No. 122203

IN THE
SUPREME COURT OF ILLINOIS

CONSTANCE OSWALD,	)
	)
Plaintiff-Appellant,	)
	)
v.	)
	)
CONSTANCE BEARD, Director of the Illinois Department of Revenue, and the ILLINOIS DEPARTMENT OF REVENUE,	)
	)
Defendant-Appellee,	)
	)
and	)
	)
ILLINOIS 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.

REPLY BRIEF OF PLAINTIFF-APPELLANT

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ORAL ARGUMENT REQUESTED

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Reply to IHA "Statement Of Facts"

The "Statement of Facts" contained in IHA's Brief (IHA Br., pp. 2-15) is, in large part, nothing more than an argument which (improperly) frequently relies on matters dehors the Record. IHA purports to trace the history of the enactment of 35 ILCS 200/15-86 ("Section 15-86") in an effort to support its claim that this Court should ignore the plain and unambiguous language of Section 15-86(c), and construe it as establishing only a quantitative threshold which a hospital applicant must satisfy before it might be entitled to the issuance of a charitable property tax exemption. (See e.g., IHA Br., p. 9 ("Essentially, in enacting P.A. 688, the General Assembly cautiously exercised its prerogative, as noted in Justice Burke's opinion in *Provena*, to establish a monetary threshold for hospitals to receive property tax exemptions."))

The unambiguous language of Section 15-86(c), however, which is undeniably the best indicator of the legislature's intent (see *Eden Retirement Center, Inc. v. Dept. of Revenue*, 213 Ill.2d 273, 291 (2004)), fails to support that interpretation. Section 15-86(c) provides that "[a] hospital applicant satisfies the conditions for an exemption under this Section with respect to the subject property" when it meets the criteria of Section 15-86(c) and "shall be issued a charitable exemption for that property…."

ARGUMENT

I. LEGAL STANDARDS GOVERNING PLAINTIFF'S CHALLENGE TO THE CONSTITUTIONALITY OF SECTION 15-86(c).

Although both IDOR and IHA acknowledge, as they must, that the *de novo* standard governs this Court's review of the grant of summary judgment against Oswald based on the construction of a statute (IHA Br., p.16; IDOR Br. p. 8), they rely on general principles

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of statutory construction in an effort to overcome the unambiguous language of Section 15-86(c). Although statutes are presumed constitutional and courts seek to construe statutes in a manner affirming their constitutionality, as IHA and IDOR acknowledge, that principle applies only where "it is reasonably possible to do so." (See IHA Br., pp. 16-17; IDOR Br., pp. 10, 15). In this case, it is not reasonably possible to construe Section 15-86(c) as constitutional because doing so requires ignoring the language actually selected by the legislature to express its intent. Section 15-86(c) unambiguously provides that a hospital applicant "shall be issued a charitable exemption for property" when it meets the criteria set forth in Section 15-86(c). There is no way the language of Section 15-86(c) can be *reasonably* construed as constitutional by interpreting it to mean that satisfaction of its requirements is only a preliminary consideration for a determination of whether a property may be exempt.

IHA also maintains that Oswald cannot satisfy the "no set of circumstances" test. (IHA Br., pp. 17-19, 36-43).[1] As discussed in Oswald's opening brief (Pl. Br., pp. 17-18), Section 15-86(c) is not valid under any circumstances because it provides, in all cases, for exemptions on the basis of unconstitutional criterion - being a hospital applicant, and not based on any consideration of whether the constitutionally mandated "exclusive charitable use" requirement has been satisfied. This Court has acknowledged that a property tax exemption statute is facially unconstitutional where it allows for exemptions based on the satisfaction of statutory conditions, without compliance with the

[1] IDOR previously conceded that if the legislature intended Section 15-86(c) to dispense with the exclusive charitable use requirement then it is unconstitutional. (IDOR Answer to Petition for Rehearing, p. 11, citing *Chicago Bar Assoc. v. Dept. of Revenue*, 163 Ill.2d 290, 298 (1994)).

