No. 120433 & 120427 (CONSOLIDATED)

IN THE SUPREME COURT OF ILLINOIS

THE CARLE FOUNDATION, an Illinois Not-for-Profit Corporation,

Plaintiff-Appellant,

v.

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

Defendants-Appellants, and

THE CHAMPAIGN COUNTY BOARD OF REVIEW, *et al.*

Defendants-Appellees

On Appeal from the Appellate Court of Illinois, Fourth District No. 4-14-0845 & 4-14-0795 (cons.)

The Honorable CHARLES McRAE LEONHARD Justice Presiding

There on Appeal from the Circuit Court of Champaign County, Illinois, No. 8L202

BRIEF *AMICUS CURIAE* OF THE AMERICAN HOSPITAL ASSOCIATION IN SUPPORT OF APPELLANT THE CARLE FOUNDATION

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The American Hospital Association ("AHA") on behalf of its members submits this brief *amicus curiae* in support of the Plaintiff-Appellant The Carle Foundation ("Carle"). Carle appeals the ruling of the Appellate Court of Illinois (Fourth Judicial District) reversing the Circuit Court of Champaign County and declaring that section 15-86 of the Illinois Property Tax Code, 35 ILCS 200/15-86 ("Section 15-86") is unconstitutional.

Founded more than a century ago, the AHA is a national not-for-profit association that represents the interests of nearly 5,000 hospitals, health care systems, networks, and other care providers, as well as 43,000 individual members, all of whom are committed to finding innovative and effective ways of improving the health of the communities they serve. Among the AHA's broad membership are all types of not-for-profit hospitals and health care networks that serve individual patients and communities by providing care to those in need regardless of ability to pay. The AHA educates its members on health care issues and trends and advocates on their behalf to ensure that its members' perspectives and needs are understood and taken into account in national health policy development, legislative and regulatory debates, and judicial matters.

Because of their abiding commitment to advancing the health of the communities they serve, the AHA's members have a great interest in the ultimate outcome of this case; indeed, the AHA participated as an *amicus curiae* in the last case in which this Court considered the issue of property tax exemption of not-for-profit hospitals: *Provena Covenant Medical Center v. Dep't of Revenue*, 236 Ill.2d 368 (2010).

Permitting the appellate court's decision to stand would adversely affect the AHA members' ability to meet the essential health care needs of their communities. The

Circuit Court was correct to apply Section 15-86 to The Carle Foundation's claim for tax exemption; the Appellate Court was wrong to overturn that statute as facially unconstitutional. Upholding the appellate court's decision—and thereby endorsing the unsound principle on which its decision rests—would throw into grave doubt the past and future tax-exempt status of every not-for-profit hospital in Illinois. Should those hospitals suddenly be unable to claim the property tax exemptions upon which they have relied for years, the resulting financial drain will jeopardize access to care in Illinois. The stakes in this matter are high. All Illinois citizens—but especially those who benefit from government-sponsored health programs like Medicare and Medicaid and those among the uninsured—rely on not-for-profit hospitals to offer quality care to all. And absent this Court's intervention, the effects of the appellate court's ill-considered decision could negatively influence decisions by taxing authorities in other parts of the country as well.

In view of the far-reaching and serious implications of the appellate court's decision for the AHA's members, the AHA offers its views to aid the Court in its review of that decision.

ARGUMENT

Courts and policymakers around the country have long understood that tax exemption is vital to not-for-profit hospitals' ability to deliver essential care to the communities they serve. Tax exemption enables these hospitals to dedicate their earnings to advancing their charitable objectives by, among other things, increasing access to quality care, expanding the range of their services (many of which are themselves unprofitable), conducting research, educating health care professionals, instituting programs to improve public health and to respond to unmet societal health needs, and upgrading facilities to provide state-of-the-art technology to all patients. Tax exemption

is thus the foundation on which the long-standing relationship between government and not-for-profit hospitals has been built. *See Congregational Sunday Sch. & Publ'g Soc'y* v. *Board of Review*, 290 Ill. 108, 113 (1919) ("The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the state to care for and advance the interests of its citizens.").

That foundation was most recently reaffirmed when the General Assembly passed Section 15-86, which was expressly designed to ensure, in the wake of this Court's holding in *Provena*, that not-for-profit hospitals who make substantial contributions to their communities continue to (predictably and reliably) receive a property tax exemption. 35 ILCS 200/15-86(a). Section 15-86, if enforced as intended, should provide much-needed certainty to not-for-profit hospitals meeting the criteria set forth in that statute; they should be confident the use of their property is among the subset of charitable uses that the General Assembly has determined are entitled to property tax exemption. *See id.* at 15-86(c).

By declaring Section 15-86 unconstitutional, the appellate court appears to have wrongly concluded that the operation of a not-for-profit hospital is not, in and of itself, a "charitable purpose" sufficient to allow the General Assembly to legislate tax-exempt status for such use. *See* Ill. Const. 1970, art. IX § 6 (permitting the General Assembly to legislate property tax exemption for property that is "used exclusively for . . . charitable purposes"). That conclusion is contrary to this court's precedent and defies the reality of the myriad ways in which Carle and not-for-profit hospitals like it tirelessly serve their communities, 24 hours a day, 365 days per year. As a result, the appellate court's

decision holding Section 15-86 unconstitutional is fatally flawed. The General Assembly may legislate property tax exemption for property that is "used exclusively for . . . charitable purposes." Ill. Const. 1970, art. IX § 6.

