

Provena Covenant Medical Center v. The Department of Revenue:
The Illinois Supreme Court's Unconstitutional Prescription for
Health Policy and Possible Side Effects

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“Our job is to do justice under the law, not to make the law. Formulating statutory solutions to social problems is the prerogative of the legislature. Whether there is a solution to the health-care crisis is anyone's guess. I am certain, however, that if such a solution can be found, it will not come from the judicial branch. It is critical, therefore, that the courts not stand as an obstacle to legitimate efforts by the legislature and others to find an answer.”¹

I. INTRODUCTION

The Illinois Supreme Court rendered its decision in *Provena Covenant Medical Center v. Department of Revenue*,² which the Illinois Department of Revenue and not for profit³ hospitals throughout Illinois hoped would provide clarity on what is expected to maintain property tax exempt status.⁴ Unfortunately, the only clear ruling is that Provena Covenant Medical Center, specifically, *did not do enough to warrant a property tax exemption in 2002*.

Generally, hospitals receiving tax exemptions, federal or state, are expected to provide free care, or “charity care”,⁵ to the underserved and indigent populations of the communities they serve, thus relieving some of the burden on the government.⁶ In the last century, expectations have evolved to encompass other services known as “community benefits”, including operating community health clinics and emergency departments, performing medical research and offering training programs, among others.⁷ Millions of tax dollars are foregone each year under this premise,⁸ but recent dollar-for-dollar comparisons indicate that hospitals receiving federal and state tax exemptions might not necessarily be holding up their end of the bargain.⁹

For many hospitals, losing valuable tax exemptions would cause financial insolvency, resulting in foreclosures or acquisitions by stronger for-profit health care systems.¹⁰ Consolidations and shutdowns on a large scale would create an incredible shift in the American health care market, as not for profit hospitals currently comprise 60% of all hospitals, nationally.¹¹ As the largest provider of health care, not for profit hospitals are an integral part of the nation’s “safety net” for the uninsured, underinsured and indigent.¹² In light of these realities, it is especially important for state and federal policymakers to proceed with caution

when revisiting tax exemption policy. This article focuses specifically on property tax exemption in Illinois, arguing that the narrow definition of charity care set forth by the plurality in *Provena* should not be adopted by the Department of Revenue as it constitutes unconstitutional judicial lawmaking and will result in decreased access to care for the vulnerable Illinois communities these not for profit hospitals serve.

II. PROPERTY TAX-EXEMPTIONS IN ILLINOIS

In Illinois, charitable organizations may apply for federal and state income tax exemptions,¹³ state and local sales tax exemptions,¹⁴ and local property tax exemptions.¹⁵ The relevant exemption in *Provena* was property tax exemption, as neither the property's federal and state income taxes nor its state sales tax exemptions were at issue.¹⁶ All three branches of the Illinois state government define and apply policy regarding property tax exemptions.¹⁷ However, because the Illinois Constitution grants the legislature the power to grant exemptions, the authority to create rules governing eligibility for property tax exemptions is concentrated in the legislative and judicial branches, which separately control statutory and constitutional requirements, respectively.

Article IX Section 6 of The 1970 Illinois Constitution¹⁸ allows the General Assembly the power to grant property tax exemptions for limited categories of properties, including those used for exclusively charitable purposes.¹⁹ It has chosen to exercise that power under § 15-65(a) of the Illinois Property Tax Code, which exempts all property “actually and exclusively used for charitable or beneficent purposes, and not otherwise used with a view to profit”.²⁰ Although the General Assembly subsequently added certain healthcare organizations to the statute and the Illinois courts recognize not for profit hospitals as charity providers, the Illinois Department of Revenue did not originally view a hospital that charged for services as a provider of charity

within the scope of the statute.²¹ Indeed, it was the Illinois Supreme Court that confirmed hospitals providing charity care to all patients in need, on a nondiscriminatory basis could be exempt from property taxes as a qualified charity.²²

The most recent attempt at legislative action came from a call for reform in early 2006 by Attorney General Lisa Madigan, who urged the General Assembly to pass the “Tax-Exempt Hospital Responsibility Act” (“H.B. 5000”) which proposed two new requirements for not for profit hospitals.²³ First, all uninsured Illinois residents with income at 150% or less of the federal poverty level were to be provided free care,²⁴ and the hospital was prohibited from issuing a bill or invoice to patients eligible for free care.²⁵ Second, a more burdensome requirement mandated that a not for profit hospital provide “charity care” equal to 8% of its total operating costs.²⁶ In addition to free care, Medicaid shortfalls and contributions to community health centers were includable as charity care expenditures to satisfy the annual 8% obligation.²⁷ Illinois hospitals strongly opposed H.B. 5000 fearing substantial financial burdens upon already struggling entities.²⁸ In the face of opposition, the Attorney General agreed with the legislature not to put the bill to vote during the session in which it was introduced, and despite active discussions between the Illinois Hospital Association and the Attorney General’s office, H.B. 5000 was never brought to the floor.²⁹

In terms of judicial influence, the Illinois Supreme Court has a long history of case law dealing with the issue of healthcare organizations and property tax-exempt status, and precedent firmly establishes that “Taxation is the rule [and] Tax exemption is the exception.”³⁰ Under this premise and the principles of the Administrative Review Law³¹ governing the court’s review of a Department of Revenue decision, the judiciary has no power to create an exemption by means of judicial construction where the legislature has not created one.³²

Beginning with *Crerar v. Williams*³³ in 1893, the court set forth a general definition of charity, which focused on the legal concept of charity as a gift for the benefit of an indefinite number of people by means of educating, healing, assisting or by public works projects to lessen the burden of government.³⁴ In 1907, *Sisters of the Third Order of St. Francis v. Board of Review of Peoria County*³⁵ the question arose of whether hospitals, “relieving bodies of suffering” for free in accordance with the *Crerar* definition, were actually dispensing charity when some patients paid for services and better accommodations.³⁶ According to the court, a disparity between the level and accommodations of care dispensed for free and care dispensed for a fee did not matter, instead, the focus was on whether “charity was dispensed to all those who needed and applied for it.”³⁷

Since the decision in *Sisters of the Third Order*, it has been well accepted that a hospital could be a charitable institution and still be reimbursed for services from patients that could pay.³⁸ That is, until 1987, when the Department of Revenue denied an application for Highland Park Hospital’s newly constructed professional center.³⁹ On appeal, the Second District Court of Appeals applied guidelines set forth by the Illinois Supreme Court in *Methodist Old Peoples Home v. Korzen* from 1968, which defined “charitable” by subdividing the concept into ownership and use analyses.⁴⁰ The *Korzen* test requires that an institution (1) provides benefits that meet the *Crerar* definition of charity;⁴¹ (2) has no capital and earns no profits;⁴² (3) mainly derives funds from public and private charity held in trust for the purposes expressed in the organization’s charter; (4) dispenses charity to all who need and apply for it; (5) provides no gain or profit to a private individual connected with the institution;⁴³ and (6) places no obstacles in the way of those who need to avail themselves of the charitable benefits provided by the institution.⁴⁴ In addition to the characteristics of a charitable institution, the *Korzen* court placed

a requirement on the property itself, as opposed to the owner, which mandates that the land be purportedly and *actually* used for charitable purposes.⁴⁵ Because judicial interpretations become part of the statute until otherwise amended by the legislature,⁴⁶ from the *Highland Park* decision emerged the two-pronged approach to property tax-exemption decisions in Illinois: charitable institution (actual ownership) and charitable use.⁴⁷

Most recently, in *Eden Retirement Center. v. Department of Revenue*, the Illinois Supreme Court distinguished statutory requirements for tax exemptions—governed by the legislature—from constitutional requirements governed by the judiciary.⁴⁸ The court explained that “charitable use” is a constitutional requirement which the judiciary holds the authority to define and the legislature is prohibited from modifying to be less stringent or eliminating it all together.⁴⁹ Since the Illinois Constitution is a limit on the General Assembly’s power,⁵⁰ the court reasoned the legislature could not declare that property meeting statutory requirements “*ipso facto*” satisfied constitutional requirements.⁵¹ Instead, the property must satisfy the *constitutional* definition of charitable use referenced in *Korzen* in addition to statutory requirements.⁵²

III. THE DECISION: PROVENA COVENANT MEDICAL CENTER V. THE DEPARTMENT OF REVENUE

On March 18, 2010, the Illinois Supreme Court upheld the Director of the Illinois Department of Revenue’s decision that Provena Hospitals, (“Provena”), as the owner and operator of Provena Covenant Medical Center (“Covenant”)⁵³ was not a charitable institution and the services provided on-site at Covenant did not constitute charitable uses warranting a local property tax-exemption.⁵⁴ Applying only the *Korzen* constitutional guidelines of charitable ownership, the majority concluded that Provena, as the owner of the property, only satisfied two of the factors: (1) Provena has no capital, corporate stock or shareholders;⁵⁵ and (2) Provena does

not provide private gain to any associated individual.⁵⁶ However, the court determined that Provena failed to satisfy the other factors, and thus did not qualify as a charitable institution for property tax exemption purposes.⁵⁷

Even though Provena failed to satisfy the charitable ownership requirement, the court proceeded with an analysis of whether the property at issue satisfied the charitable use requirement.⁵⁸ Justice Burke and Justice Freeman declined to join this discussion and thus the decision did not result in binding precedent.⁵⁹ In order to analyze whether Provena, as the owner—albeit not *charitable* owner—used the property for charitable purposes, the court first looked at the various aspects of the definition of charity mentioned in *Crerar* and the requirements for ownership and use under *Korzen*.⁶⁰ The plurality first focused on *lessening the burden of government* as part of the *Crerar* definition of charity, explaining that exemptions for charitable institutions are based on the idea that such institutions confer a benefit upon the public, thus reducing the burden of the government and increasing general public welfare.⁶¹ Careful to distinguish this ideology from a dollar-for-dollar, exemption-to-charity-care policy that Illinois does not engender,⁶² the court explained Provena needs to show the use of the property *actually* relieves some of the financial burden for the governments from which the tax revenue will be forgone.⁶³

The court recognized that Covenant provides healthcare to certain classes of individuals, thus relieving the burden of state and federal governments which seek to do the same.⁶⁴ However, Provena did not show how Covenant lessens the burden of the *affected* ten governmental units⁶⁵ where the forty-three parcels of real estate upon which the hospital complex sits are located.⁶⁶ For the dissent, Justice Burke argued that this *quid pro quo* relationship between the charitable entity and the municipality is the reasoning for the

exemption, not an eligibility requirement.⁶⁷ Referencing the definition of charity in *Crerar*, the dissent reiterated the mention of “relieving bodies from disease or suffering” as a sufficient charitable use which lessened the burden of government.⁶⁸ However, the plurality still found that because of this deficiency in benefits to the local taxing entities, Provena fails to demonstrate charitable use to warrant a property tax exemption.⁶⁹

Proceeding with the analysis on the assumption that Provena had shown that Covenant provided the *types* of services beneficial to the affected taxing bodies, the court reasoned that the *terms* of service were inadequate to meet the charitable use requirement.⁷⁰ Citing to the appellate court’s decision in this case, the plurality noted that services rendered for a fee do not relieve the burden of the state.⁷¹ To counter, Provena proffered a number of services it felt should be considered as charitable uses,⁷² including donations to community clinics,⁷³ educational and training programs, and Medicare and Medicaid participation.⁷⁴ The plurality acknowledged that all of the programs did unquestionably benefit the community, but Illinois law does not determine charitable exemption eligibility under a community benefit test, as is the standard for federal income tax exemption. In light of Illinois’ focus on the specific uses of the property when applying for exemption, the only service the court felt might qualify was the Crisis Nursery.⁷⁵ However, the Crisis Nursery only occupies four of the forty-three parcels of land on the property and thus could not justify an exemption for the entire property in the absence of other charitable uses.⁷⁶ The court disregarded the other services as insufficient because the evidence did not support the conclusion that any of those services occurred on the property being considered for the exemption.⁷⁷