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"exclusive use" requirements of the Illinois Constitution. See *Chicago Bar Assoc. v. Dept. of Revenue*, 163 Ill.2d 290, 298 (1994).

II. SECTION 15-86(C) DOES NOT INCORPORATE OR REFERENCE THE CONSTITUTIONAL EXCLUSIVE CHARITABLE USE REQUIREMENT. IT DOES NOT CONDITION THE ALLOWANCE OF AN EXEMPTION ON THE SATISFACTION OF ANY CRITERIA OTHER THAN THOSE SET FORTH IN SECTION 15-86.

Section 15-86(c) says what it says. Despite extraordinary efforts to disregard that fact (see *e.g.*, IHA's claim that "Oswald is unable to point to any expression of legislative intent to override the Constitution's charitable use requirement" (IHA Br., p. 20), except, of course, the most important indicator of legislative intent, the language of Section 15-86(c) which the legislature used to express its intent), to obfuscate that fact (based on a series of suggested interpretations that have nothing to do with the language of Section 15-86(c)), and to distract from that fact (see *e.g.*, IHA's claim that Oswald is "accusing the General Assembly of flouting the Constitution" (IHA Br., p. 20)), neither IHA nor IDOR can overcome that very simple, indisputable fact.

A. Section 15-86 Does Not Merely Create A New Category Of Charitable Ownership.

According to IHA and IDOR, in enacting Section 15-86, the General Assembly expressly indicated its intention was to add a new category of charitable ownership, and not to replace or supplant the constitutional charitable use requirement. (IHA Br., pp. 21-24; IDOR Br., p. 13). This argument is premised on Section 15-86(a)(5), which states:

> 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

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> 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.

Section 15-86(a)(5), however, not only indicates a legislative intent to "establish a new category of ownership" applicable to not-for-profit hospitals and hospital affiliates, but also an intent "to establish quantifiable standards for the issuance of charitable exemptions for such property [property owned by not-for-profit hospitals and hospital affiliates]." 35 ILCS 200/15-86(a)(5). Those "quantifiable standards" do not incorporate or reference the constitutional "used exclusively used for ... charitable purposes" requirement.

IHA, however, maintains, "The legislative finding contained in Section 15-86(a)(5) went on to acknowledge that this new statutory category of ownership would not override the constitutional charitable use requirement." (IHA Br., p. 22). Section 15-86(a)(5), however, contains no reference at all to the constitutional exclusive charitable purpose or use requirement. Contrary to IHA's argument, Section 15(a)(5) does not express a legislative intent to incorporate or "not override" the constitutional charitable use requirement. If the legislature intended to incorporate, acknowledge or address the constitutional exclusive charitable use requirement all it had to do was say so – but it did not.

IHA resorts to semantic gymnastics in an effort to support its claim that, by using the term "ipso facto" in Section 15-86(a), the legislature intended to incorporate the constitutional exclusive use requirement. According to IHA, the legislature's use of the term "*ipso facto*" in Section 15-86(a)(5) was meant to allude to this Court's use of that term

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in *Eden*, and that by virtue of that oblique reference the legislature acknowledged it could not and was not "reliev[ing] hospitals of the need to satisfy the constitutional charitable use requirement." (IHA Br., p. 23).

IDOR advances a similar argument, relying on the "*ipso facto*" language of Section 15-86(a)(5) as support for its claim that "the legislature was careful to make clear that it was not creating a blanket exception for such institutions simply because an applicant could meet a quantitative threshold." (IDOR Br., p. 13).