Indeed, because of the tremendous benefits not-for-profit hospitals provide to the community and the State, operating a not-for-profit hospital has long been deemed a "charitable" endeavor in Illinois. And that is fully consistent with the great weight of authority nationwide. If allowed to stand, the appellate court's contrary ruling not only has serious potential to harm public health throughout Illinois, but also to cause ripple effects of uncertainty throughout the country.

Moreover, the appellate court's decision unnecessarily overrides the legislature's assessment of not-for-profit hospitals' role in the State's communities. That should not be tolerated in any event, but particularly not where, as here, the legislature's judgment was so objectively reasonable. Not-for-profit hospitals (including Carle) face real challenges in meeting the growing needs of their communities. Significant amounts of uncompensated care, continuing underpayments by government health care programs, and rising costs of delivering health care have all combined to increase the challenges for already strained not-for-profit hospitals. Increasing not-for-profit hospitals' tax burden threatens to deprive communities of vital health care resources.

The Court should reverse the decision below and reject the panel's incorrect holding that Section 15-86 is unconstitutional. As the Circuit Court properly held below, if Carle meets the standards set out in Section 15-86(c), its property should be tax exempt.

I. NOT-FOR-PROFIT HOSPITALS LESSEN THE BURDENS OF GOVERNMENT AND PROMOTE PUBLIC HEALTH IN THEIR COMMUNITIES

Any analysis of the constitutionality of a statute exempting not-for-profit hospitals from property taxation must begin with a view to the tremendous monetary and non-monetary contributions not-for-profit hospitals provide to their communities. For example, in 2014, Carle Foundation alone provided $118.8 million in services, donations and support to its community, which included nearly $39 million in free or discounted care to more than 31,000 patients, many of whom were treated on several occasions. Summary of the Carle Foundation, Community Benefit Report (2014), *available at* https://carle.org/Documents/Carle_2014_Annual_Report_Executive_Summary.aspx. But not-for-profit hospitals also provide countless other benefits and services to communities, immeasurably improving public health of the area's citizens.

A. Not-For-Profit Hospitals Lessen the Burdens of Government By Devoting Extraordinary Resources to Benefit Their Communities and By Improving Health and Access To Health Care

For more than a century, not-for-profit hospitals have significantly "lessened the burdens of government," by, among other things, serving as an indispensable health care safety net for this country's uninsured and underinsured. *Crerar* v. *Williams*, 145 Ill. 625, 643, 34 N.E. 467, 470 (1893). That "safety net" is more important now than ever: hospitals today "do more to assist the poor, sick, elderly and infirm than any other entity in the health care sector." Statement for the Record of the American Hospital Association before the House Committee on Ways and Means Tax Reform and Tax Provisions Affecting State and Local Governments, March 19, 2013 at 1. These services include, among others, "labor and delivery services and emergency stand-by services such as disaster response readiness, burn units and high level trauma care" regardless of

the ability to pay for them. *Id.* Not-for-profit hospitals play a critical role in our modern health care system: "Americans rely heavily on hospitals to provide 24/7 access to care for all types of patients, to serve as a safety-net provider for vulnerable populations and to have the resources and skills needed to respond to disasters. Emergency department visit volume has increased by nearly 26 percent since 2000, and will continue to grow." *Id* at 2.

A recent Internal Revenue Service ("IRS") report to Congress shows the significant contributions that not-for-profit hospitals have made to their communities. Based on a review of 2011 tax returns for 2,469 not-for-profit hospitals,[1] the IRS reported that not-for-profit hospitals provided over $62.4 billion in benefits to their communities, with over $15 billion representing charity care provided at cost and over $18.7 billion representing unreimbursed Medicaid expense. Internal Revenue Service, Report to Congress on Private Tax-Exempt, Taxable and Government Owned Hospitals, January 2015 at 6, *available at* https://www.vha.com/AboutVHA/PublicPolicy/CommunityBenefit/Documents/Report_to_Congress_on_Hospitals_Jan_2015.pdf (reporting costs for private tax exempt hospitals). Those payments do not include underpayments from Medicare, which totaled $37.2 billion in 2014. American Hospital Association Uncompensated Hospital Care Cost Fact Sheet (Jan 2016), *available at* http://www.aha.org/content/16/uncompensatedcare

[1] In 2008, the IRS added a requirement that hospitals submit additional information regarding community benefits on the new Schedule H worksheet for the Form 990, Return of Organizations Exempt From Income Tax. Internal Revenue Service, *Form 990 Redesign Tax Year 2008 Background Paper* at 10 (Dec. 20, 2007). The form calls for reporting specifically on community benefit that includes financial assistance to patients, unreimbursed costs associated with Medicaid and other means-tested public programs, and other community benefits that include community health improvement activities, health professions education, research, subsidized health care and cash and in-kind support to community groups and organizations. Internal Revenue Service, *Instructions for Schedule H (Form 990)* at 13-20, *available at* https://www.irs.gov/pub/irs-pdf/i990sh.pdf.

factsheet.pdf. By continuing to treat patients eligible for Medicare and Medicaid, not to mention covering billions of dollars in shortfall payments, hospitals unquestionably reduce the government's burden for directly providing medical services.