Ultimately, the plurality concluded the *actual* use of the forty-three parcels, rather than the purported use, was more accurately described as “treating patients in exchange for

compensation”⁷⁸ because the undisputed evidence suggested that the number of uninsured patients receiving free or discounted care⁷⁹ and the actual dollar value of that care are *de minimus*,⁸⁰ amounting to less than one percent of total patient revenues.⁸¹ Further scrutinizing the amount of charity care Covenant provided, the plurality characterized Covenant’s charity care policy⁸² as “illusory”,⁸³ as the hospital still took in a surplus on discounted payments in 2002 and the patients often received the benefit of financial assistance only after their bill was sent to collection.⁸⁴ The dissent pointed out that this analysis implicated a *quantum of care*,⁸⁵ which the legislature does not impose.⁸⁶ Citing to persuasive authority, the dissent highlighted various problems posed by establishing a dollar or percentage specific amount of charity care.⁸⁷ First, any fixed level of charity care is arbitrary because of inaccurate approximations of the indigent population size due to incomplete reporting.⁸⁸ Second, the needs of communities differ, thus a standardized level of care may be insufficient or unnecessary depending on the community.⁸⁹ Third, the size of the uninsured population varies with economic fluctuations, thus a threshold may either be superfluous or insufficient depending on the annual economic need of each community.⁹⁰ This would perpetually threaten tax exemptions, as tax liability is determined on an annual basis. For these reasons, the dissent opined that the better method of inquiry is “whether health care [is] made available to all who needed it regardless of their ability to pay”, as Illinois precedent has dictated for over a century.⁹¹

IV. ANALYSIS

A. The Plurality Violates the Separation of Powers Clause by Restricting Charitable Use to an Implied Threshold of Charity Care.

In articulating the standard of review, the *Provena* court specifically stated that the Director of the Department of Revenue’s opinion was under review, not the appellate court’s decision. As the head of an administrative agency, his decision is based on determinations of

statutory meaning—not constitutional meaning, which only the judiciary has the authority to derive.⁹² Yet, the court analyzes “charitable ownership” and “charitable use” in terms of their constitutional meaning⁹³ even though the statute’s validity had not been challenged.⁹⁴ Further, the plurality’s judgment rests upon Covenant’s insufficient provision of free medical care as a percentage of revenue; a requirement that is not found anywhere in the language of the statute.⁹⁵ Granted, the Illinois Supreme Court has the power to ensure that constitutional qualifications are met, but if the constitutional definition of charitable use and the statute’s definition are not congruent—following the court’s inference that a threshold of charity care is a constitutional requirement—the implication is that the statute does not comport with the constitution and thus should be held invalid.⁹⁶ However, the court neither addressed these issues nor rendered a decision on the constitutionality of the statute.⁹⁷ This is an alarming deviation from the traditional role of the court⁹⁸ and dangerously resembles a function the court has acknowledged belongs to the legislature: to define terms within a statute.⁹⁹ Assuming a legislative function, as the *Provena* plurality arguably does, is a violation of the separation of powers clause. Ironically, Justice Karameier, author of the *Provena* decision, warns of the danger of the court exceeding its bounds in his dissent in *Lebron v. Gottlieb Memorial Hospital*, decided exactly six weeks before *Provena*. Justice Karameier wrote, “[i]f courts exceed their constitutional role and second-guess policy determinations by the General Assembly under the guise of judicial review, they not only jeopardize the system of checks and balances on which our government is based, they also put at risk the welfare of the people the government was created to serve.”¹⁰⁰

The separation of powers clause of the Illinois Constitution safeguards against one branch of government exercising powers belonging to another branch.¹⁰¹ Generally, the test is whether one branch is encroaching on the sphere of authority of another branch or impeding the other

branch's ability to function.¹⁰² While there are areas of overlap, each branch has a unique sphere of authority in which it is best suited to function for the benefit of the general welfare.¹⁰³ In *Mohanty v. St. John's Heart Clinic*, the Illinois Supreme Court emphasized that the General Assembly, comprised of elected officers, is best equipped to formulate public policy and to determine what changes in the law are desirable and feasible because the legislature can solicit input from the public and private entities that may be affected by any change in the law.¹⁰⁴ In this vein, an Illinois appellate court in *Board of Education of Dolton School District 149 v. Millers* acknowledged the judiciary's deficiency in the arena of developing public policy because rarely are all interested parties and issues represented in a case which the court can then balance and establish a policy applicable to general society.¹⁰⁵ *Provena* is an excellent example of this "issue-in-a-silo" framework within which the courts must make decisions, since much of the court's analysis is based on assumptions and inferences drawn from an incomplete record.¹⁰⁶ For example, both the court and the Director considered the lack of data on the charity care expenditures across all Provena's facilities, as the parent company and true owner, to be one of the factors dooming the Covenant application for exemption.¹⁰⁷

Inevitably the role of the judiciary, as the final authority on constitutionality, and the legislature, which derives its power to act from the Illinois Constitution, will overlap, but it is well established that the General Assembly may enact any legislation not prohibited by the constitution.¹⁰⁸ Article IX, Section 6 of the Illinois Constitution expressly permits the legislature to grant property tax exemptions in limited circumstances.¹⁰⁹ As recently reiterated in *Michigan Avenue Bank vs. County of Cook*, "[t]he fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent."¹¹⁰ Further, the court acknowledges the limitation of its power to interpret statutory language in *Hines v. Department of Public Aid*, in which it held that

the courts may not derive restrictions where the legislature has not made any.¹¹¹ Yet, the plurality in *Provena* neither addresses this limitation on judicial power nor reconciles its decision with either precedent.¹¹² Alternative precedent, such as *City of Chicago v. Holland*, seems to imply that in ascertaining the plain and ordinary meaning of a statute, the court must take into consideration the “relevant *constitutional and statutory* provisions in the constitutional and legislative contexts in which [it] appear[s].”¹¹³ However, the court in *Holland* was deciding an issue of constitutionality, whereas the *Provena* court was reviewing a state agency’s determination of statutory compliance under the principles of administrative judicial review, and the constitutionality of the statute was not in question.

In keeping with the principles of judicial review,¹¹⁴ had the court looked at the legislative history of property tax exemption policy in Illinois, it would have seen the legislature’s intent was *not* to impose a threshold charity care requirement for charitable use, as it chose not to pass H.B. 5000 back in 2006.¹¹⁵ Instead, the *Provena* plurality proceeded to demand the traditional notion of charity, a gift for which nothing is expected in return, essentially restricting the definition of charitable use to the provision of free care.¹¹⁶ In fact, the court’s definition of charity is more stringent than the proposed legislation, as the court explicitly rejected Medicaid shortfalls and contributions to community health clinics which would have been included in the charity care figure under H.B. 5000.¹¹⁷ Further, the court goes beyond the plain and ordinary meaning of the statute by imposing *type* and *terms* restrictions on services offered as part of its “charitable use” analysis, in the absence of such statutory language to that effect.¹¹⁸ Prudently, the dissent recognized this deviation from the standard and chose not to support the plurality,¹¹⁹ thus this discussion is *dicta*¹²⁰ instead of binding precedent to be incorporated into the meaning of the statute.

To avoid delving into this realm of public policy outside the role of the judiciary, the plurality should have exhibited judicial restraint¹²¹ and affirmed the Director's decision¹²² once it found that Provena did not qualify as a charitable institution under the *Korzen* analysis. Instead, the court chose to proceed with an unnecessary discussion of "charitable use", effectively imputing its own view of what should be required of not for profit hospitals.¹²³ The court acknowledges that Illinois does not require a dollar-for-dollar exemption to charity ratio, but then states, without citing to any authority, that organizations seeking a charitable exemption must show how their activities will relieve the financial burden *of the affected taxing bodies*.¹²⁴ As the dissent pointed out, this takes the reason for the exemption and imposes it as a requirement, which Provena fails to meet because it lessens the burden of the *wrong* government, by rendering services traditionally provided by the federal and state governments rather than the local taxing bodies.¹²⁵ Proceeding under the hypothetical premise that Provena could show Covenant provided the *type* of services those taxing governances might need, the court also indicated the *terms* of such services are relevant to whether the burden of government was lessened.¹²⁶ More notably, the court did not reconcile *type* and *terms* requirement regarding the charitable nature of providing services for a fee with the longstanding precedent of *Sisters of the Third Order of St. Francis*; that hospitals can be qualified charitable institutions so long as they render charity care indiscriminately and as needed.¹²⁷ The court seemed to rationalize the additional requirements as heightened scrutiny of the standard set forth in *Sisters of the Third Order*, but the new *type* and *terms* requirement actually undermine the precedent's importance: to bring hospitals within the definition of charitable organizations, not to make it harder for them to qualify.¹²⁸ Had the court ended its analysis after it found Provena Hospitals was not a charitable owner, *Provena* would have been a proper application of the courts authority to decide cases,¹²⁹ instead of an example of

the court's improper substitution of its ideas of property tax exemption policy and a lack of foresight as to the impact on health care throughout the state.

V. IMPACT

A. Unintended Consequences: Communities Most in Need of Charity Care Suffer the Most

In theory, a percentage-based charity care requirement the plurality seems to support, would guarantee a certain amount of free care throughout the state.¹³⁰ In reality, the burden of providing charity care varies from region to region and each hospital faces a different set of community needs.¹³¹ Rural and inner city hospitals, which are typically smaller, already carry a disproportionate share of the uninsured and could face financial disaster if required to provide more free care than they are already providing.¹³² In 2006, when Attorney General Lisa Madigan sought to impose an 8% charity care requirement on Illinois hospitals, 45 hospitals stood to see their expenses exceed their revenues, resulting in negative operating margins.¹³³ Additionally, 28 hospitals that already operated in the red would have seen their aggregate margin rise to a \$411 million deficit.¹³⁴

When hospitals face financial struggle and have no means of increasing revenue, the typical financial strategy is to reduce services, facilities or staff.¹³⁵ Ultimately, it is the community that suffers, because the services most at risk to be scaled back or eliminated are those that serve important community needs, but are often unprofitable.¹³⁶ Covenant proffered many examples of such services, but each was rejected by the court as not within the purview of the constitutional definition of charitable use. By the Illinois Attorney General's own calculations from mandated community benefits reports in 2007,¹³⁷ about one hundred Illinois hospitals lost \$271 million from expensive services needed by the community, but unprofitable to the hospital.¹³⁸ Along with service cut backs, job losses greatly impact the community surrounding the hospital.¹³⁹ In communities where hospitals serve as a stable job source, not

only would the community lose valuable health care services, residents' incomes would be compromised by layoffs and local businesses would suffer from decreased revenues from products and services sales, as the hospital itself is a substantial economic consumer.¹⁴⁰ Furthermore, federal, state and local governments stand to lose valuable revenue sources in hospital-paid wages, which are subject to wage taxes.¹⁴¹ Given the importance of hospitals to these communities, the potential ramifications of compromising the financial sustainability of these vital organizations could be more costly than the property tax exemptions the state seeks to recoup.¹⁴²

B. Lessons Learned: Problems with Imposing a Charity Care Threshold as Seen in Texas

As a point of comparison, proponents and opponents of strict charity care requirements can look to Texas to see the possible effects of enacting a minimum charity care requirement for property tax exemption, as there has been one in place there since 1993.¹⁴³ The relevant lesson to learn from Texas is that the legislature imposed the requirement, not the courts.¹⁴⁴ In fact, the Texas district court chose to defer the issue of acceptable levels of charity care to the legislature rather than impose a judicially created rule when given the opportunity to rule on whether a hospital fulfilled its duty to provide charity care commensurate to the needs of the community and tax-exempt benefits received.¹⁴⁵

After enacting a 4% minimum charity care requirement in 1993, overall spending on charity care by not for profit hospitals did not measurably increase.¹⁴⁶ Actually, overall spending on charity care decreased by 1.2%.¹⁴⁷ The phenomenon occurred because hospitals spending above the benchmark could scale back their charity care programs, while underperforming hospitals increased charity care to remain tax-exempt.¹⁴⁸ Texas found that the fundamental issue complicating the regulation of charity care is the definition and calculation of charity care.¹⁴⁹ Since enactment, the statutory definition of charity care has been amended to include bad debt

and “community benefits” when it became apparent a strictly “free care” calculation would leave many providers short of the 4% of revenues requirement.¹⁵⁰ Although the Texas State Auditor’s Office makes available reporting guidelines, institutions often report charges instead of costs, impeding any meaningful comparison of facility contributions or overall community impact.¹⁵¹ The takeaway from the legislative experiment in Texas: a predetermined threshold of free and discounted care is neither effective nor sustainable.