These arguments are not persuasive. The legislature's stated intention in Section 15-86(a)(5) in no way supports the conclusion that in enacting Section 15-86, the General Assembly only intended to establish threshold criteria to identify parcels of property that might qualify, subject to the application of additional constitutional requirements, for the potential issuance of a charitable use tax exemption. The legislature said exactly what it meant by its use of the term *ipso facto*: "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." This statement expresses an intent to establish criteria to be applied, on a case-by-case basis, to determine whether any particular property is exempt, as opposed to an intention to declare any particular category of property (presumably the "new category of ownership" "to be applied to not-for-profit hospitals and hospital affiliates" it stated it was establishing) exempt. Such an intent is completely consistent with an interpretation of Section 15-86(c) in accordance with the plain meaning of its terms. Section 15-86(c) provides for an exemption based on a case-by-case analysis of whether "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…"

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B. There Is No Principle Of Construction Established By The Precedent Of This Court Requiring That, Irrespective Of Their Text, Statutory Property Tax Exemption Provisions Must Be Construed To Incorporate The Constitutional "Exclusive Charitable Use" Requirement.

According to IHA, it is a "basic principle of property tax law" that "statutory criteria for the property tax exemptions are considered 'illustrative and descriptive' of circumstances where exemptions are warranted" but only if "the applicable constitutional requirements are satisfied." (IHA Br., pp. 24-28). IDOR similarly argues that the precedent of this Court establishes that "exemption statutes like Section 15-86 are always harmonized with the constitutional requirement of exclusive use." (IDOR Br., pp. 17-22). The decisions relied upon by IHA and IDOR in support of their claims include *Chicago Bar Assoc. v. Dept. of Revenue*, 163 Ill.2d 290 (1994), *Eden Retirement Center, Inc. v. Dept. of Revenue*, 213 Ill.2d 273 (2004), *McKenzie Johnson*, 98 Ill.2d 87 (1983), *MacMurray College v. Wright*, 38 Ill.2d 272 (1967), *School of Domestic Arts and Science v. Carr*, 322 Ill. 562 (1926), and *Presbyterian Theological Seminary v. People*, 101 Ill. 578 (1882). However, this Court did not analyze statutory language like that of Section 15-86(c) at issue in this case in any of the cases cited by IHA and IDOR. Moreover, despite the opportunity to do so, in the cases cited by IHA and IDOR this Court neither recognized that, as a "basic principle of property law" all statutory property tax exemption criteria are deemed merely illustrative or descriptive, nor hold that the constitutional exclusive charitable use requirement must be read into all statutory property tax exemption provisions.

Both IHA and IDOR rely upon this Court's decision in *Chicago Bar Association*. In that case, this Court rejected a finding that a statute providing for a school property

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exemption, "including, in counties of over 200,000 population which classify real property, property … adjacent to … 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." *Chicago Bar Assoc.*, 163 Ill.2d at 293-294. This Court analyzed the specific language of the exemption, finding, in accordance with its previous decision in *MacMurray College* (another of the cases relied upon by IHA) that by using the word "including" the legislature signaled it "was speaking descriptively and illustratively and not with a declaratory intendment." *Chicago Bar Assoc.*, 163 Ill.2d at 299, quoting *MacMurray College*, 38 Ill.2d at 277. In *Chicago Bar Association*, this Court also considered its previous decision in *McKenzie v. Johnson*, 98 Ill.2d 87 (1983) (another of the cases relied upon by IDOR), in which it had construed comparable statutory exemption language relating to religious institutions. *Chicago Bar Assoc.*, 163 Ill.2d at 299.

In *Chicago Bar Association*, based on its analysis of the "including" statutory language at issue, this Court concluded, "[W]e believe that the 'adjacent property' clause … 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." *Chicago Bar Assoc.*, 163 Ill.2d at 299-300. Section 15-86, however, does not contain any similar language suggesting it is illustrative or descriptive, but unconstitutionally mandates a charitable exemption.