Hospitals also bear the cost of care provided to individuals who never pay their hospital bills (many because they cannot afford to do so). A significant portion of uncompensated care is provided to low-income populations. *See, e.g.*, Congressional Budget Office, *Nonprofit Hospitals & the Provision of Community Benefits* at 10 n.34 (Dec. 2006) ("the great majority of" uncompensated care provided outside of explicitly income-driven financial assistance programs "was attributable to patients with incomes below 200% of the federal poverty level.").

Additionally, not-for-profit hospitals are critical to the functioning of government health care programs that provide care to the indigent, elderly, and others. In passing Section 15-86, the General Assembly called this the "most significant[]" way that "[h]ospitals relieve the burden of government," noting that without "their participation in and substantial financial subsidization of the Illinois Medicaid program," the program "could not operate." 35 ILCS 200/15-86(a)(4). The legislature was not exaggerating.

Yet, since 2010, hospitals have endured more than $250 billion in cuts to federal health programs, including more than $14 billion in reductions included in the *American Taxpayer Relief Act*. Statement for the Record of the American Hospital Association before the House Committee on Ways and Means Tax Reform and Tax Provisions Affecting State and Local Governments(March 19, 2013) at 2, *available at* http://www.aha.org/advocacy-issues/testimony/2013/130401-tes-tax-reform.pdf. These cuts, in addition to continuing underpayments for care of Medicare patients, have

necessarily threatened the financial health of not-for-profit hospitals. In its March 2016 Report to Congress, the Medicare Payment Advisory Commission (MedPAC) indicated that hospital Medicare margins fell to negative 5.8 percent for overall Medicare services in 2014. The losses absorbed by hospitals are staggering. For example, in 2014 alone, hospitals reported an aggregate shortfall of $51 billion dollars for treating Medicare and Medicaid payments. American Hospital Association Underpayment by Medicare and Medicaid Fact Sheet, *available at*
http://www.aha.org/content/15/medicaremedicaidunderpmt.pdf.

Without not-for-profit hospitals' abiding commitment to their communities, governments alone would be required to meet their communities' health care needs, at a staggering, and likely unsustainable, cost.

B. Not-for-Profit Hospitals Relieve Suffering and Improve Health In Their Communities Through Innovative Community Programs and Education

As the General Assembly recognized when passing Section 15-86, the contributions not-for-profit hospitals make to their communities extend far beyond the uncompensated costs they incur for providing care. *See* 35 ILCS 200/15-86(e) (recognizing services from not-for-profit hospitals such as "outreach or educational services to low-income or underserved individuals for disease-management and prevention" and "providing medical education; and conducting medical research or training of health care professionals"). In today's world, not-for-profit hospitals have become the driving force behind numerous public health initiatives to improve the health and quality of life within the State.

For instance, Carle has responded to its community's critical health care needs through specially-tailored programs. With input from community leaders and

organizations, Carle selected the following four health related topics as its top priorities in the Champaign-Urbana area: access to care, behavioral health, obesity and victims of violence. The Carle Foundation, Annual Report, Infographic (2014), *available at* https://carle.org/Documents/Carle_2014_Annual_Report_Infographic.aspx. It then went into action to address each and every one of these priorities.

As to access to care, Carle has expanded health care services for the underinsured and uninsured by working with community organizations and leaders. This effort included the provision of $292,372 to enhance service and education, including regular prenatal, breastfeeding and newborn care education at Frances Nelson Health Center. *Id.* Carle also spent $43,488 to cover the rent and operational costs of Champaign County Christian Health Center. *Id.*

To address behavioral health, Carle will continue to recruit behavioral health providers and support community programs like the Crisis Intervention Teams to direct people with mental illness into services, before and in lieu of jail. *Id; see also* Champaign County Criminal Justice System Assessment at 126-27, *available at* http://www.co.champaign.il.us/JailAssessment/ILPP_CHAMPAIGN_COUNTY_FINAL_REPORT_09-24-13.pdf. Carle also works with Community Elements[2] and the Champaign County Mental Health Board[3] to provide mental health related services. The Carle Foundation, Annual Report, Infographic (2014).

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[2] http://www.communityelements.org.

[3] http://www.co.champaign.il.us/mhb/mhbddb.htm.

On the issue of obesity, Carle continues to support activities aimed at improving the health of families througout the community, including its role as a sponsor of a program known as "Girls on the Run."[4] *Id.*

Carle is also dedicated to the safety of victims, including victimes of domestic violence, sexual assualt and child abuse through the efforts of its child abuse safety team and sexual assault nurse examiners. *Id.*

Other not-for-profit hospitals have similarly implemented a variety of creative health care solutions directly responsive to the unique health care problems facing their communities. For example:

- The McHenry County Crisis Program has been a service of Centegra Health System in Crystal Lake, Illinois for more than 20 years. It serves as the point of access for all behavioral health emergencies in the county, with the goal of providing prompt, compassionate and effective behavioral health services to individuals during a personal, family or community emergency. Services include a 24/7 crisis line, a 24/7 mobile response unit and Psychiatric Emergency Services ("PES") focused on crisis intervention with patients who arrive at the emergency department. Critical Incident Stress Debriefing and Grief Support is also offered to those who are faced with a critical incident, such as a traumatic death or other distressing experiences such as a fire. In fiscal year ("FY") 2015, the crisis line assisted more than 13,600 callers, and on-site associates assessed and linked 5,545 individuals to appropriate services. Community Connections, Ideas and Innovations for Hospital Leaders, American Hospital Association 2016 at 5,

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[4] http://www.girlsontherunofchampaigncounty.org/who-we-are.

available at

http://www.ahacommunityconnections.org/content/16caseexamples11.pdf

("Community Connections 2016").