VI. CONCLUSION

In Illinois, it is abundantly clear that both the legislative and judicial branches of government would like to see tax exemption policy reform to create more accountability, but it cannot be achieved at the expense of established principles of separation of powers central to the state constitution, and American principles of government generally. As highlighted by the dissent in *Provena*, the Illinois Supreme Court did just that by attempting to impose a restriction on property tax exemptions not set forth by the legislature, even after consideration of H.B. 5000 in 2006.¹⁵² In light of the lack of guidance from the *Provena* decision on what Illinois health care providers must do in order to be eligible for property tax exemptions, any further attempts to clarify *should* come from the legislature, not the courts.¹⁵³

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¹ *Lebron v. Gottlieb Mem. Hosp.*, 930 N.E. 2d 895, 933-934 (Ill. 2010), *reh’g denied* (May 24, 2010) (Karmeier, J., dissenting) (ruling that a cap on medical malpractice jury awards for pain and suffering violated the separation of powers clause it “unduly encroached[d] upon the fundamentally judicial prerogative of determining whether a jury’s assessment of damages is excessive within the meaning of the law.” citing *Best v. Taylor Mach. Works*, 689 N.E. 2d 1057, 1080 (Miller, J., dissenting)).

² *Provena Covenant Med. Ctr. v. Dep’t of Revenue*, 925 N.E. 2d 1131 (Ill. 2010).

³ See General Not For Profit Act of 1986, 805 ILL. COMP. STAT. art. 105 §101.80(m) (West 2011) (defining not for profit corporation as “a corporation subject to this Act and organized solely for one or more of the purposes authorized by Section 103.05 of this Act”) and § 103.05 (listing thirty three purposes for which a corporation may incorporate itself and qualify as a not for profit in Illinois, including for charitable, benevolent, and religious purposes). For a comparison of the three types of hospital ownership—not for profit, for-profit, and government-owned—see Jill R. Horwitz, *Making Profits and Providing Care: Comparing Nonprofit, For-Profit, and Government Hospitals*, 24 HEALTH AFF., no. 3, 2005 at 790, 790-801, available at <http://content.healthaffairs.org/content/24/3/790.full.pdf+html>.

⁴ See CONG. BUDGET OFF., NONPROFIT HOSPITALS AND THE PROVISION OF COMMUNITY BENEFITS (2006), <http://www.cbo.gov/ftpdocs/76xx/doc7695/12-06-Nonprofit.pdf> for a more detailed breakdown of the tax exemptions provided to Nonprofit Hospitals,

⁵ Compare OFF. OF THE ATT'Y GEN., ANNUAL NON PROFIT HOSPITAL COMMUNITY BENEFITS PLAN REPORT FORM AG-CBP-1 (2011), <http://www.illinoisattorneygeneral.gov/charities/CBP-1.pdf> (defining charity care as “care for which the provider does not expect to receive payment from the patient or a third-party payer”, to be reported in term of dollar value of cost to the hospital as opposed to what would be charged to the patient) with ILL. HOSP. ASS'N, EVEN MORE THAN MEDICINE: HOW ILLINOIS HOSPITALS HELP THEIR COMMUNITIES, 2010 COMMUNITY BENEFITS REPORT 3 (2010), <http://www.ihatoday.org/uploadDocs/1/2010commbenefitreport.pdf> (defining charity care, an example of a community benefit, as “free or discounted care provided to patients who cannot pay, who are not eligible for public programs, and who meet certain financial criteria in accordance with hospital policy (e.g., income below a certain threshold of the federal poverty level). Charity care includes services for which hospitals neither received nor expected to receive payment because they had determined the patient’s inability to pay. This number is reported as the cost of the care to the hospital.”) (emphasis added). See also *Id.* at 2 (graphically displaying bad debt (totaling \$1.103 billion) and charity care (totaling \$492 million) as two separate categories of community benefits). But see AM. HOSP. ASS'N, UNCOMPENSATED CARE COST FACT SHEET 2, (2005), www.aha.org/aha/content/2008/pdf/08-uncompensated-care.pdf (explaining that hospitals often have difficulty in distinguishing bad debt from charity care and proposing the distinction between the two types of unreimbursed costs is essentially meaningless and both should be included in the calculation).

⁶ Alice A. Noble et al. *Charitable Hospital Accountability: A Review and Analysis of Legal and Policy Initiatives*, 26 J.L. MED. & ETHICS 116, 116-17 (1998) (citing P STARR, THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE (1982)); Jack Hansen, *Are We Getting Our Money's Worth? Charity Care, Community Benefits, and Tax Exemption at Nonprofit Hospitals*, 17 LOY. CONSUMER L. REV. 395, 399 (2005) (“At the start of the 20th century, private charities and beneficent groups around the country... began to establish community hospitals to provide medical care to families unable to pay for doctor visits at home, where most primary health care was provided.”).

⁷ Jack Hansen, *Are We Getting Our Money's Worth? Charity Care, Community Benefits, and Tax Exemption at Nonprofit Hospitals*, 17 LOY. CONSUMER L. REV. 395, 398 (2005) (adopting the Access Project’s definition of community health benefits which includes ‘the unreimbursed goods, services, and resources provided by healthcare institutions that address community identified health needs and concerns particularly those of people who are traditionally uninsured and underserved.’). See ILL. HOSP. ASS'N, EVEN MORE THAN MEDICINE: HOW ILLINOIS HOSPITALS HELP THEIR COMMUNITIES, 2010 COMMUNITY BENEFITS REPORT 3 (2010), <http://www.ihatoday.org/uploadDocs/1/2010commbenefitreport.pdf>, for an analysis on the types of community benefits—defined as “programs and services provided by hospitals that address community health needs and for which hospitals do not receive payment to cover their costs—that Illinois Hospitals provide,

⁸ *Property Tax Facts in Illinois*, MADISON CNT'Y, ILL. TREASURER'S OFF., <http://www.madcotreasurer.org/PropertyTaxFactsIL.shtml> (last visited Oct. 15, 2011) (estimating that in 2006 Illinois granted more than four million property tax exemptions worth approximately \$36.2 billion in revenues). See COMM'N ON GOV. FORECASTING & ACCOUNTABILITY, ILLINOIS PROPERTY TAXES: UPDATE 2009 at 52, Appendix 10 (2009), <http://www.ilga.gov/commission/cgfa2006/Upload/2009updateilpropertytaxreport.pdf>, for a county-by-county breakdown of Illinois property tax exemptions granted and revenue foregone, See COMM'N ON GOV. FORECASTING & ACCOUNTABILITY, ILLINOIS PROPERTY TAXES: UPDATE 2009 at 52, Appendix 10 (2009), <http://www.ilga.gov/commission/cgfa2006/Upload/2009updateilpropertytaxreport.pdf>.

⁹ Jack Hansen, *Are We Getting Our Money's Worth? Charity Care, Community Benefits, and Tax Exemption at Nonprofit Hospitals*, 17 LOY. CONSUMER L. REV. 395, 399 (2005) (summarizing the concerns about not for profit hospital tax exemptions into two relevant questions: 1) “Does the value of the hospital’s community benefit programs equal or exceed the value of its preferential tax treatment?”; 2) “Does the hospital involve the community members in the community benefits planning process?” Hansen concludes that, “[i]f the answer to either of these questions is ‘no’ then the community is not getting what it is paying for ...”); *An Update: An analysis of the Tax Exemptions Granted to Non-Profit Hospitals in Chicago and the Metro Area and the Charity Care Provided in Return*, CTR. FOR TAX & BUDGET ACCOUNTABILITY at 3 (Apr. 2009), <http://www.ctbaonline.org/All%20Links%20to%20Research%20Areas%20and%20Reports/Health%20Care/2009%20Charity%20Care%20and%20Non%20Profit%20Hospital%20Exemption%20Update....pdf> (finding that the hospitals studied received tax breaks worth \$489.5 million, but only provided \$175.7 million in charity care); Jack Hansen, *Are We Getting Our Money's Worth? Charity Care, Community Benefits, and Tax Exemption at Nonprofit Hospitals*, 17 LOY. CONSUMER L. REV. 395, 399 (2005) (citing a study from ten years ago which suggested that

“20% to 80% of nonprofit hospitals fail to provide community benefits commensurate to their tax savings depending upon how ‘community benefit’ was calculated.”).

¹⁰ Marianna Kiselev, *Hospitals in Distress: How the Economy Has Affected Financing of Health Care*, ILL. BUS. L.J. (Mar. 16, 2010, 21:34pm), available at <http://www.law.uiuc.edu/bljournal/post/2010/03/16/Hospitals-in-Distress-How-the-Economy-has-Affected-Financing-of-Health-Care.aspx> (discussing the various issues causing hospitals’ economic problems, such as low reimbursement rates, increasing uninsured and elderly (both are usually associated with high costs) populations, and high resource costs).

¹¹ Scott B. David & Philip J. Robinson, *Health Care Providers Under Pressure: Making the Most of Challenging Times*, 37 J. HEALTH CARE FIN., no.2, 2010 at 49, 51-53 (“In the face of these financial pressures, stand-alone health care facilities find it very difficult to compete with multi-state and multi-hospital systems. Consolidation of health care providers is a growing trend, driven by limitations on access to capital, mandates on quality of care and survival due to pressure on the bottom line. Future consolidation will likely be driven by pressure to reduce costs that cannot be passed along to payers, as well as higher capital investment requirements and continuing economic uncertainty.”) Further, “[such systems] are seeing that their very survival may be dependent on merging with or being acquired by another system. Consolidated systems generally have better access to capital and also tend to have higher bond ratings than stand-alone systems. In the current environment, consolidation can be an opportunity for health care systems, large and small, to be better positioned to fulfill their mission and deliver quality, cost effective care.”); James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL’Y 373, 377 (2009); Jill R. Horwitz, *Making Profits and Providing Care: Comparing Nonprofit, For-Profit, and Government Hospitals*, 24 HEALTH AFF., no. 3, 2005 at 790, 790.

¹² See *An Update: An analysis of the Tax Exemptions Granted to Non-Profit Hospitals in Chicago and the Metro Area and the Charity Care Provided in Return*, CTR. FOR TAX & BUDGET ACCOUNTABILITY at 3 (Apr. 2009), <http://www.ctbaonline.org/All%20Links%20to%20Research%20Areas%20and%20Reports/Health%20Care/2009%20Charity%20Care%20and%20Non%20Profit%20Hospital%20Exemption%20Update....pdf> (explaining that the public health care safety-net is comprised of three components: 1) Medicaid for low-income families, funded by federal and state dollars, 2) public hospitals and clinics, funded by federal, state, and local tax dollars, and 3) Charity Care, subsidized by federal, state, and local tax dollars in the form of tax breaks.) See INST. OF MED., AMERICA’S HEALTH CARE SAFETY NET: INTACT BUT ENDANGERED 21-22 (Marion Ein Lewin & Stuart Altman eds.) (2000), for a more detailed definition of the “safety net”.

