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

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

ORDER and OPINION

I. ORDER

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

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

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

II. OPINION

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

FACTS

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

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

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

DISCUSSION

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

A. Standard for Summary Judgment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Oswald argues that subsection 15-86(c) states that the DOR must grant an exemption to a claimant because the DOR must accept the criteria in subsection 15-86(e). Oswald points to the language in subsection (c) which reads, "a hospital applicant satisfies the conditions for an exemption under this Section with respect to the subject property, and shall be issued a charitable exemption for that property, if the value of services or activities listed in subsection (e)" meet or exceed the hospital's property tax liability for the claimed year. 35 ILCS 200/15-86(c) (2012). Oswald places emphasis on the word "shall", however, Oswald misinterprets the subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

ENTERED: _____

Judge Robert Lopez Cepero

Judge Robert Lopez Cepero

JUN 23 2015

Circuit Court - 1627