In a footnote, IHA claims that, contrary to Oswald's assertion, the *Chicago Bar Association* "reveals" that an exemption statute does not need to incorporate language

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signifying illustrative or descriptive intent, such as "including", to be construed as descriptive or illustrative. (IHA Br., p. 26, fn 4). IHA, however, does not and cannot provide any citation to the decision in *Chicago Bar Association* which substantiates IHA's assertion that the illustrative language used in the statute at issue in *Chicago Bar Association* was irrelevant to this Court's decision. Nor can IHA cite any portion of the *Chicago Bar Association* decision which stands for the proposition that all statutory exemption statutes must be read as descriptive or illustrative and subject to the constitutional requirements, irrespective of their statutory language. To the contrary, in *Chicago Bar Association*, this Court expressly considered the fact that the statute at issue used the word "including" and based its ruling on the presence of that language. See *Chicago Bar Assoc.*, 163 Ill.2d at 298-300.

Like *Chicago Bar Association*, *McKenzie*, and *MacMurray College*, the other decisions relied upon by IHA and IDOR likewise fail to support their arguments. In *Presbyterian Theological Seminary*, cited by IHA, there was no claim that the exemption at issue was unconstitutional. Instead, at issue was whether an applicant was entitled to an exemption under a statute providing, "that among property that shall be exempt from taxation is 'all property of institutions of learning, including the real estate on which the institutions are located, not leased by such institutions, or otherwise used with a view to profit.'" *Presbyterian Theological Seminary*, 101 Ill. at 581-582. Although this Court indicated it would construe the provision in light of the constitutional exclusive use requirement, it relied on the specific language of the statute in finding that the applicant was not entitled to the requested exemption because the applicant's "institutions of learning" were not located on the property as to which the exemption was claimed.

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In *School of Domestic Arts and Science v. Carr*, 322 Ill. 562, 567-568 (1926), also cited by IHA, this Court considered the validity of a statutory exemption for "all property of institutions of public charity and all property of beneficent and charitable organizations, when such property is actually and exclusively such for such charitable or beneficent purposes and not leased or otherwise used with a view to profit." [Citation omitted.] This Court distinguished that exemption, which incorporated the constitutional exclusive charitable use requirement, from another exemption provision which it had found was unconstitutional because it did not incorporate the constitutionally mandated exclusive use requirement. *Id.* at 570-571. As previously noted, in stark contrast, Section 15-86 omits any such exclusive charitable use language.

This Court's decision in in *Eden*, cited by IDOR, fails to support its contention that all statutory exemption language must be read to engraft the constitutional "exclusive use" requirement, irrespective of the actual statutory language used. As discussed in Oswald's opening brief (Pl. Br., pp. 15-16), this Court's decision in *Eden* relied upon the fact that the exemption provision at issue in *Eden*, 35 ILCS 200/15-65 ("Section 15-65"), expressly incorporated language preconditioning any exemption upon a showing that the subject property met the constitutional used "exclusively for … charitable purposes" requirement.

Neither IDOR nor the IHA have pointed to any aspect of the text of Section 15-86(c) that supports their arguments. By contrast with the language of the various statutory exemption statutes considered by this Court in its prior decisions, in this case, the language of Section 15-86(c) requires issuance of a charitable property exemption based upon a showing that the value of qualifying services or activities equals or exceeds its estimated property tax liability ("[a] hospital applicant satisfies the conditions for an exemption

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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….") Section 15-86(c) expressly provides that a hospital applicant satisfies the requirements for an exemption and *shall* be issued a charitable property tax exemption when it satisfies the quantitative test set forth in that section. It does not merely establish a quantitative threshold which a hospital applicant must satisfy before it *might* be entitled to the issuance of a charitable property tax exemption subject to an additional showing that it satisfies the constitutional "exclusive charitable use" requirement.

Contrary to the claims of IHA and IDOR, the precedent of this Court does not establish a special rule of construction relevant to property exemption statutes that dictates they must be construed as merely illustrative or descriptive. This Court has never held that the constitutional "exclusive charitable use" requirement must be read into all statutory property exemption statutes such that, irrespective of the language actually used by the General Assembly, all statutory property exemption statutes must be upheld as constitutional.