¹³ See FORMING A CHARITABLE ORGANIZATION, ILL. ATT’Y GEN., www.illinoisattorneygeneral.gov/charities/forming.html (directing those wishing to form a charitable organization to contact the Internal Revenue Service, among other entities, to apply for federal income tax exemption first because once the IRS grants an exemption, the entity is generally automatically exempt from Illinois state income tax under 35 ILL. COMP. STAT. art. 5 § 205 (West 2005)); Jack Hansen, *Are We Getting Our Money’s Worth? Charity Care, Community Benefits, and Tax Exemption at Nonprofit Hospitals*, 17 LOY. CONSUMER L. REV. 395, 409 Appendix III.B. (2005) (explaining that Illinois is one state that has chosen to grant state income tax exemptions upon qualification for federal tax exemption).

¹⁴ *Sales and Property Tax Exemptions*, ILL. DEP’T OF REVENUE, <http://tax.illinois.gov/Publications/PIOs/pio37.htm> (last visited Oct. 15, 2011)(explaining the difference between the two types of exemptions granted exclusively by states: property and sales tax). See also the Illinois Not For Profit Act of 1986 and 805 ILL. COMP. STAT. art. 105 *et seq.* (detailing the requirements for not for profit organizations in Illinois, including requirements for articles of incorporation, division of assets, and board and member powers, among other provisions); NON-PROFIT ORGANIZATIONS, ILL. DEP’T OF REVENUE, <http://www.revenue.state.il.us/nonprofits/index.htm> (last visited Oct. 15, 2011) (listing the required materials a nonprofit seeking an E number should submit; specifically, 1) articles of incorporation or organization’s constitution; 2) by-laws; 3) detailed narrative of purpose, function, and activities; 4) IRS letter respecting federal tax-exempt status, if acquired; 5) materials explaining the purpose, functions, activities of the organization; 6) most recent financial statement (unnecessary for religious organizations); and 7) any other information regarding purpose, functions, and activities). See also Jack Hansen, *Are We Getting Our Money’s Worth? Charity Care, Community Benefits, and Tax Exemption at Nonprofit Hospitals*, 17 LOY. CONSUMER L. REV. 395, 415-16 (2005) (explaining how to calculate the value of a hospital’s sales and use tax savings by multiplying the annual expenses on supplies—as listed on the IRS Form 990 filing—by the sales tax rate in the municipality where the hospital is located, with the caveat that some states, including Illinois, have a lower sales tax rate for Medical supplies) and Press Release, Response of Ill. Hosp. Ass’n and the Metropolitan Chicago Healthcare Council to CTBA Charity Report (Apr. 10, 2009), <http://www.ihatoday.org/uploadDocs/1/ctbareportresponse.pdf>

(explaining that Illinois applies a 1% sales tax rate to all prescription drugs, food, and consumable medical supplies and a 0% rate to all supplies used for Medicare and Medicaid patients.

¹⁵ *Sales and Property Tax Exemptions*, ILL. DEP'T OF REVENUE, <http://tax.illinois.gov/Publications/PIOs/pio37.htm> (last visited October 15, 2011) (distinguishing that property tax exemptions do not require not for profit status, but rather charitable ownership and charitable use and explaining that The Retailer's Occupation Tax Act governs sales tax exemptions, while the Property Tax Code governs property tax exemptions); *An Update: An analysis of the Tax Exemptions Granted to Non-Profit Hospitals in Chicago and the Metro Area and the Charity Care Provided in Return*, CTR. FOR TAX & BUDGET ACCOUNTABILITY at 3 (Apr. 2009), <http://www.ctbaonline.org/All%20Links%20to%20Research%20Areas%20and%20Reports/Health%20Care/2009%20Charity%20Care%20and%20Non%20Profit%20Hospital%20Exemption%20Update....pdf>.

¹⁶ *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131, 1141 (Ill. 2010).

¹⁷ See The Charitable Trusts Act, 760 ILL. COMP. STAT. art. 55 § 3 (2011) (placing not for profit corporations in the supervision of the Attorney General) and The Community Benefits Act, 210 ILL. COMP. STAT. art. 76 § 20(a)(1)-(4) (2011)(mandating a community benefits plan from not for profit hospitals to be submitted to the Attorney General including: 1) hospital's mission statement, 2) description of the needs of the community taken into consideration in developing the plan, 3) Amount and types of community benefits provided, and 4) amount of charity care calculated separately in terms of actual cost, not what the patient was charged (actual cost of service provided is based on the hospitals Medicare cost report which looks at the total cost to charge ratio)).

¹⁸ See also I.L. CONST. art. IX, § 3 (1948) and I.L. CONST. art. IX § 3 (1870) (previous versions of the Illinois Constitution and provisions granting property tax exemptions).

¹⁹ ILL. CONST. art. IX, § 6 (1970).

²⁰ 35 ILL. COMP. STAT. art. 200 § 15-65 (2011) ("All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit: (a) Institutions of public charity. (b) Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.".) See also 35 ILL. COMP. STAT. art. 200 § 15-40(a)(1) (2011) (exempts property used exclusively for religious purposes, an alternative theory under which Provena Covenant Medical Center sought exemption, but ultimately failed.)

²¹ John D. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gap*, 37 LOY. U. CHI. L.J. 493, 506 (2006). See 35 ILL. COMP. STAT. art. 200 § 15-65(d) (2011) (specifically mentions nonprofit health maintenance organizations certified by the Illinois Department of Insurance). See, e.g., *Sisters of the Third Order of St. Francis v. Bd. of Rev. of Peoria Cnty.*, 83 N.E. 272, (Ill. 1907) (Department of Revenue challenged the hospital as a nonexempt entity because a majority of the hospital's patients paid for services and were given the option of better accommodations as a result).

²² *Sisters of the Third Order of St. Francis v. Bd. of Rev. of Peoria Cnty.*, 83 N.E. 272 (Ill. 1907); John D. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gap*, 37 LOY. U. CHI. L.J. 493, 497 (2006). See also 35 ILL. COMP. STAT. art. 200 § 15-64(d) (2011) (specifically *disqualifies* any hospital or health maintenance organization that is found to have denied a patient admission based on race, creed, color, sex, or national origin).

²³ H. B. 5000, 94th Gen. Assembly, 2006, <http://www.ilga.gov/legislation/94/HB/PDF/09400HB5000lv.pdf> (first introduced Jan. 23, 2006).

²⁴ H.B. 5000 § 15(a)(1)(A). See also, § 15(a)(2)(A) (imposing sliding scale discounts for patients between 150% and 250% of the federal poverty level, and once medically necessary expenses exceed \$10,000 in twelve months, the patient becomes eligible for full charity care under § 15(a)(1)(A) for the amount in excess of \$10,000).

²⁵ H.B. 5000 § 15(a)(1)(B); See also John D. Colombo, *Federal & State Tax Exemption Policy, Medical Debt & Healthcare for the Poor*, 51 ST. LOUIS L.J. 433, 444 (2007) (discussing the two new obligations places on nonprofit hospitals).

²⁶ H.B. 5000 § 25(a). See John D. Colombo, *Federal & State Tax Exemption Policy, Medical Debt & Healthcare for the Poor*, 51 ST. LOUIS L.J. 433, 444 (2007) for an overview of the new requirements of H.B. 5000.

²⁷ See H.B. 5000 § 25(b) (allowing for the inclusion of Medicaid shortfalls and contributions to community health clinics).

²⁸ ILL. HOSP. ASS'N, WHY HB5000 AND HB4999 WILL HARM HOSPITALS AND THE COMMUNITIES THEY SERVE, http://www.mchc.com/eweb/docs/newsroom/cfc_aha3.pdf (predicting that Illinois hospitals not already in compliance with the proposed law would collectively lose an additional \$158 million annually, and forty-five

hospitals would be forced into a budget deficit); Keith Emmons et al., *Survey of Illinois Law: Health Care*, 32 S. ILL. U. L.J. 999, 1001 (2008) (discussing Illinois hospital's opposition to HB5000).

²⁹ John D. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gap*, 37 LOY. U. CHI. L.J. 493, 529 (2006); Keith Emmons et al., *Survey of Illinois Law: Health Care*, 32 S. ILL. U. L.J. 999, 1001 (2008).

³⁰ *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131, 1143 (Ill. 2011); *see also* *Chicago Bar Ass'n v. Dep't of Revenue*, 644 N.E. 2d 1166, 1171 (Ill. 1994); *Springfield School Dist. No. 186 v. Dep't of Revenue*, 893 N.E. 2d 1042, 1047 (Ill. App. 4th Dist. 2008); *Faith Builders Church, Inc. v. Dep't of Revenue*, 882 N.E. 2d 1256, 1261 (Ill. App. 4th Dist. 2008) (all citing this rule regarding taxation verbatim).

³¹ 35 ILL. COMP. STAT. art. 200 § 8-40 (2011) (specifically applies to judicial review of Department of Revenue determinations regarding property); 735 ILL. COMP. STAT. art. 5 § 3-101 (2011) (grants the power of judicial review generally). *See* 35 ILL. COMP. STAT. art. 200 § 8-35 (2011), for the specifics on the Department of Revenue's procedures on exemption determinations. *See also* *Provena*, 925 N.E. 2d at 1143 (explaining that the *de novo* standard of review applies to questions of law, "manifest weight of the evidence" standard applies to questions of fact, and "clear error" standard applies to mixed questions situations.)

³² *City of Chicago v. Dep't of Revenue*, 590 N.E. 2d 478 (Ill. 1992) (concerning exemption of city buildings under § 19.6). *See generally* *Bd. of Certified Safety Professionals of the Americas v. Johnson*, 494 N.E. 2d 485 (Ill. 1986); *Follett's Ill. Books & Supplies Store v. Isaacs*, 190 N.E. 2d 324 (Ill. 1963); *Reeser v. Koons*, 213 N.E. 2d 561 (Ill. 1966).

³³ *Crerar v. Williams*, 34 N.E. 467 (Ill. 1983) (involving a dispute over and eight provisions John Crerar's will that were challenged as insufficient to convey valid testamentary gifts).

³⁴ *Crerar*, 34 N.E. at 470 ("A charity, in a legal sense, may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education, religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or by otherwise lessening the burden of government.")

³⁵ *Sisters of the Third Order of St. Francis v. Bd. of Rev. of Peoria Cnty.*, 83 N.E. 272 (Ill. 1907).

³⁶ *Sisters of the Third Order of St. Francis*, 83 N.E. at 273-74 (wherein St. Francis hospital treated all patients regardless of creed, race, or financial condition, but those able to pay for services were given the more desirable rooms).

³⁷ *Sisters of the Third Order of St. Francis*, 83 N.E. at 274.

³⁸ John D. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gap*, 37 LOY. U. CHI. L.J. 493, 506 (2006) (noting that for eighty years tax exemptions for hospitals went unchallenged).

³⁹ *Highland Park Hosp. v. Dep't. of Revenue*, 507 N.E. 2d 1331, 1333 (Ill. App. Ct. 2nd Dist. 1987).

⁴⁰ *Korzen v. Methodist Old Peoples Home*, 233 N.E. 2d 537, 537 (Ill. 1968) (noting that the court's past decisions did not provide a precise formula for resolving questions of charitable use, the court proceeds to define gift according to *Crerar*, and then list various attributes of charitable institutions identified by precedent, and then defines "exclusive use" as "the primary purpose for which property is used and not any secondary or incidental purpose).

⁴¹ *Id.* at 541-42; *Crerar*, 34 N.E. at 470 (defining charity).