- In an effort to reduce health disparities, Rush University Medical Center in Chicago, Illinois is partnering with Medical Home Network and Malcolm X City College to develop new, sustainable models of care to improve health care delivery. These new models of population-based health care are vital to improving access, quality and efficiency in the medically underserved communities of Chicago's West Side and South Side. With funding from BMO Harris Bank, Rush is working with its partners to design educational programs that train a new health care workforce to create a pipeline from training at the certificate and associate's degree levels to continuing education for clinicians and allied health professionals. Community Connections 2016 at 9.
- Because youth abuse of prescription drugs and heroin is a growing problem in New Jersey, CentraState Healthcare System in Freehold, New Jersey founded a Student Health Awareness Center ("SHAC"). SHAC has a seven-year history of providing drug-prevention and education events for students, school staff and parents. Through collaborations with other community organizations, programs have included educational events, classroom lessons and speaker presentations. In 2014, SHAC provided in-class programming for "Life Skills Training," a substance abuse prevention program for students and parents. The focus for programs has remained on educating youth so they can make informed and empowered decisions. Community Connections 2016 at 16.

- On Sept. 1, 2015, the Emory Brain Health Center in Atlanta, Georgia launched the Emory Healthcare Veterans Program—a free, comprehensive care and treatment program for post-9/11 veterans with post-traumatic stress disorder, traumatic brain injury and other service-related conditions. It combines behavioral health care, including psychiatry and neurology, with rehabilitative medicine, wellness and family support to help heal the invisible wounds of war. The program is a member of the newly established Warrior Care Network, a national network funded by the Wounded Warrior Project. The Emory program has two patient-care formats: outpatient services for veterans who can drive to weekly appointments and an intensive two-week outpatient program for veterans from across the country coming to Atlanta. The program plans to serve 1,000 veterans over the next three years. Community Connections 2016 at 6.
- Recognizing the need to provide prenatal care to expectant mothers in the community who are underserved or are in a low-income bracket, the Renown Regional Medical Center in Reno, Nevada developed a pregnancy center for this purpose. The Center offers high-quality, culturally sensitive care services including prenatal exams, delivery options, postpartum care, well-baby check-ups, education and support for healthy lifestyle choices. In 2014, the Center saw more than 5,200 patients, more than 150 patients a day. From June 2012 to March 2015, nearly 7,500 babies were born. Without this option for care, many of the women who deliver at Renown would be strictly walk-ins, which often result in birth trauma, unidentified birth defects and fetal death. Community Connections 2016 at 9-10.

- After recognizing a critical gap in access to mental health services for low-income, Spanish-speaking and older individuals, Joseph Health Queen of the Valley Medical in Napa, California integrated behavioral health screenings and services into its programs and collaborates with community partners to address service gaps. In 2006, the hospital launched a postpartum depression program with local providers to screen all pregnant and postpartum women in the county and offer free counseling and referral services to at-risk women. In 2008, the hospital integrated behavioral health into the CARE Network to provide free assessment and mental health services to low-income, chronically ill or high-risk recently hospitalized clients. The hospital recently partnered in implementing the "Healthy Minds, Healthy Aging Program," a community-based behavioral health initiative for underserved older adults at risk for behavioral or cognitive health issues. In 2015, the programs screened 1,650 underserved individuals and served more than 230 clients, 90% of which demonstrated improvement in depression symptoms. Community Connections 2016 at 11.
- At the Mount Carmel Health System in Columbus, Ohio, the Street Medicine team serves homeless individuals by providing them with free, on-site medical care and extensive case management and resources. Many homeless individuals do not seek medical attention until a situation escalates and requires emergency care and/or hospitalization. By reaching vulnerable and underserved populations where they are, the Street Medicine team is able to treat symptoms before they become more serious and can also address other barriers to health, including helping individuals to obtain housing. A patient advocate works with patients to

help them accomplish many things, including acquire IDs, get transportation to medical and mental health appointments scheduled by the team and connect with a Medicaid application specialist. Community Connections 2016 at 8.

All of these programs meet vital health needs that would otherwise go unaddressed in the areas these hospitals serve. They are conceived and implemented with compassion for the plight of the less fortunate members of the surrounding community. These and other programs are concrete testaments to creative and compassionate care for those most in need.

Not-for-profit hospitals also conduct important medical research and training. In 2015, for example, Northwestern Memorial Hospital in Chicago invested $33.4 million in clinical research. Northwestern Memorial HealthCare Community Benefits Plan Report FY 2015, *available at* http://www.nmh.org/nmh/pdf/nmh_2007_csr.pdf. Indeed, the hospital has sponsored more than 2,200 clinical research studies and programs at one time. Northwestern Memorial HealthCare, White Card at 2 (May 2013), available at http://community.nm.org/uploads/2/2/6/7/22671674/2012_nmh_community_service_white_card_final.pdf. Clinical research—particularly at this volume—is a tremendous community benefit. It adds to our overall body of medical science and potentially puts us one step closer to the next medical breakthrough.