C. There Is No Basis For Construing The Legislature's Use Of The Word "Shall" In Section 15-86 As Permissive.

Initially, the IHA repeats its claim that, in order to construe Section 15-86(c) as unconstitutional, this Court must necessarily find that the General Assembly deliberately enacted an unconstitutional provision (but backs off its earlier claim that Oswald has expressly accused the legislature of flouting the Constitution). (See IHA Br., pp. 20, 28)). Based on this faulty premise, IHA argues this Court should not construe Section 15-86(c) (or, for that matter, any statute) as unconstitutional because that could not have been the

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General Assembly's intent. (IHA Br., p. 28-29). Construing Section 15-86(c) according to its express provisions, and finding, as this Court must, that it is unconstitutional, does not require the Court to find that the General Assembly acted with bad intentions. Instead, as this Court has long recognized, it simply requires this Court to perform its constitutional obligation. *See In re Pension Reform Litigation* at ¶47.

According to IHA and IDOR, Oswald pins her entire argument on the word "shall." (IHA Br., p. 20; IDOR Br., p. 23). That assertion is incorrect because Oswald's construction of Section 15-86(c) is based not only on the word "shall" but also on the context in which it appears. Section 15-86(c) provides that "[a] hospital applicant satisfies the conditions for an exemption under this Section with respect to the subject property" when it meets the criteria of Section 15-86(c). As a result of satisfying the conditions for an exemption under Section 15-86(c), that provision further provides that such a hospital applicant "shall be issued a charitable exemption for that property…." IHA characterizes Oswald's interpretation of Section 15-86(c) as "wooden" or "superficial, apparently because it is based on the actual statutory language. However, as this Court has consistently recognized:

> The primary rule of statutory construction is to give effect to the true intent of the legislature. The language of the statute is the best indication of the legislative drafters' intent. When the drafters' intent can be ascertained from the statutory language, it must be given effect without resort to other aids for construction. In construing a statute, it is never proper for a court to depart from plain language by reading into a statute exceptions, limitations, conditions which conflict with the clearly expressed legislative intent. *Illinois Graphics Co. v. Nickum*, 159 Ill.2d 469, 479 (1994) [Citations omitted throughout.]

1. Section 15-86(c) is mandatory, not permissive.

IHA further argues that the word "shall" can be construed as meaning either "must" or "may" depending on the legislative intent. (IHA Br., p. 30 citing, *In re Armour*, 59 Ill.2d

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102, 104 (1974), *Cooper v. Hinrichs*, 10 Ill.2d 269, 272 (1975), and *In re Rosewell*, 97 Ill.2d 434, 440-41 (1983)). In both *Armour* and *Rosewell*, this Court construed the word "shall" in the context of determining whether it was used as directory or mandatory (an analysis which "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"), and not in the context of determining whether it was used as permissive or mandatory (that is whether it refers "'to a permissive power which a governmental entity may exercise or not as it chooses" or "'to an obligatory duty which a governmental entity is required to perform'". See *People v. Ousley*, 235 Ill.2d 299, 311 (2009). By contrast, it appears that in *Cooper*, this Court addressed the "permissive-mandatory" dichotomy in determining whether the word "shall" as used in the statute at issue should be construed as mandatory or discretionary. The Court identified language included in the statute ("whenever possible … the court … shall ….”), which supported that the court's obligation was discretionary (or "permissive"), despite its use of the word "shall." *Cooper*, 10 Ill.2d at 272-276.

IHA maintains that the legislature intended the word "shall" as used in Section 15-86(c) to be permissive, and not mandatory. (IHA Br., pp. 29-32). Unlike the statute at issue in *Cooper*, however, Section 15-86(c), does not contain any language supporting a "permissive" interpretation. IHA makes no attempt to explain how the language of Section 15-86(c) can be construed as vesting the IDOR with discretion to issue, or not, an exemption to a hospital applicant that satisfies the conditions for an exemption under Section 15-86(c). To the contrary, Section 15-86(c) provides that an applicant "satisfies

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the conditions for an exemption under this Section" when it meets the criteria of Section 15-86(c), and "shall" be issued an exemption.

