitable purposes and therefore tax exempt. It is the

province of the courts, and not the legislature, to ascertain whether or not the particular property, including property used as an old peoples home is 'used exclusively for charitable purposes' within the meaning of the constitutional provision." *Id*. at 155. The Court then set forth "guidelines and criteria" from previous decisions to be "generally applied" in conducting the exemption analysis. *Id*. at 156.

Unfortunately, the Court did not specify whether the factors set forth in its opinion pertained to the constitutional charitable-use requirement or the statutory charitable-ownership requirement. At one point, the Court said the factors were "for resolving questions of purported charitable use." *Id*. at 156. But, in the very next sentence, consistent with the "institutions of public charity" language in Section 19.7 of the Revenue Act, the Court described five of the factors as involving the concept of an "institution." *See id*. at 156–57. Only the sixth factor referred to the concept of "use." *See id*. at 157 ("[T]he term 'exclusively used' means the primary purpose for which property is used and not any secondary or incidental purpose.").

After *Korzen* was decided, it remained unclear whether its factors were statutory or constitutional in nature. *See, e.g., Eden Ret. Center, Inc. v. Dep't of Revenue*, 213 Ill. 2d 273, 290 (2004) (*Korzen* factors "resolve the *constitutional* issue of charitable use") (emphasis in original). In *Provena*, however, the Court clarified that five of the six *Korzen* factors apply to the statutory charitable-ownership test under Section 15–65 of the Property Tax Code, not the constitutional charitable-use test under Article IX, Section 6, of the Illinois Constitution. *See Provena*, 236 Ill. 2d at 390, 411. Specifically, the Court noted that under "Section 15–65 of the Property Tax Code, eligibility for a charitable exemption requires not only that property be 'actually and exclusively used for charitable

or beneficent purposes, and not leased or otherwise used with a view to profit,' but also that it be owned by an institution of public charity or certain other entities, including 'old peoples homes' . . . ." *Id*. at 390 (internal citation omitted). The Court went on to recite the ownership-related *Korzen* factors, noting that, in *Korzen*, it "identified the distinctive characteristics of a *charitable institution* . . . ." *Id*. (emphasis added).

Consistent with *Provena*, the Court should reaffirm that the constitutional charitable-use requirement does not depend on the *Korzen* factors. Five of the six factors pertain to defining an "institution[] of public charity" under Section 15–65 of the Property Tax Code. *See* 35 ILCS 200/15–65(a); *Provena*, 236 Ill. 2d at 390, 411. In the hospital context, Section 15–86 supplanted those factors as the statutory charitable-ownership test for property-tax exemption. *See* 35 ILCS 200/15–86.

The sixth *Korzen* factor is simply a recitation of the constitutional charitable-use requirement. *See Korzen*, 39 Ill. 2d at 157. Satisfying that requirement depends on (i) whether property is used for an historically recognized charitable purpose and, (ii) where that purpose is promoting health and combating disease, whether the care provided in furtherance of the purpose is available to everyone in a community who needs it, regardless of their ability to pay. It does not depend on satisfying the five ownership-related *Korzen* factors.

B. Illinois public policy supports a broad, non-quantitative conception of charitable use.

In addition to the decades of Illinois jurisprudence discussed above, Illinois public policy supports a broad, non-quantitative conception of charitable use.

1. Dramatic differences among Illinois communities support a flexible charitable-use standard.

An appropriate charitable-use analysis takes into account the full range of activities and services provided by a hospital in meeting the needs of its community. Decisions about those services and activities are made by hospital trustees, acting as representatives of the local community, based on an analysis and a balancing of local needs and hospital resources. Although free and discounted care certainly is needed in every Illinois community, the extent of that need can vary tremendously from community to community.

The United States Census Bureau reported the following percentages of persons living below the poverty line in the following pairs of adjacent Illinois counties from 2009 through 2013:

- Cook 17%
- DuPage 7%

- Champaign 22%
- Piatt 6%

- Jackson 30%
- Randolph 12%

See Index Mundi, *Illinois Poverty Rate by County, available at*: http://www.indexmundi.com/facts/united-states/quick-facts/illinois/percent-of-people-of-all-ages-in-poverty#map; United States Census Bureau, *American FactFinder, Community Facts, available at*: http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml.