Not-for-profit hospitals are also critical to the education system that turns out the high-quality physicians our State has come to expect. For example, in 2015, on top of its substantial investment in research, Northwestern HealthCare also invested $67 million in medical education, permitting more than 900 medical students, residents and fellows to be trained there. Northwestern Memorial HealthCare Community Benefits Plan Report

FY 2015 ($67 million invested in 2015); Northwestern Memorial HealthCare, White Card at 2 (numbers of students and residents trained each year). Such residency programs help to educate the next generation of physicians through the guidance of clinical experts and expand the primary care physician resources available in medically underserved areas.

* * *

When these contributions from not-for-profit hospitals are viewed together, one ineluctable conclusion emerges: the type of charitable benefits that Illinois's not-for-profit hospitals bring to their communities today meet tremendous needs of both the communities they serve and the State itself. Indeed, the charitable care provided by hospitals today is "all that stands between a thorny policy dilemma and an access crisis for millions of Americans." PricewaterhouseCoopers, Health Research Institute, *Acts of Charity: Charity Care Strategies for Hospitals in a Changing Landscape* (PWC, *"Acts of Charity"*), at 1 (2005).[5]

Should this Court affirm the appellate court and declare Section 15-86 facially unconstitutional and as a result not-for-profit hospitals are not reliably assured of a property tax exemption, citizens in Illinois could be hurt as not-for-profit hospitals are forced to consider cutbacks to meet any newly assessed tax liability. They might have to make room in their budget by cutting programs for children without dental care, expectant mothers without prenatal care, and communities that lack culturally appropriate care delivered by people with language skills. As the General Assembly seems to have

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[5] *Available at* http://www.pwc.com/extweb/pwcpublications.nsf/docid/1766F3BFD7D4C80A8525726F007E46F6.

recognized when passing Section 15-86, with property tax exemption support for not-for-profit hospitals removed, the government itself may ultimately have to meet these needs.

II. THE APPELLATE COURT'S NARROW VIEW OF CHARITABLE PURPOSE WAS CONTRARY TO THE WELL-ESTABLISHED LAW OF ILLINOIS AND THE GREAT WEIGHT OF AUTHORITY FROM OTHER JURISDICTIONS.

Section 15-86 is fully consistent with Illinois law, which has for decades interpreted the term "charity" to include "relieving [the public's] bodies from disease, suffering, or constraint" or "lessening the burdens of government." *Crerar v. Williams*, 145 Ill. 625, 643 (1893). *See also Congregational Sunday Sch. & Publ'g Soc'y*, 290 Ill. at 113, 125 N.E. at 10 ("Charity, in the legal sense, is not confined to mere almsgiving or relief of poverty and distress, but has a wider signification, which embraces the improvement and promotion of the happiness of man."). Indeed, in light of the countless contributions that not-for-profit hospitals make in their communities, discussed and illustrated above, land used for such a hospital has long been considered a "charitable" use of property under Illinois common law. *See Sisters of Third Order of St. Francis v. Bd. of Review of Peoria Cnty.*, 231 Ill. 317, 320-21 (1907) (not-for-profit hospital is "institution of public charity" exempt from taxation); *People ex rel. Cannon v. Southern Illinois Hospital Corp.*, 404 Ill. 66, 88 N.E.2d 20 (1949) (holding that not-for-profit hospital was a charitable organization); *Norwegian Am. Hosp., Inc. v. Dep't of Revenue*, 210 Ill. App. 3d 318, 324-25 (1st Dist. 1991) (not-for-profit hospital entitled to property tax exemption for all parcels of land that were reasonably necessary to accomplish and fulfill the hospital's objective and administration).

That precedent remains valid today, and the case for not-for-profit hospitals as "charitable" uses of land has only grown stronger over time. The current health care

environment poses challenges that only have become more formidable over time, including absorbing significant underpayments from government health care programs, making available increasingly expensive therapies, providing financial assistance to patients without health coverage, and bearing the costs of care for patients with health coverage who have difficulty meeting their responsibility for increasingly high deductibles.

The commonsense view that not-for-profit hospitals serve "charitable" purposes is not unique to Illinois common law. It is the mainstream view of the term "charity" shared by a majority of states[6] and the federal government.[7] Courts across the country, in decisions stretching back far into the last century, have almost uniformly found that not-for-profit hospitals serve "charitable" purposes that further their communities' interests. *See, e.g., United Hosp. Ctr., Inc. v. Romano*, 233 W. Va. 313, 321 (2014) (using property as a hospital constituted an "undisputed charitable purpose" even before hospital had

[6] Consideration of other states' views is particularly appropriate here since the various states' charity laws – including Illinois' – descend from a common English ancestor. *See* Charles A. Borek, *Decoupling Tax Exemption for Charitable Organizations*, 31 Wm. Mitchell L. Rev. 183, 195 (2004) ("As the preeminent English exposition on the law of charity, the Statute of Charitable Uses became the principal source of such law in the United States after the American Revolution. * * * [T]he most important perspective inherited from the English law was its expansive view of what was 'charitable.' "); *Taylor* v. *Keep*, 2 Ill. App. 368, 1878 WL 10421, at *6 (1878) ("The words *charity* and *charitable uses*, at least in this State, where the statute * * * commonly known as the Statute of Charitable Uses, is held to be in force, must be determined with reference to the provisions of that statute.").