Instead of pointing to any statutory language supporting a "permissive" interpretation, IHA simply repeats its argument that all the legislature intended to do in enacting Section 15-86 was to create a new category of ownership for charitable property tax exemptions and its claim that "longstanding precedent" establishes that Section 15-86(c) must be construed as merely descriptive or illustrative. Those arguments, addressed previously, are unavailing; in addition to ignoring the plain language of Section 15-86(c), they are based on a misinterpretation of Section 15-86(a) and
misconstrue this Court's precedent.

2. The mandatory – directory dichotomy is not applicable.

IHA advances the confused argument that "Section 15-86 would be constitutional, even if it were interpreted to make issuance of exemptions mandatory rather than permissive if the statutory criteria are satisfied, because any putative requirement to issue exemptions would be merely directory." (IHA Br., pp. 32-36). IDOR similarly argues that the use of the word "shall" in Section 15-86(c) is directory rather than mandatory. (IDOR Br., pp. 23-24). As this Court explained in *People v. Ousley*, however, the mandatory-directory dichotomy is only at issue where a question presented is 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." *People v. Ousley*, 235 Ill.2d at 311. In this case, no issue is raised as to whether "the failure to comply with a particular procedural step" invalidates a "governmental action to which the procedural requirement relates."

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Nonetheless, in a feat of circular reasoning, IHA argues that the mandatory-directory is at issue because Section 15-86(c) "does not dictate a particular consequence if the Department of Revenue fails to grant an exemption application that satisfies the statutory criteria." The purported failure of Section 15-86(c) to indicate a particular consequence does not, however, mean that the use of the word "shall" in Section 15-86(c) somehow implicates the mandatory-directory dichotomy or vests the IDOR with discretion to allow, or not, an exemption to an applicant who "satisfies the conditions for an exemption under this Section."

Contrary to IHA's argument, this Court's decisions in *Robinson* and *Delvillar* do not hold that a party must demonstrate that a statutory provision is both mandatory rather than permissive and mandatory rather than directory. (IHA Br., p. 35). Instead, because both of those cases addressed the impact of the validity of governmental action arising as a consequence of a failure to comply with a particular procedural step the Court acknowledged that the mandatory-directory dichotomy, rather than the mandatory-permissive dichotomy, was controlling. In *Robinson*, the Court was asked to determine the consequences flowing from a failure to comply with a provision of the Post–Conviction Hearing Act. The provision at issue provided that an order dismissing the petition "shall be served upon the petitioner by certified mail within 10 days of its entry." There was no "genuine dispute" over whether the requirement that the clerk serve the order within 10 days was mandatory and not permissive. However, that inquiry was not dispositive of the issue before the Court because the question presented was whether the failure to serve the defendant within 10 days with a copy of a post-conviction petition dismissal order required reversal of the order.

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Similarly, in *Delvillar*, the Court addressed the failure to comply with a requirement that the court admonish a defendant regarding the potential immigration consequences arising from a guilty plea before accepting the plea invalidated a guilty plea. In *Delvillar*, the Court acknowledged the statute imposed a "mandatory" rather than "permissive" or discretionary obligation upon the court to provide the admonishment, but that inquiry was not dispositive of the impact of the failure to admonish upon the validity of the guilty plea. The Court concluded that the mandatory-directory dichotomy controlled determination of that issue.