Based on this, it is reasonable to assume that the number of people who apply for charity care will differ dramatically from community to community and hospital to hospital (and even from year to year as the economic climate changes). Conducting the

charitable-use analysis based on a straight mathematical calculation erroneously suggests that there is a single correct percentage of charity care that must be dispensed by every hospital in Illinois to be considered "charitable enough" to deserve property-tax exemption, regardless of how many people actually "need and apply" for that care. There is not, and defining the charitable-use analysis in this way ignores the realities of the services hospitals provide across the state.

2. Dramatic differences among Illinois hospitals support a flexible charitable-use standard.

As discussed above, *see* Facts About Illinois Hospitals, §§ I–II, there are enormous differences among Illinois hospitals. Community hospitals, CAHs, safety-net hospitals, specialty hospitals, and academic medical centers are as diverse and varied as the communities they serve. The wide variation among Illinois hospitals further demonstrates the wisdom of a flexible and balanced charitable-use analysis that is not based purely on a monetary threshold.

3. Taxing charitable-hospital property wastes charitable assets.

If the board of a charitable hospital decided to use the hospital's resources to open an elementary school or to build soccer fields or to construct a jail, the Illinois Attorney General likely would seek to enjoin those projects on the basis that the board was "wasting charitable assets"—that is, not using the assets for the charitable purpose of the organization. *See* 760 ILCS 55/15; *see also Riverton Area Fire Protection Dist.*, 208 Ill. App. 3d at 948.

Likewise, requiring a charitable hospital to pay property taxes will divert its charitable assets away from its charitable purpose of providing healthcare to its community and violate the intent of the person or persons who made the charitable gift to

establish the hospital. The hospital's assets could be used by local governments to operate schools, build soccer fields, or imprison criminals, all of which are worthy activities but unrelated to the charitable purpose for which the hospital's assets are held in trust for the public.

4. Taxing charitable-hospital property decreases scarce healthcare resources.

As a group, Illinois charitable hospitals operate on extremely thin margins. Their revenue barely exceeds their cost of doing business. Forty-one percent of Illinois hospitals have negative operating margins or margins of less than 2%. Imposing the additional cost of property taxes will cause some hospitals currently operating in the black to go into the red and will cause hospitals already operating in the red to lose even more money. No less than their investor-owned counterparts, charitable organizations must bring in more revenue than they spend if their charitable purposes are to be served at all.

5. Taxing charitable-hospital property makes it more difficult for hospitals to borrow needed funds.

To ensure high-quality patient care, hospitals must upgrade equipment, expand and improve facilities such as emergency departments and operating rooms, replace aging buildings, and invest in new medical technology. These projects cost millions of dollars, and most hospitals must borrow the necessary funds.

Institutions that lend money to hospitals constantly assess the Illinois hospital community to determine whether it is a good, safe, and profitable place to invest. Their assessment boils down to the same things a bank looks at when deciding whether to give a person a mortgage: income, expenses, and debt.

Imposing property taxes on charitable hospitals and reducing their already minuscule operating margins will make them less attractive to lenders, especially in comparison to hospitals in other states that do not have the additional burden of property taxes. While it is very difficult to estimate the value of property-tax exemption for institutions that have never been on the tax rolls, some studies have suggested a value between 1% and 2% of a hospital's net patient revenue. *See* Congressional Budget Office, *Nonprofit Hospitals and the Provision of Community Benefits* (2006); Evelyn Brody, *Property-Tax Exemption for Charities* (2002). These estimates demonstrate that paying property taxes could severely reduce, or even wipe out, the average Illinois hospital's operating margin. Diminishing hospitals' operating margins reduces their "debt capacity" (i.e., the amount they can borrow) both individually and collectively.