[7] The federal government, recognizing that not-for-profit hospitals must be flexible and creative in tailoring their services to the communities they serve, has also adopted a broad definition of "charity" for determining hospital exemptions under 26 U.S.C. § 501(c)(3). The IRS has stated that "[t]he promotion of health * * * is one of the purposes in the general law of charity that is deemed beneficial to the community as a whole even though the class of beneficiaries eligible to receive a direct benefit from its activities does not include all members of the community, such as indigent members of the community." Rev. Ruling 69-545 (1969).

opened its doors to the public); *Harvard Cmty. Health Plan, Inc.* v. *Board of Assessors*, 427 N.E.2d 1159, 1163 (Mass. 1981) ("[T]he promotion of health, whether through the provision of health care or through medical education and research, is today generally seen as a charitable purpose."); *Community Mem. Hosp.* v. *City of Moberly*, 422 S.W.2d 290, 297 (Mo. 1967) (Non-profit hospital entitled to tax exemption because it served the "charitable purpose of operating a hospital for the benefit of all who come to its doors whether as pay[ing] or indigent patients."); *Nuns of Third Order of St. Dominic* v. *Younkin*, 235 P. 869, 872 (Kan. 1925) ("[I]t is uniformly held that [a] hospital is conducted exclusively for charitable purposes" when its earnings from "whatever source are used in the maintenance, extension, and improvement of the hospital.").

For example, nearly fifty years ago, the Virginia Supreme Court declared that charitable tax exemptions for not-for-profit hospitals were justified because based upon "the nature of the[se] institutions and the purpose of their operations," which are "devoted to the care of the sick, which aid in maintaining public health, and contribute to the advancement of medical science [hospitals] are and should be regarded as charities." *City of Richmond* v. *Richmond Memorial Hosp.*, 116 S.E.2d 79, 81-82, 84 (Va. 1960).

The Supreme Court of Michigan likewise has emphasized that hospitals provide such quintessentially "charitable" activities as furthering public health through a variety of health-based community services, educational services, and efforts to treat communicable diseases like HIV-AIDS and hepatitis and maladies like diabetes and obesity. *See Wexford Med. Group* v. *City of Cadillac*, 713 N.W.2d 734, 737 (Mich. 2006). The *Wexford* court reasoned that "implicit in the definition" of charity espoused by both the Michigan Supreme Court and this Court (which includes both relieving

bodily disease and relieving burdens from the government) "is that relieving bodies from disease or suffering is lessening the burden of government." *Id.* at 748. Accordingly the petitioner hospital needed only to prove that it "reliev[es] . . . bodies from disease, suffering, or constraint" to qualify for tax exemption. *Id.* The Michigan Supreme Court pointed out that the not-for-profit hospital at issue could also be considered "charitable" because "the reimbursements [the hospital] receives from government funding fall well short of defraying the costs [it] incurs to render medical care," and therefore "not only are Medicare and Medicaid patients receiving a gift from [the hospital], but [the hospital] is not fully recouping its costs from the government." *Id.*, 713 N.W.2d at 747.[8]

Adding another voice to the chorus, the Alaska Supreme Court has stated, "[i]t is quite clear that what is done out of good will and a desire to add to the improvement of the moral, mental, *and physical* welfare of the public generally comes within the meaning of the word 'charity.'" *Fairbanks North Star Borough* v. *Dená Nená Henash*, 88 P.3d 124, 132 and 135(Alaska 2004) (internal quotation marks & citation omitted) (the "concept of charity" includes any "activity that improves public welfare" and "provide a public benefit") (emphasis added).

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[8] The Illinois General Assembly has similarly recognized that the "unreimbursed cost to a hospital or health system of providing * * * government-sponsored indigent health care * * * [and] government-sponsored program services" are part of the package of "community benefits" that a not-for-profit hospital brings to its community. 210 Ill. Comp. Stat. 76/10. Other state legislatures have done the same. *See, e.g.*, Cal. Health & Safety Code § 127345 ("community benefit" includes "[h]ealth care services, rendered to vulnerable populations, including, but not limited to, charity care and the unreimbursed cost of providing services to the uninsured, underinsured, and those eligible for Medi-Cal, Medicare, California Childrens Services Program, or county indigent programs"); Ind. Code 16-21-9-1 (" 'community benefits' means the unreimbursed cost to a hospital of providing charity care, government sponsored indigent health care, donations, education, government sponsored program services, research, and subsidized health services").