⁴² *Korzen*, 233 N.E. 2d at 541-42. John D. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gap*, 37 LOY. U. CHI. L.J. 493, 510 (2006) (explaining that this holding essentially makes exempt organizations adopt a nonprofit organizational structure, although not statutorily required). *C.f. Applying for Exemption: The Difference Between Nonprofit and Tax-Exempt Status*, INTERNAL REVENUE SERV.

[HTTP://www.irs.ustreas.gov/charities/article/0,,id=136195,00.html](http://www.irs.ustreas.gov/charities/article/0,,id=136195,00.html) (last Sept. 6, 2011) (explaining that nonprofit is a state exemption concept whereas tax-exempt status qualified organizations exempt from federal tax income tax. Most tax-exempt organizations are nonprofits, but nonprofit status is not dispositive of federal tax-exempt status).

⁴³ *Korzen*, 233 N.E. 2d at 541-42. *C.f.* John D. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gap*, 37 LOY. U. CHI. L.J. 493, 510 (2006) (arguing that the second and part of the fourth *Korzen* factors "mirror" the ban on private inurement for federal tax exemption). For more information, see I.R.C. § 501(c)(3) (specifically mentions private inurement, while private benefit is implied under Reg. § 1.501(c)(3)-1(d)(1)(ii) which states the organization must serve a "public rather than private interest"); Rev. Rul. 97-21, 1997-1 C.B. 121 (specifically the discussion regarding employee-physician recruitment incentives which is governed by the private inurement restrictions as opposed to recruiting physicians to the community where the court applied the private benefit analysis); John D. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gap*, 37

LOY. U. CHI. L.J. 493, 500-01 (2006) (explaining the nuances that distinguish private benefit from private inurement).

⁴⁴ *Korzen v. Methodist Old Peoples Home*, 233 N.E. 2d 537, 541-42 (Ill. 1968). *See also* *Riverside Med. Ctr. v. Dep't of Revenue*, 507 N.E. 2d 1331, 1335-36 (Ill. App. Ct. 3rd Dist. 2003) (laying out the six factors of the *Korzen* test as the principles set forth by the Illinois Supreme Court used to determine whether or not a use was in fact exclusively for charitable purposes).

⁴⁵ *Korzen*, 233 N.E. 2d at 541-42 (emphasis added) (specifically, statements of agents and legal documents express the intent to use the property exclusively for charitable purposes, and it can be shown the property is actually used exclusively for charitable purposes).

⁴⁶ *Abruzzo v. City of Park Ridge*, 898 N.E.2d 631, 642 (Ill. 2008) (explaining that judicial “interpretation is considered part of the statute itself until the legislature amends it contrary to that interpretation.”).

⁴⁷ *See e.g. Riverside*, 795 N.E. 3d at 365 (Facility failed to meet the third and fourth factors, which require a majority of the funds to be derived from public or private charity and that charity is dispensed to all who need it. *Riverside* failed to advertize their charity care and automatically sent bills, which the Department of Revenue construed as a barrier to those who needed charity); *Alivio Med. Ctr. v. Dep't of Rev.*, 702 N.E. 2d 189 (Ill. App. Ct. 1st Dist. 1998) (*Alivio* found not to be a charity because it did not advertize its charity care policy, but instead, billed patients and then reduced payments when notices went unpaid. The court decided this was “writing off bad debt” as opposed to dispensing charity). *See generally* John D. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gap*, 37 LOY. U. CHI. L.J. 493 (2006) (discussing the evolution of Illinois case law, specifically how the *Korzen* test came to be adopted district-by-district).

⁴⁸ *Eden Retirement Ctr. v. Dep't of Revenue*, 821 N.E. 2d 240 (Ill. 2004) (the appellate court had determined that because the 1984 amendment to the charitable exemption statute to include the requirements of federal tax-exempt status, the property necessarily satisfied charitable use as a matter of law when the statutory requirements were met. The Illinois Supreme Court ruled the appellate court’s analysis erroneous because the legislature cannot declare property exempt without meeting the constitutional definition of charitable use, which the 1984 amendment satisfied, had the appellate court bothered to look at the plain language of the statute.”).

⁴⁹ *Eden Retirement Ctr.*, 821 N.E. 2d at 290.

⁵⁰ ILL. CONST. art. IX, § 1 (“The General Assembly has the exclusive power to raise revenue by law *except as limited* or otherwise provided in this Constitution.” (emphasis added)).

⁵¹ *Eden Retirement Ctr.*, 821 N.E. 2d at 290.

⁵² *Eden Retirement Ctr.*, 821 N.E. 2d at 287 (citing to the holding in *Korzen*, which stated “that the plaintiff’s property is not held exclusively for charitable purposes *within the meaning of our constitution . . .*”).

⁵³ *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131, 1146 (Ill. 2010).

⁵⁴ *Provena*, 925 N.E. 2d at 1136 (*Provena Hospitals* is one of four subsidiaries of *Provena Health*, a corporation created when the *Servants of the Holy Heart* and two other catholic health organizations merged their operations.); Brief of Plaintiff-Appellant *Provena Covenant Medical Center* at 1, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (explaining that *Covenant’s* services included: 24-hour emergency department, a birthing center, intensive care, neonatal intensive care, and pediatrics units, surgical center, cardiac care, cancer treatment, rehabilitation, and behavioral health services, and home health care including hospice. Other services include: smoking cessation clinics, high cholesterol and blood pressure screenings, pastoral care, and case management service for older persons hoping to stay in their homes, as well as other support groups and health-related classes.).

⁵⁵ *Provena*, 925 N.E. 2d 1145. *See generally*, 805 ILL. COMP. STAT. art. 105 *et seq.* (2011) (detailing the requirements for not for profit organizations in Illinois, including requirements for articles of incorporation, division of assets, and board and member powers, among other provisions)

⁵⁶ *Provena*, 925 N.E. 2d at 1145.

⁵⁷ *Id.* at 1146.

⁵⁸ *Id.* at 1147.

⁵⁹ *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131, 1157 & 1160 (Ill. 2010) (Burke, J., dissenting).

⁶⁰ *Id.* at 1147.

⁶¹ *Id.* at 1147-48. *See also* *People v. Y.M.C.A. of Chicago*, 6 N.E. 2d 166, 169 (Ill. 1937) (noting that “the reason for the exemptions in favor of charitable institutions is the benefit conferred upon the public by them, and a consequent relief, to extent, of the burden upon the state to care for and advance the interests of its citizens”); Brief of Plaintiff-

Appellant Provena Covenant Medical Center at 21, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (citing to Y.M.C.A. of Chicago).

⁶² *Provena*, 925 N.E. 2d at 1140 (explaining that Covenant provided \$1,758,940 in charity care, if calculated in terms of charges, but only \$831,724 in actual costs; therefore, total charity care equaled less than one percent of Covenant's total patient-service revenues. In terms of patients, .27% of the hospital's total annual patient census received reductions in their bills under the charitable care program. Given Covenant's property tax liability of \$1.1 million, the amount of charity care provided fell short by \$268, 276); Brief of the Defendant-Appellee Department of Revenue at 10, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328).

⁶³ *Provena*, 925 N.E. 2d at 1148.

⁶⁴ *Provena*, 925 N.E. 2d at 1148; Brief of Plaintiff-Appellant Provena Covenant Medical Center at 21, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (arguing services relieved the burdens of government and noting that no government entity owned or operated a general acute-care hospitals in Champaign County).

⁶⁵ *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131, 1148 (Ill. 2010) (listing the affected taxing bodies: Champaign County, Champaign County Forest Preserve District, Community College District 505, Unit School District 116, Urbana Corporation, Cunningham Township, Urbana-Champaign Sanitary District, Urbana Park District, Champaign-Urbana Mass Transit District, and Champaign-Urbana Public Health District); *id.* at 1148 n.10 (noting that Provena was not required to show Covenant (for which the property was used) reduced the burden on *each* affected taxing district, but did need to show that it helped alleviate a financial burden faced by the country or any one of the other entities).

⁶⁶ *Id.* at 1148. *See generally* *Eden Retirement Ctr. v. Dep't of Revenue*, 821 N.E. 2d 240 (Ill. 2004) (the Supreme Court held that the appellate court erred in concluding that the legislature necessarily intended for federal tax exemption to be dispositive of state property exemption when it amended the statute granting exemptions to include the criteria for federal tax-exempt status).

⁶⁷ *Provena*, 925 N.E. 2d at 1159 (Burke, J., dissenting) (despite this objection, the dissent did not believe that Provena failed to meet its burden of showing it alleviated some of the burden of the government).

⁶⁸ *Id.*; *Crerar v. Williams*, 34 N.E. 467, 470 (Ill. 1983).

⁶⁹ *Provena*, 925 N.E. 2d at 1148. *C.f.* *Cannon v. S. Ill. Hosp. Corp.*, 88 N.E. 2d 20, 23 (Ill. 1949) (Illinois Supreme Court reversed a denial for tax exemption where the hospital charged for services to indigent residents but did so at deeply discounted rates for the county and was the only hospital in the area, thus the county was also spared the cost of transportation and treatment of patients elsewhere).

⁷⁰ *Provena*, 925 N.E. 2d at 1148. Brief of the Defendant-Appellee Department of Revenue at 11, 2008 WL 7826209 (Ill.), *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) ("And of those 302 [patient's granted charity care] Provena sent 64 to debt collection agents for unpaid bills ranging from \$2.52 to \$77,704.47. Provena also filed lawsuits against patients who did not pay in full and used wage deductions and body attachments (also known as warrants for arrest) to collect payment [back in 2002]"); *Provena*, 925 N.E. 2d at 1139 (explaining that as a policy, patients were billed directly if reimbursement did not come from private insurance or government sources. Short-term collection matters were handled by Provena's "Extended Business Office" that sent out three or four statements and made three or four phone calls to patients with outstanding balances.). *See also*, Carol Pryor, *The Hospital Billing and Collection Flap: It's Not Over Yet*, 2005 J. HEALTH CARE COMPLIANCE 25, 26, http://www.accessproject.org/adobe/the_hospital_billing_and_collections_flap.pdf (mentioning several aggressive collection practices such as wage garnishing, liens, and home foreclosures pursued by hospitals against low-income families eligible for assistance, but hounded for payment instead). For a discussion of legislative reform of hospital's billing practices in 2006, see Press Release, Madigan Proposes Two Bills to Hold Hospitals Accountable for Charity Care, Stop Unfair Billing and Collection Practice, Illinois Attorney General (Jan. 23, 2006) http://www.illinoisattorneygeneral.gov/pressroom/2006_01/20060123.html (describing the Fair Patient Billing Act, which passed, and H.B. 5000, which ultimately failed) and Press Release, Report of the Task Force on Charity Care and Collection Practices for the Uninsured, Ill. Hosp. Ass'n and the Metro. Chi. Healthcare Council (Sept. 11, 2003) <http://www.nonprofithealthcare.org/resources/charitycare.pdf> (offering hospitals advice in light of the investigations of billing and collection practices led by a coalition of labor unions and immigrant groups) for more information on this issue.).

⁷¹ *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 384 Ill.App.3d 734, 744 (1st Dist. 2008). *C.f.* Brief of Plaintiff-Appellant Provena Covenant Medical Center at 3, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E.

2d 1131 (Ill. 2010) (No. 107328) (highlighting that neither the federal, state, or local government owns or operates a general acute-care hospital in Champaign County).

⁷² *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131, 1152-55 (Ill. 2010). *Compare* Brief of the American Hospital Ass'n Amici Curiae Supporting Provena Covenant Medical Center at 15, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (citing a survey done in 2006 of 132 not-for-profit hospitals which found that 100% provided additional community programs) *with* Brief of the Defendant-Appellee Department of Revenue at 21, 2008 WL 7826209 (Ill.), *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (citing to the same study concluding that hospitals offer these services, characterized as “unprofitable”, out of economic self-interest). *See generally*, Jill R. Horwitz, *Why We Need the Independent Sector: The Behavior, Law, and Ethics of Not-For-Profit Hospitals*, 50 UCLA L. REV. 1345 (2003) (presenting empirical data which suggests that nonprofit hospitals are different from for-profit hospitals and do offer different types of services because their missions are different.).