CONCLUSION

The people of the state of Illinois are fortunate to have been given the gift of 155 not-for-profit charitable hospitals. Those hospitals play a vital role in safeguarding the health, safety, and welfare of the people of Illinois. The charitable property-tax exemption plays an equally vital role in preserving the health of those hospitals and ensuring that the public assets held in trust by those hospitals are used entirely for their intended charitable purpose of providing hospital services to the people and communities of Illinois.

For the reasons set forth above, the IHA urges this Court to reverse the appellate court's decision, which misinterprets Illinois's property-tax-exemption framework, ignores the role that Section 15–86 plays within that framework, and will damage the delivery of healthcare services to the people of Illinois

Dated: August 31, 2016

Respectfully submitted,

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Nos. 120427 & 120433 (consolidated)

IN THE SUPREME COURT OF ILLINOIS

THE CARLE FOUNDATION, an Illinois not-for-profit corporation, *Plaintiff–Appellant*,	)	
v.	)	On appeal from the Illinois Appellate Court, Fourth District, Case Nos. 4-14-0795 & 4-14-0845 (consolidated)
THE ILLINOIS DEPARTMENT OF REVENUE and CONSTANCE BEARD, in her official capacity as Director of the Illinois Department of Revenue, *Defendants–Appellants*,	)	There on appeal from the Sixth Judicial Circuit Court, Champaign County, Illinois Case No. 08 L 202
and	)	Hon. Chase M. Leonard Judge Presiding
CUNNINGHAM TOWNSHIP, *et al.*, *Defendants–Appellees.*	)	

SUPREME COURT RULE 341(c)
CERTIFICATE OF COMPLIANCE

I, Seth A. Horvath, an attorney certify that the **Amicus Curiae Brief of the Illinois Health and Hospital Association** conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the certificate of service, and the Rule 373 certificate, is 37 pages.

Dated: August 31, 2016

Respectfully submitted,

Seth A. Horvath

One of the Attorneys for the Illinois Health and Hospital Association

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CERTIFICATE OF SERVICE

I, Seth A. Horvath, an attorney, certify that on August 31, 2016, I caused the accompanying **Amicus Curiae Brief of the Illinois Health and Hospital Association** to be served on the recipients listed on the accompanying Service List (1) by causing a true and correct copy of the same to be delivered to each of those recipients by electronic mail and (2) by causing three true and correct copies of the same to be placed in properly sealed envelopes addressed to each of those recipients and deposited in the United States mail at 70 West Madison Street, Chicago, Illinois 60602, with proper postage prepaid.

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Nos. 120427 & 120433 (consolidated)

IN THE SUPREME COURT OF ILLINOIS

THE CARLE FOUNDATION, an Illinois not-for-profit corporation, *Plaintiff–Appellant*,	)	On appeal from the Illinois Appellate Court, Fourth District, Case Nos. 4-14-0795 & 4-14-0845 (consolidated)
v.	)	
THE ILLINOIS DEPARTMENT OF REVENUE and CONSTANCE BEARD, in her official capacity as Director of the Illinois Department of Revenue, *Defendants–Appellants*,	)	There on appeal from the Sixth Judicial Circuit Court, Champaign County, Illinois Case No. 08 L 202
and	)	Hon. Chase M. Leonard Judge Presiding
CUNNINGHAM TOWNSHIP, *et al.*, *Defendants–Appellees.*	)	

SUPREME COURT RULE 373 CERTIFICATE

I, Seth A. Horvath, an attorney, certify that on August 31, 2016, I caused an original and 20 true and correct copies of the accompanying **Amicus Curiae Brief of the Illinois Health and Hospital Association** to be placed in a properly sealed package addressed to:

Carolyn Taft Grosboll
Clerk of the Supreme Court of Illinois
Supreme Court Building
200 E. Capitol
Springfield, Illinois 62701

and delivered to FedEx, a third-party commercial carrier, at 70 West Madison Street, Chicago, Illinois 60602, with proper delivery charges prepaid, for overnight delivery by FedEx to the Clerk of the Supreme Court of Illinois in accordance with Illinois Supreme Court Rule 373.

Seth A. Horvath

One of the Attorneys for the Illinois Health and Hospital Association