The list of cases from other states goes on and on. Courts across the country agree that "charitable" land use encompasses the numerous services to the community provided by not-for-profit hospitals. *See, e.g., Mingledorff* v. *Vaughan Reg'l Med. Ctr., Inc.*, 682 So.2d 415, 422 (Ala. 1996) (holding that "hospitals * * * whose overall objective is to provide health services to the public at large, with no reservation as to those who cannot afford to pay and with no eye toward the attainment of profit or private advantage" qualify for charitable exemption); *Miriam Osborn Mem'l Home Ass'n v. Assessor of City of Rye*, 909 N.Y.S.2d 493 (New York Supreme Court, 2nd District 2010) ("While there is no precise statutory definition of the term "charitable purpose," it has included the relief of poverty, the advancement of education, [and] the promotion of health[.]"); *Medical Center Hospital of Vermont, Inc. v. City of Burlington*, 152 Vt. 611 (1989) (holding that hospital was "charitable" by virtue of making health care available to all who need it, regardless of ability to pay, even if in the end it never provided free services); *St. Margaret Seneca Place* v. *Board of Prop. Assessment Appeals & Review, County of Allegheny*, 640 A.2d 380, 384 (Pa. 1994) (rejecting argument that shortfalls from government programs should not be considered part of provision of charitable care because "a Medicaid recipient . . . will be accepted [for treatment], despite the understanding and expectation that this causes financial loss to the institution").

Indeed, recognizing that community involvement is key to not-for-profit hospitals' charitable objectives, many states—including this one—actually *require* them to file annual reports detailing the community benefits they provide. *See*, *e.g.*, Cal. Health & Safety Code § 127345; Idaho Code Ann. § 63-602D(7); 210 ILCS 76/20.

In Section 15-86, the General Assembly granted property tax exemption only to a particular subset of not-for-profit hospitals that provide specific charitable benefits to their communities and the not-for-profit entities supporting those hospitals' charitable health care purposes. When passing Section 15-86, the General Assembly found that not-for-profit hospitals deliver exactly the sort of "charitable" community contributions that this Court and others have repeatedly held can justify tax exemption. *See* 35 ILCS 200/15-86(b), (e).

The appellate court nevertheless held that, on its face, Section 15-86 runs afoul of the Illinois Constitution's requirement that property tax exemptions legislated by the General Assembly be limited to properties used exclusively for "charitable purposes." The appellate court reached that conclusion because, in its formalistic view, the statute does not expressly require a not-for-profit hospital to use its property in a "charitable" manner before it is exempted. 2014 IL App (4th) 140795 at ¶ 141 ("Rather than require the hospital entity to use the subject property exclusively for charitable purposes . . ., section 15-86 merely requires" the hospital to provide services of a certain value). Implicit in the appellate court's analysis, then, is the assumption that operating as a not-for-profit hospital is not, in and of itself, a "charitable" use of land. That conclusion is directly contrary to the extensive precedent set forth above, which makes clear that, for example, "relieving [the public's] bodies from disease, suffering, or constraint" or "lessening the burdens of government," are themselves "charitable" purposes. *See, e.g., Crerar*, 145 Ill. at 643.

Because the appellate court used the wrong standard for what land uses were "charitable," it failed to take into account the substantial charitable contributions made by

not-for-profit hospitals—including healing the sick, community care and outreach, shouldering Medicare and Medicaid underpayment, and delivering uncompensated care. If allowed to stand, the appellate court's decision would be at odds with longstanding law in the state on what constitutes a charitable purpose and, therefore, create unnecessary and Statewide uncertainty for not-for-profit hospitals about whether they qualify for property tax exemption—the very uncertainty the legislature sought to avoid by passing Section 15-86.

This Court's own precedent therefore provides ample reason for this Court to reject the appellate court's conclusion that Section 15-86 is facially unconstitutional. And failure to follow that well-established precedent could have the unfortunate consequence of creating uncertainty both inside and outside of the State of Illinois. Litigants seeking to tax not-for-profit hospitals in other states would argue that the hospitals' previously well-established proposition that not-for-profit hospitals further charitable purposes by caring for the health of their communities should be reconsidered and overturned, citing for support this Court's decision to reconsider and overturn decades of precedent.

III. SECTION 15-86 IS WELL WITHIN THE GENERAL ASSEMBLY'S LEGISLATIVE PREROGATIVE, CONSISTENT WITH THE STATE CONSTITUTION, AND SHOULD BE ENFORCED.

In light of the factual and legal backdrop set out above, there can be little doubt that Section 15-86 is a valid exercise of the General Assembly's legislative authority. After the *Provena* decision, there was uncertainty regarding whether not-for-profit hospitals were "institutions of public charity" entitled to property tax exemption under Section 15-65, 35 ILCS 200/15-65. *Provena Covenant Med. Center v. Dept. of Rev.*, 236 Ill.2d 368, 393-94 (2010). Determined to make tax exemption for not-for-profit hospitals more objective and predictable, the legislature enacted a new standard in Section 15-86.

That statute set a "monetary or quantum standard" for property tax exemption for not-for-profit hospitals, which is exactly the sort of "complex decision" that at least two justices of this Court have suggested "should be left to our legislature." *Id.* at 415 (Burke, J., dissenting).

In passing Section 15-86, the legislature explicitly recognized that, in the modern health care environment, "hospitals are assuming responsibility for improving the health status of communities and populations," and that "[l]ow-income and underserved communities benefit disproportionately by these activities." 35 ILCS 200/15-86(a)(3). The General Assembly also expressly found that the State's hospitals "relieve the burden of government in many ways, but most significantly through their participation in and substantial financial subsidization of the Illinois Medicaid program, which could not operate without the participation and partnership[.]" *Id.* at 15-86(a)(4).