⁷³ *Provena*, 925 N.E. 2d at 1152 (the court also explained that the use of funds derived from the facility on the property is irrelevant because the “critical issues is the use to which the property itself is devoted, not the use to which income derived from the property is employed.”).

⁷⁴ *Id.* at 1151-56; Brief of Plaintiff-Appellant Provena Covenant Medical Center, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328).

⁷⁵ *Provena*, 925 N.E. 2d at 1154; Brief of Plaintiff-Appellant Provena Covenant Medical Center at 9, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (describing The Crisis Nursery in Urbana: [The Crisis Nursery] is a separate not-for-profit entity with no corporate affiliation with Covenant or Provena Health, despite the fact that Covenant employees serve on its board of directors. It provides a temporary haven for young children whose families are experiencing some form of crisis and the parents are incapable of caring for or are a danger to their children. “The goal, always, is to protect children from situations in which they may be at heightened risk of abuse or neglect.” Services offered by the Crisis Nursery include: allowing children up to age five to stay overnight for up to three days during which time the child is fed, bathed, and provided with developmentally appropriate activities. The Crisis Nursery financed the construction of its facilities and provides its own staff, but Provena Health owns the land and leases it to the Crisis Nursery for \$1 per year. In addition to leasing the land, Provena Health provides the nursery with telephone and utilities services, building and grounds maintenance, laundry, meals, medical consultations, and meeting space at Covenant, among other things.).

⁷⁶ *Provena*, 925 N.E. 2d at 1154; Brief of the Defendant-Appellee Department of Revenue at 21, 2008 WL 7826209 (Ill.), *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (determining that “only the crisis nursery appears to be a wholly free program for patients” but was still only a situation where Provena subsidized).

⁷⁷ *Compare with* Brief of Plaintiff-Appellant Provena Covenant Medical Center at 9-10, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328)(citing to Congressional Sunday Sch. v. Bd. of Rev., 125 N.E. 7, 11, *reh'g denied* (Ill. 1919) (sales from *off property* missionary work didn't bar exemption).

⁷⁸ *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131, 1149 (Ill. 2010) (basing its conclusion on Provena's billing practices which focused on billing for services as the rule and discounts and credits as the exception); Brief of the Defendant-Appellee Department of Revenue at 29, 2008 WL 7826209 (Ill.), *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (“Rather, [Provena's] primary use was for the delivery of healthcare in exchange for payment, as measured by revenues of \$113 million [at Covenant].”).

⁷⁹ *Provena*, 925 N.E. 2d at 1149; Brief of the Defendant-Appellee Department of Revenue at 27, 2008 WL 7826209 (Ill.), *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (characterizing discount policy as a “last resort”).

⁸⁰ *Id.* *See also, Id.* at 1150 (disputing that such a low level of charity care is the result of low demand. Given that Covenant's purported to advance the Catholic health care ministry which holds that the institution must “distinguish itself by service to and advocacy for those people whose social condition puts them at the margins of our society and makes them vulnerable to discrimination: the poor, the uninsured and the underinsured,” the lack of a need for charity care would have led Provena to devote its resources elsewhere. Based on this analysis the court decided that since Covenant was still in operation, this argument lacked merit. Additionally, the Federal census showed that nearly 25,000 people in Champaign country fell below the federal poverty guidelines and at least 20,000 residents were without any health-care coverage. Covenant's discounted services to only 302 out of 110,000 patients annually suggests that there is a greater need for charity care and that need is not satisfied or adequately quelled by Covenant's charity care policy.).

⁸¹ Provena, 925 N.E. 2d. at 1140 (stating the exact percentage as .723%); Brief of the Defendant-Appellee Department of Revenue at 10-11, 2008 WL 7826209 (Ill.), *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (calculating this figure by dividing \$831,724 in costs forgone as charity by \$113 million in patient-services revenue). Compare with Jack Hansen, *Are We Getting Our Money's Worth? Charity Care, Community Benefits, and Tax Exemption at Nonprofit Hospitals*, 17 LOY. CONSUMER L. REV. 395, 402-04 (2005) (highlighting that the two largest private healthcare providers, Advocate Health Care and Resurrection Health Care, both fell short of their tax exemptions in 2002. Resurrection contributed a little more than 50% of its total tax savings of \$72 million (value of property, sales, and income tax exemptions combined) while Advocate, the largest system, contributed less than half of its \$73.9--\$85 million aggregate annual savings between 1999 and 2002). See also John D. Colombo, *Federal & State Tax Exemption Policy, Medical Debt & Healthcare for the Poor*, 51 ST. LOUIS L.J. 433, 443 n.2 (2007) (noting that 75% of nonprofit hospitals provide less uncompensated care than their tax benefit).

⁸² *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131, 1138-39 (Ill. 2010) (quoting the charity care policy stated: “[Provena Covenant Medical Center] would offer, to the extent it is financially able, admission for care or treatment, and the use of hospital facilities and services regardless of race, color, creed, sex, national origin, ancestry or ability to pay for these services.”); Brief of Plaintiff-Appellant Provena Covenant Medical Center at 6, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (“Under that policy, and as an established operating tenet, patients who need charity assistance are encouraged to apply for assistance.”).

⁸³ *Provena*, 925 N.E. 2d at 1139 (reasoning that as effectuated, the policy applied a sliding scale percentage discount on care based on an individual’s income level, as established on the application. Anyone who requested a charity care application was given one, but it was the applicant’s responsibility to provide all the necessary and requested information.). See also Brief of the Defendant-Appellee Department of Revenue at 26-27, 2008 WL 7826209 (Ill.), *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (maintaining that the hospital did not inform a patient of the availability of charity care unless a staff member “hear[d] a patient talk” about financial concerns or crisis. Further, Covenant’s onerous application required a patient to present documentation of income such as income tax returns, paycheck stubs, or bank statements and included questions such as, “Do [your dependents] meet the IRS dependent support regulations?”).

⁸⁴ *Provena*, 925 N.E. 2d at 1150 (noting that in one instance, the charitable benefit was not applied until after the patient had passed away). For the federal attempt to address such practices, see PPACA, Pub. L. No. 111-148, § 9007(a)(5)(A), 124 Stat. 557 (2010) (prohibiting patients determined to be eligible for financial assistance from being charged more than the highest rate charged to third party payors for emergency and necessary medical services).

⁸⁵ See generally Evelyn Brody, *All Charities Are Property-Tax Exempt, but Some Charities are More Exempt Than Others*, 44 NEW ENG. L. REV. 621, 647 (2010).

⁸⁶ *Provena*, 925 N.E. 2d at 1158 (Burke, J., dissenting).

⁸⁷ *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131, 1157-58 (Ill. 2010) (Burke, J., dissenting) (citing to cases from the Michigan and Vermont Supreme Courts). See generally *Wexford Med. Group v. City of Cadillac*, 713 N.W.2d 734 (Mich. 2006); *Med. Ctr. Hosp. of Vermont, Inc. v. City of Burlington*, 566 A.2d 1352 (Vt. 1989).

⁸⁸ *Provena*, 925 N.E.2d at 1157-58 (Burke, J., dissenting) (citing to the plaintiff’s argument in *Wexford Med. Group v. City of Cadillac*, 713 N.W.2d 734 (Mich. 2006)). See also *City of Richmond v. Richmond Mem. Hosp.* 116 S.E. 2d 79, 81-82 (Va. 1960) (recognizing that “[a] tax exemption cannot depend upon any such vague and illusory concept as the percentage of free service actually rendered” but where not-for-profit hospitals are concerned, depends instead upon “the nature of the[se] institutions and the purpose of their operations.”); Brief of the American Hospital Ass’n Amici Curiae Supporting Provena Covenant Medical Center at 11, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (citing city of Richmond v. Richmond Memorial Hosp.).

⁸⁹ *Provena*, 925 N.E.2d at 1157-58 (Burke, J., dissenting) (citing to the plaintiff’s argument in *Wexford Med. Group v. City of Cadillac*, 713 N.W.2d 734 (Mich. 2006)).

⁹⁰ *Provena*, 925 N.E. 2d at 1158-59 (Burke, J., dissenting) (citing *City of Richmond v. Richmond Mem. Hosp.*, 116 S.E.2d 79, 81-82 (1960) (“A tax exemption cannot depend upon any such vague and illusory concept as the percentage of free service actually rendered. This would produce chaotic uncertainty and infinite confusions, permitting a hodge-podge of views on the subject.”). See also Heather May & Kristen Stewart, *Utah Hospital: Reform Won't Cut Need for Charity*, SALT LAKE TRIB.,(updated Sept. 21, 2010 7:14PM),

<http://www.sltrib.com/sltrib/lifestyle/49862588-80/hospitals-care-charity-patients.html.csp> (discussing how the high level of unemployment has caused a spike in the need for charity care, especially because people tend to put off anything unnecessary during times of economic hardship, foregoing preventative treatment and waiting till their health deteriorates substantially before seeking medical treatment).

⁹¹ *Provena*, 925 N.E. 2d at 1158 (Burke, J., dissenting) (citing to *Med. Ctr. Hosp. of Vermont, Inc. v. City of Burlington*, 566 A.2d 1352 (Vt. 1989)).

⁹² See *Klafter v. St. Bd. of Examiners of Architects*, 102 N.E. 193, 194-95 (Ill. 1913) (explaining that the role of an administrative authority may be quasi-judicial, requiring “[t]he authority to ascertain facts and apply the law to the facts”, but this is not an encroachment on judicial authority; rather, it’s merely judgment exercised “incident to the execution of ministerial power.”).

⁹³ See *Eden Retirement Ctr. v. Dep’t of Revenue*, 821 N.E. 2d 240, 290 (Ill. 2004) (explaining that charitable use is a constitutional requirement, as it appears in art. IX, § 6 of the Illinois Constitution, and thus the prerogative of the judiciary to define).

⁹⁴ See *Provena Covenant Med. Ctr. v. Dep’t of Revenue*, 925 N.E. 2d 1131, 1143 (Ill. 2010) (where the court explains it will apply a “clear error” standard of review). See also *Exelon Corp. v. Dep’t of Revenue*, 917 N.E.2d 899, 904-05 (2009) (establishing the standard of review for review of administrative agency decisions which involve questions of fact and law defined as “ ‘questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.’ ”).

⁹⁵ See 35 ILL. COMP. STAT. art. 200 § 15-65 (2011).

⁹⁶ See *Maddux v. Blagojevich*, 911 N.E.2d 979, 988 (Ill. 2009), *Allegis Realty Investors v. Novak*, 860 N.E.2d 246, 255 (Ill. 2006), and *A.B.A.T.E. of Ill., Inc. v. Giannoulas*, 929 N.E.2d 1188, 1196 (Ill. App. 4th Dist. 2010) *appeal allowed*, 938 N.E.2d 518 (Ill. 2010) for authoritative statements explaining that the constitution restricts the legislature’s power, rather than grants it, and therefore, statutory language must be within constitutional bounds.

⁹⁷ See Ill. Sup. Ct. R. 18(c)(3) (requiring that any court finding a statute or other law unconstitutional must set for the specific grounds for that finding including “ *that the statute, ordinance, regulation or other law being held unconstitutional cannot reasonably be construed in a manner that would preserve its validity*” among other requirements) (emphasis added). See, e.g. *People v. Dabbs No. 109698*, 2010 WL 4649236 (Ill. 2010) (viewing a statute permitting evidence of defendant’s prior acts of domestic violence with “a strong presumption of constitutionality”, thereby placing the burden on the challenger to demonstrate a violation).