At issue in this case is whether satisfaction of the requirements of Section 15-86(c) entitles a party to receive an exemption pursuant to that provision and requires the issuance of an exemption. There is no support whatsoever for IHA's claim that Section 15-86(c) can be reasonably construed to mean that an applicant who "satisfies the conditions for an exemption under this Section" "may" be issued an exemption, but is not entitled to an exemption unless it also satisfies the constitutional "exclusive charitable use" requirement.[2] There is no requirement, and none of the cases cited, require the legislature

[2] IDOR argues that the "*ipso facto*" language of Section 15-86(a)(5) establishes that Section 15-86(c) is directory, not mandatory, because if Section 15-86(c) were mandatory it would be "contrary to the constitutional requirements." (IDOR Br., pp. 23-24). In addition to making no sense, this argument relies upon an incorrect interpretation of the "*ipso facto*" language of Section 15-86(a)(5) and ignores the language of Section 15-86(c). Moreover, in practice, neither the IDOR nor the IHA have construed Section 15-86(c) as merely directory or discretionary. Included in the Record is the "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. Before the circuit court, neither the Department nor IHA disputed that that form is used by hospitals to apply for property tax exemptions. That 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 regarding numerous of the constitutional considerations as set forth in *Korzen*. (R. C414-422). For example, it requests no information regarding a hospital applicant's corporate structure,

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to state its intention in both an affirmative form ("an exemption shall be issued") and a negative form ("and the property shall not be taxed") in order to make a statute enforceable as mandatory.

> 3. *The Doctrine Of "In Pari Materia" Does Not Support A "Directory" Rather Than Mandatory Interpretation Of "Shall" As Used In Section 15-86(c).*

According to IDOR, the legislature's *ipso facto* statement in Section 15-86(a)(5) somehow creates an ambiguity as to the meaning of "shall" as used in Section 15-86(c). That argument is based, however, on IDOR (and IHA's) previously discussed misinterpretation of Section 15-86(a)(5).

Proceeding from the incorrect premise that Section 15-86(a)(5) renders Section 15-86(c) ambiguous, IDOR embarks on a tortured analysis from which it inexplicably concludes that Section 15-86(c) should be read "in pari materia" with Section 15-65. (IDOR Br. pp. 24-27). Based on this "in pari materia" interpretation, the IDOR ultimately concludes that Section 15-86 should not be read as requiring exemptions for applicants who meet the requirements of Section 15-86(c), but should instead be interpreted and requiring compliance with both the requirements of Section 15-86(c) and the constitutional "exclusive charitable use" requirement. All of the premises upon which this argument is based are wrong. Ultimately, and most importantly, Section 15-86(c) is not ambiguous (and so there is no need to resort to statutory interpretation tools such as the doctrine of *in pari materia*), there is nothing in the language of Section 15-86(c) which supports the conclusion that "shall" should be construed as directory, and there is nothing in the

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nothing regarding the contents of its corporate charter, nothing regarding its main source of its funds and no information regarding the obstacles or lack thereof it imposes upon those in need of its services. See *Korzen*, 39 Ill.2d at 156-157.

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unambiguous language of Section 15-86(c) that incorporates the constitutional "exclusive charitable use" requirement.

CONCLUSION

Wherefore, for the reasons set forth above as well as those set forth in the Brief Of Plaintiff-Appellant, 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,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Reply Brief of Plaintiff-Appellant conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief is seventeen (17) pages, excluding the pages or words contained in the Rule 341(d) cover and the Rule 341(c) certificate of compliance.

.

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

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No. 122203

IN THE SUPREME COURT OF ILLINOIS

CONSTANCE OSWALD, Plaintiff-Appellant, v. CONSTANCE BEARD, Director of the Illinois Department of Revenue, and the ILLINOIS DEPARTMENT OF REVENUE, Defendant-Appellee, and ILLINOIS HOSPITAL ASSOCIATION, Intervenor-Defendant-Appellee.	)	On appeal from the Appellate Court Court of Illinois, First District, Appeal 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

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PLEASE TAKE NOTICE that on April 4, 2018, Plaintiff-Petitioner electronically submitted the REPLY 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 Reply Brief of Plaintiff-Appellant is attached and hereby served upon you.

Dated: April 4, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

Kenneth Flaxman, an attorney, hereby certifies that on April 4, 2018, he caused copies of the aforementioned Reply Brief of Plaintiff-Appellant to be served upon by following by electronic mail:

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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

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