Having (correctly) surmised, for many of the same reasons set forth above, that hospitals were the sort of "charitable" uses of property that the General Assembly can constitutionally exempt from property taxes, the legislature made the eminently reasonable decision to clearly exempt a subset of those hospitals that could be consistently and predictably identified: not-for-profit hospitals that contribute substantial value to their State and communities as measured by specific concrete objective metrics.

To start, the General Assembly limited the exemption in Section 15-86 to land used to operate not-for-profit hospitals (or affiliates that further the exempt health-care services of those hospitals). 35 ILCS 200/15-86(b)(1)-(2) (applying the exemption only to those institutions "licensed under the Hospital Licensing Act" (*i.e.*, hospitals) and owned by a "not-for-profit corporation"). It then set forth "quantifiable standards for the

issuance of charitable exemptions for such property," specifically, that the hospital provides services or activities whose value "equals or exceeds the relevant hospital entity's estimated property tax liability" for the exempted property. *Id.* at 15-86(a)(5), (c).

The statute is intentionally specific (and predictable) about what kinds of charitable services and activities count toward the tax exemption. The services that count toward exemption are precisely the sorts of services that have traditionally caused not-for-profit hospitals to be viewed as "charitable" in Illinois and across the country as discussed above in Section II. For example, hospitals can count toward their tax exemption value added to their community through: (1) providing services that "address the health care needs of low-income or underserved individuals or relieve the burden of government with regard to health care services," such as "free or discounted services provided to people of limited means," (2) shouldering unreimbursed costs for "health services to low-income and underserved individuals," (3) providing "subsidies of state and local governments" for "programs that benefit low-income or underserved populations," (4) providing "support for State health care programs for low income individuals" such as ALL KIDS and Medicaid, (5) absorbing "unreimbursed costs" for activities that relieve the burden of government to care for low-income individuals such as "providing emergency, trauma, burn, neonatal, psychiatric, rehabilitation, or other special services," and (6) "providing medical education," or "conducting medical research or training of health care professionals." *Id.* at 15-86(c), (e)(1)-(7).

Accordingly, not-for-profit hospitals that qualify for tax exemption under Section 15-86 are unquestionably serving the charitable purposes the Illinois Constitution permits

the General Assembly to exempt. And the legislature's choice to exempt these properties from property taxes makes perfect sense as a matter of policy. These hospitals provide real benefits—benefits that hospitals are uniquely equipped to provide—that more than offset any lost revenue and that meet fundamental health care needs.

Ultimately, in order to shoulder any new tax burden resulting from invalidation of Section 15-86, hospitals would face challenging decisions about how to deploy their resources in service to their communities. Some hospitals might cut back on high-cost services—like trauma units—that cannot function absent a subsidy. *See*, *e.g.*, 210 ILCS 76/10 (recognizing that "emergency and trauma care, neonatal intensive care, community health clinics and * * * immunization programs" are all "subsidized health services" that a hospital receives less than cost for offering). Other not-for-profit hospitals might reconsider the community services and programs they currently provide, such as community clinics and other outreach and preventative efforts, even though those programs may be the only primary health care some people can access. Or, they may choose to delay capital investments in new technology or facility improvements and use the money for property taxes instead.

Any of these cost-cutting measures would tangibly and noticeably diminish a not-for-profit hospital's ability to provide the community it serves with access to needed care. That result would be both unfortunate and completely unnecessary given the State's longstanding (and, as affirmed for decades by this Court, constitutional) policy of tax exemption for not-for-profit hospitals.

Accordingly, the General Assembly's desire to eliminate what it deemed to be "considerable uncertainty surrounding the test for charitable property tax exemption" for

not-for-profit hospitals in the wake of this Court's *Provena* decision, 35 ILCS 200/15-86(a)(1), was well within the broad range of policy judgments that it was elected to make. *See Provena*, 236 Ill.2d at 412 (2010) ("imposing a quantum of care requirement and monetary threshold" for tax exemption is a matter "best left to the legislature") (Burke, J., dissenting). The appellate court erred when it did not respect that sound policy judgment, particularly since not-for-profit hospitals fit so comfortably under longstanding legal precedent within the "charitable" land uses that the Illinois Constitution authorizes the General Assembly to exempt from taxation. The Court should reverse the judgment below.

CONCLUSION

For all of the foregoing reasons, as well as those contained in the briefs of the Hospitals and other *amici* in support of the Hospitals, this Court should reverse the appellate court's conclusion that Section 15-86 is facially unconstitutional.

Respectfully submitted,

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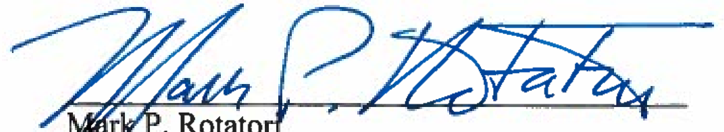
SUPREME COURT RULE 341(c) COMPLIANCE

I certify that this brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief is 26 pages.



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CERTIFICATE OF SERVICE

The undersigned, being first duly sworn upon oath, deposes and states that on this August 30, 2016, three copies of the foregoing Brief *Amicus Curiae* of the American Hospital Association in Support of Appellant The Carle Foundation were served on each of the below-named parties by depositing such copies with an overnight carrier at 77 W. Wacker Drive, Chicago, Illinois, before 7:00 pm, in envelopes bearing sufficient postage:

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