⁹⁸ *Crusius v. Ill. Gaming Bd.*, 837 N.E.2d 88, 98 (Ill. 2005) (“It is the dominion of the legislature to enact laws and it is the province of the courts to construe those laws.” citing *Shields v. Judges' Retirement System*, 204 Ill. 2d 488, 497, 274 Ill. Dec. 424, 791 N.E.2d 516 (2003)). See also *Best v. Taylor Mach. Works*, 689 N.E. 2d 1057, 1107 (Ill. 1997) (Miller, J., dissenting) (“Although it is certainly true that the power of the legislature to act in a particular field is not a license to act unconstitutionally, the legislature generally enjoys broad discretion in its determinations of public policy.”). See e.g., *Comm. for Educ. Rights v. Edgar*, 672 N.E.2d 1178, 1191-93 (Ill. 1996) (declining to rule the current method of education funding unconstitutional) and *St. Building Venture v. O’Donnel*, No. 108673, 2010 WL 4655103 (2010) (reviewing and upholding the legislatures exercise of constitutional authority to allow sovereign immunity under 745 ILL. COMP. STAT. 5/0.01 *et seq.*)

⁹⁹ *People v. Muzzarelli*, 770 N.E.2d 1232, 1234 (Ill. App. Ct. 3rd Dist. 2002) (“A legislative body has the power to articulate reasonable definitions of terms within a statute and may broaden or narrow the meaning that terms otherwise would have.” citing *People v. Johnson*, 231 Ill.App.3d 412, 419-22, 172 Ill.Dec. 711, 595 N.E.2d 1381, 1387-88 (1992)). See also, *Collins v. Metro. Life Ins. Co.*, 83 N.E. 542, 544 (“When the sovereign power of the State has by written constitution declared the public policy of the State on a particular subject, the legislative and judicial departments of the government must accept such declaration as final. When the legislature has declared, by law, the public policy of the State, the judicial department must remain silent, and if a modification or change in such policy is desired the law-making department must be applied to, and not the judiciary, whose function is to declare the law but not to make it.”).

¹⁰⁰ *Lebron v. Gottlieb Mem. Hosp.*, 930 N.E. 2d 895, 933-934 (Ill. 2010), *reh’g denied* (May 24, 2010) (Karmeier, J., dissenting). See also, *Midstate Siding & Window Co., v. Rogers*, 789 N.E.2d 1248, 1252-53 (Ill. 2003) (“It is never proper for the courts to depart from the plain language of the statute by reading into it exceptions, limitations or conditions which conflict with the intent of the legislature”) (citations omitted).

¹⁰¹ ILL. CONST. art. II, § 1 (1970) (“The legislative, executive, and judicial branches are separate. No branch shall exercise power properly belonging to another.”). See also *Burger v. Lutheran Gen. Hosp.*, 749 N.E. 2d 533, 541 (Ill. 2001) (explaining that the “both theory and practice, the purpose of the [separation of powers] provision is to ensure

that the whole power of two or more branches of government shall not reside in the same hands.”) (citations omitted).

¹⁰² *Lebron*, 930 N.E.2d at 933-934; *Allegis Realty Investors v. Novak*, 860 N.E. 2d 246, 255 (Ill. 2006) (emphasizing the role of the separation of powers clause to ensure “no branch shall exercise powers properly belonging to another.”).

¹⁰³ *Best v. Taylor Mach. Works*, 689 N.E.2d 1057, 1178 (Ill. 1997); *Allegis Realty Investors*, 860 N.E. 2d at 255 (explaining that specifically, the doctrine on the roles of the legislature and judiciary has come to mean “the legislature’s role is to make the law and the judiciary’s role is to interpret the law.”). For examples of invalid delegations of power to the improper branch, see *Murneigh v. Gainer*, 685 N.E. 2d 1357 (Ill. 1997) (improper delegation to judicial branch), *Wright v. Ctrl. Du Page Hosp. Ass’n*, 347 N.E. 2d 736 (Ill. 1976) (improper delegation of judicial power to a medical malpractice review board), and *Fields Jeep-Eagle v. Chrysler Corp.*, 645 N.E. 2d 946 (Ill. 1994) (invalid delegation of legislative or administrative power to the judiciary).

¹⁰⁴ *Mohanty v. St. John Heart Clinic*, 866 N.E. 2d 85, 110, *reh’g denied* (Mar. 26, 2007) (Ill. 2007) (Freeman, J., concurring in part and dissenting in part) (emphasizing that the legislature should be the primary vehicle of public policy, especially in cases where the issue is whether or not a new rule is warranted). See Bruce Jaspén, *No Clarity on Charity Care Pushes Hospitals, Lawmakers to Create Definitions*, CHI. TRIB. (Apr. 05, 2010), http://articles.chicagotribune.com/2010-04-05/business/ct-biz-charity-care--20100405_1_charity-care-urbana-hospital-nonprofit-hospitals (posturing that the legislature needs to come forth with a new, clear definition of charity care).

¹⁰⁵ *Bd. of Edu. of Dolton Sch. Dist. 149 v. Millers*, 812 N.E. 2d 688, 693 (Ill. App. 3rd Dist. 2004).

¹⁰⁶ See, e.g., *Provena Covenant Med. Ctr. v. Dep’t of Revenue*, 925 N.E. 2d 1131, 1148 (Ill. 2010) (The record was devoid of findings regarding relief provided to the twelve taxing authorities in which the Hospital sits); *id.* at 1152-53 (no record of the emergency medical training services taking place on the premises); *id.* at 1153 (no record of how the shortfall between costs of the medical residency program and the reimbursement); *id.* at 1146 (noting that the record was devoid as to where the gain Covenant individually realized—from income totaling \$2,165,388 after providing for \$7,101,000 uncollectible accounts receivables—was reinvested specifically or if it was reinvested at Covenant at all).

¹⁰⁷ Brief of the Defendant-Appellee Department of Revenue at 11, 2008 WL 7826209 (Ill.), *Provena Covenant Medical Center v. Dep’t of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328); *Provena*, 925 N.E. 2d at 1146-47 (noting that the only charitable donations documented to Covenant, totaled \$6,938, but the court’s focus is on what *Provena Hospitals* reported on its financial statements as charitable donations).

¹⁰⁸ *Chi. Bar Ass’n v. St. Bd. of Elections*, 558 N.E. 2d 89, 94 (Ill. 1990); *Client Follow-Up Co. v. Hynes*, 390 N.E.2d 847, 849-50 (Ill. 1979); *Droste v. Kerner*, (217 N.E.2d 73, 76 (Ill. 1966)); *Adamowski v. Metropolitan Sanitary Dist. of Greater Chi.*, 150 N.E.2d 361, 367 (Ill. 1958); *Herb v. Pitcairn*, 64 N.E.2d 519, 523 (Ill. 1945).

¹⁰⁹ ILL. CONST. art. IX, § 6 (1980).

¹¹⁰ *Michigan Ave. Nat’l Bank v. City of Cook*, 732 N.E.2d 528, 534 (Ill. 2000); *Burger v. Lutheran Gen. Hosp.*, 749 N.E. 2d 533, 545 (Ill. 2001).

¹¹¹ *Hines v. Dep’t of Pub. Aid*, 850 N.E. 2d 148, 153 (Ill. 2006) (involving a situation where The Department of Public Aid tried to seek reimbursement for correctly expended costs from the estate of a Medicaid recipient’s surviving spouse when Illinois law only allowed three exceptions for such reimbursement and only allowed for payment from the recipient’s estate, not from the spouses’ estate).

¹¹² See generally, *Provena Covenant Med. Ctr. v. Dep’t of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (the only cite to *Hines* comes from the dissent who takes issue with the plurality’s imposition of a quantum of care).

¹¹³ *City of Chi. v. Holland*, 790 N.E. 2d 240, 246 (Ill. 2003) (emphasis added) (finding and amendment to the Illinois State Audit Act unconstitutional).

¹¹⁴ See, e.g., *Best v. Taylor Mach. Works*, 689 N.E.2d 1057, 1165 (Ill. 1997); (looking at the deliberations and committee hearings leading up to the passage of a comprehensive tort reform bill) and *Chic. Bar Ass’n*, 558 N.E. 2d at 99-100 (looking the legislative proceeding to determine that the unconstitutional provision of a law calling for the election of some appellate and circuit court judges, was in fact severable).

¹¹⁵ Compare with John D. Colombo, *Federal & State Tax Exemption Policy, Medical Debt & Healthcare for the Poor*, 51 ST. LOUIS L.J. 433, 445 (2007) and John D. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gap*, 37 LOY. U. CHI. L.J. 493, 529 (2006).

¹¹⁶ *Provena*, 925 N.E. 2d at 1157 (Burke, J., dissenting) (referring to the court’s characterization of the dollar value of charity care provided as *de minimus*). See James King et al., *Provena Covenant Medical Center v. Department of Revenue: Illinois Supreme Court Suggests New, Narrow Tests for Charity Care* (JONES DAY) March 2010, available

at <http://www.jonesday.com/abc2.aspx?url=/newsknowledge/publicationdetail.aspx%3Fpublication%3Dce7cd0e6-5700-4401-b83a-061673a29973%26print%3Dtrue%26section%3DResults> (reiterating the court's view that providing services on charitable terms requires more than "merely never intending to receive payment."). *But see* MIRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/charity> (last visited Oct. 15, 2011) (defining charity, in relevant part, as "benevolent goodwill toward or love of humanity; generosity and helpfulness especially toward the needy or suffering; aid to those in need; an institution engaged in relief of the poor; public provision for the relief of the needy' a gift for public benevolent purposes; or an institution (as a hospital) founded by such a gift.")

¹¹⁷ H. B. 5000, 94th Gen. Assembly, 2006, <http://www.ilga.gov/legislation/94/HB/PDF/09400HB5000lv.pdf>.

¹¹⁸ *Compare* 35 ILL. COMP. STAT. art. 200 § 15-65 (2011) (only requiring property be actually and exclusively used for charitable purposes) *with Provena*, 925 N.E. 2d at 1148 (discussing that services rendered with the expectation of payment are not acceptable *terms* and the particular *type* of services offered where not of the nature the local governments were responsible for).

¹¹⁹ *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131, 1159 (Ill. 2010) (Burke, J., dissenting) ("I do not believe this court can, under the plain language of section 15-65, impose a quantum of care or monetary requirement, nor should it invent legislative intent in this regard. Setting a monetary or quantum standard is a complex decision which should be left to our legislature, should it so choose. The plurality has set a quantum of care requirement and monetary requirement without any guidelines. This can only cause confusion, speculation, and uncertainty for everyone: institutions, taxing bodies, and the courts. Because the plurality imposes such a standard, without any authority to do so, I cannot agree with it.").

¹²⁰ For the courts explanation of the two types of dicta, *Obiter* and *Judicial dictum*, see *Exelon Corp. v. Dep't of Revenue*, 917 N.E. 2d 899, 907 (2009) (explaining that "*Obiter dictum*," frequently referred to as simply "*dictum*," is a remark or opinion that a court uttered as an aside, is not essential to the outcome of the case or an integral part of the opinion, and thus is generally not binding authority or precedent within the *stare decisis* rule, but *Judicial dictum*, on the other hand, is 'an expression of opinion upon a point in a case argued by counsel *and deliberately passed upon by the court*' and is entitled to much weight, and should be followed unless found to be erroneous.). *See, e.g.,* *Lebron v. Gottlieb Mem. Hosp.*, 930 N.E. 2d 895, 906-907 (Ill. 2010), *reh'g denied* (May 24, 2010) (the state challenged the applicability of separation of powers doctrine rendered under *Best v. Taylor Mach. Works* as it was unnecessary to the decision and only dicta, but the court responded that its discussion of the separation of power in *Best* was *judicial dictum* and entitled to much weight.) *But see, Lebron*, 930 N.E.2d at 926 (Karmeier, J., dissenting) (arguing that *Dicta* is not binding, and even *judicial dictum* does not preclude reconsideration, citing *Geer v. Kadera*, 671 N.E.2d 692 (Ill. 1996)).

¹²¹ For a general description of the characteristics of judges who practice the philosophy of judicial restraint, see James C. Dunlop & Tara A. Fumerton, *The Illinois Supreme Court: Judicial Activism, With Limits*, THE FEDERALIST SOC'Y FOR L. & PUB. POL'Y STUD. 2 (Oct. 20, 2004), http://www.fed-soc.org/publications/pubid.96/pub_detail.asp (describing the role of judges, when exhibiting judicial restraint, in matters of public policy, as deferential to the legislature rather than to substitute their own judgment).

¹²² OHIO HOSP. ASS'N, THE PROVENA TAX EXEMPTION CASE AND ITS IMPACT ON OHIO HOSPITALS at 4, April 2010, <http://www.ohanet.org/siteobjects/c1e5ce37b193eaf94fd0da708e4a701/provena%20tax%20exemption%20white%20paper%2004%2010.pdf> (discussing how the Court did not show judicial restraint and continued on to the analysis of the charitable use prong); *Provena*, 925 N.E. 2d at 1147 (Holding that the appellate court correctly concluded the Department's decision was not clearly erroneous and then directly proceeded to the discussion of charitable use without any discussion as to why it was still necessary to determine whether *Provena* satisfied that requirement since it failed as a charitable institution in the first place).

¹²³ *See also*, James C. Dunlop & Tara A. Fumerton, *The Illinois Supreme Court: Judicial Activism, With Limits*, THE FEDERALIST SOC'Y FOR L. & PUB. POL'Y STUD. 3 (Oct. 20, 2004), http://www.fed-soc.org/publications/pubid.96/pub_detail.asp (accusing the Illinois Supreme Court, in *Best v. Taylor Machine Works* of "abandon[ing] any semblance of judicial restraint and proceed[ing] to substitute its judgment for the legislature's by rejecting the evidence relied upon by the Illinois General Assembly as unresponsive ... and rewriting public policy expressly to include a judicially-established component.").

¹²⁴ *Provena*, 925 N.E. 2d at 1148 (emphasis added). *Compare* *Cannon v. S. Ill. Hosp. Corp.*, 88 N.E. 2d 20, 23 (Ill. 1949) (holding it was acceptable that the hospital provided services the particular taxing authorities did not, thus sparing the government that expense).

¹²⁵ *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131, 1159 (Ill. 2010) (Burke, J., dissenting) (“[T]he plurality converts this rationale into a condition of charitable status”). See *generally* *People v. Young Men’s Christian Ass’n of Chi.*, 6 N.E. 2d 166 (Ill. 1937).

¹²⁶ *Provena*, 925 N.E. 2d at 1148 (“The *terms* of the service also make a difference”).

¹²⁷ *Sisters of the Third Order of St. Francis v. Bd. of Rev. of Peoria Cnty.*, 83 N.E. 272, 273-74 (Ill. 1907) (responding to and rejecting the argument that the hospital “should not be considered an institution of public charity by reason of the great disparity between the number of charity patients and those who pay for the care and attention they receive at the institution.”). Compare Reply Brief for Plaintiff-Appellant Provena Covenant Medical Center at 1, 6, & 14-15 *Provena Covenant Medical Center v. Dep’t of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (stating that the Department stipulated that Provena dispensed health care to all who applied regardless of availability to pay) with Brief of the Defendant-Appellee Department of Revenue at 25, 2008 WL 7826209 (Ill.), *Provena Covenant Medical Center v. Dep’t of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (clarifying that it stipulated *health* care to all who needed it, but health care and charity care are not synonymous for purposes of the *Sisters of the Third Order of St. Francis* and property exemption standards).

¹²⁸ John D. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gap*, 37 LOY. U. CHI. L.J. 493, 496 n.25 (2006). Colombo notes that the Illinois Supreme Court concluded the debate in holding that hospitals would be exempt even if they charged those patients who were able to pay, so long as the hospital provided charity care to all patients who needed it and treated all patients on a nondiscriminatory basis.” (citing to *Sisters of the Third Order*, 83 N.E. at 273; *German Hosp. of Chi. V. Bd. of Rev. of Cook Cty.*, 84 N.E. 215, 216 (Ill. 1908)).

¹²⁹ See *Ultsch v. Ill. Mun. Ret. Fund*, 874 N.E. 2d 1, 6 (Ill. 2007) (explaining “[t]he Illinois Constitution establishes three coequal branches of government, each with its own powers and function. The constitution declares that the legislative branch makes laws, and that the judicial branch decides cases”) (citation omitted). See also, *Lebron v. Gottlieb Mem. Hosp.*, 930 N.E. 2d 895, 922 (Ill. 2010), *reh’g denied* (May 24, 2010) (Karmeier, J., dissenting) (citing *Ultsch* and accusing the court of disregarding the principle of judicial restraint by proceeding to find a comprehensive tort reform bill unconstitutional, when it was not necessary to the disposition of the case).

¹³⁰ See *generally* John D. Colombo, *Federal & State Tax Exemption Policy, Medical Debt & Healthcare for the Poor*, 51 ST. LOUIS L.J. 433, 446 (2007) (addressing the “Case in Favor” of minimum charity care requirements) and Gabriel O. Aitsebaomo, *The Nonprofit Hospital: A Call For New National Guidance Requiring Minimum Annual Charity Care To Qualify For Federal Tax Exemption*, 26 CAMPBELL L. REV. 75, 93 (2004) (arguing for a minimum charity requirement for federal tax exemptions).

¹³¹ James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL’Y 373, 391 (2009) (projecting that the variance of size and purpose of nonprofit hospitals will cause a percentage requirement to affect some hospitals more than others). See also Brief for Illinois Hospital Ass’n Amici Curiae Supporting Appellants at 7, *Provena Covenant Med. Ctr. v. Dep’t of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (explaining “[a]t one end is Chicago, a metropolis of 2.9 million people with 42 hospitals and about 10,000 hospital bed. At the other end is Metropolis, a city with 6,400 people and one hospital with 25 beds.”).

¹³² James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL’Y 373, 391 (2009).

¹³³ ILL. HOSP. ASS’N, WHY HB5000 AND HB4999 WILL HARM HOSPITALS AND THE COMMUNITIES THEY SERVE, http://www.mchc.com/eweb/docs/newsroom/cfc_aha3.pdf; James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL’Y 373, 392-93 (2009).

¹³⁴ ILL. HOSP. ASS’N, WHY HB5000 AND HB4999 WILL HARM HOSPITALS AND THE COMMUNITIES THEY SERVE, http://www.mchc.com/eweb/docs/newsroom/cfc_aha3.pdf (The hospitals’ aggregate bottom line prior to the hypothetical enactment of an 8% requirement amounted to -\$254 million); James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL’Y 373, 393 (2009) (giving the example, in Chicago, Mount Sinai Hospital’s financial solvency fluctuates hourly. Mount Sinai’s “days of cash on hand---a common gauge of a hospital’s solvency—are sometimes measured in hours.”).

¹³⁵ See Julie Appleby, *Hospitals Hurt by Slumping Economy Put Off Projects*, USA TODAY, Jan. 22, 2009, http://www.usatoday.com/news/health/2009-01-22-hospitals_N.htm?POE=click-refer (“As a result of the economic crunch, 45% of hospitals have postponed upcoming improvement projects and 13% have halted expansions already underway” as reported by a survey of 639 hospitals.”).

¹³⁶ Brief of the American Hospital Ass'n Amici Curiae Supporting Provena Covenant Medical Center at 15, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (referencing “subsidized health service” such as emergency and trauma care, neonatal intensive care units, community health clinics and immunization programs).

¹³⁷ See Community Benefits Act, 210 ILL. COMP. STAT. art. 76 § 20(a)(1)-(4) (2011) (statutory requirements of the community benefits reports mandated by the Illinois Attorney General).

¹³⁸ Brief for Illinois Hospital Ass'n Amici Curiae Supporting Appellants at 6, *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (Specifically, 109 hospitals aggregately lost \$271 million); Brief of the American Hospital Ass'n Amici Curiae Supporting Provena Covenant Medical Center at 2-3, *Provena Covenant Medical Center v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (noting that tax exemptions make such unprofitable services feasible and are the foundation of the long standing relationship between government and nonprofits).

¹³⁹ Brief for Illinois Hospital Ass'n Amici Curiae Supporting Appellants at 6, *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 925 N.E. 2d 1131 (Ill. 2010) (No. 107328) (citing an American Hospital Ass'n Annual Survey from 2005 that found a hospital was the largest employer in forty eight Illinois counties); See also Julie Appleby, *Hospitals Hurt by Slumping Economy Put Off Projects*, USA TODAY, Jan. 22, 2009, http://www.usatoday.com/news/health/2009-01-22-hospitals_N.htm?POE=click-refer (discussing the growing trend of hospital staff layoff and hiring freezes).

¹⁴⁰ *Beyond Health Care: The Economic Contribution of Hospitals*, TRENDWATCH (Am. Hosp. Ass'n, Washington D.C.) Ap. 2008 at 5, www.aha.org/aha/trendwatch/2008/twapr2008econcontrib.pdf

¹⁴¹ *Beyond Health Care: The Economic Contribution of Hospitals*, TRENDWATCH (Am. Hosp. Ass'n, Washington D.C.) Ap. 2008 at 5, www.aha.org/aha/trendwatch/2008/twapr2008econcontrib.pdf; Hospital wages also translates into income for residents as consumers in the state and local economy. *Id.*

¹⁴² James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL'Y 373, 394-95 (2009). *Beyond Health Care: The Economic Contribution of Hospitals*, TRENDWATCH (Am. Hosp. Ass'n, Washington D.C.) Ap. 2008 at 1, www.aha.org/aha/trendwatch/2008/twapr2008econcontrib.pdf. (citing to National data that suggests “each hospital job supports two additional jobs and every dollar spent by a hospital supports more than \$2 of additional business activity.”).

¹⁴³ See 4 Tex. HEALTH & SAFETY CODE § 311.031(2) (West 2010). See also James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL'Y 373, 382 (2009).

¹⁴⁴ James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL'Y 373, 384 (2009); Gabriel O. Aitsebaomo, *The Nonprofit Hospital: A Call For New National Guidance Requiring Minimum Annual Charity Care To Qualify For Federal Tax Exemption*, 26 CAMPBELL L. REV. 75, 93 (2004) (explaining how a suit brought by the Texas Attorney General against Methodist Hospital was dismissed on the grounds that the attorney general lacked authority to enforce the tax code, and in response the legislature passed the minimum charity care legislation which included an enforcement provision).

¹⁴⁵ James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL'Y 373, 383 (2009) (citing to *Texas v. The Methodist Hosp.*, No. 494,212 (126th Dist. Ct., Travis Cnty, Tex. Feb. 19, 1993) which prompted the 1993 legislation).

¹⁴⁶ James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL'Y 373, 382-83 (2009) (explaining more specifically, 4% of annual revenues must be spent on charity care).

¹⁴⁷ Tyrrell, *supra* note 11, at 384. For examples of alternative means of increasing accountability for charity care with arguably more success than Texas's minimum requirement, see Jessica Berg, *Putting The Community Back Into The “Community Benefit” Standard*, 44 GA. L. REV. 375, 421-30 (2010) (analyzing current state community benefits requirements, including Texas, to encourage states without such accountability measures to implement one in order to preserve the current system of not for profit and for profit hospitals).

¹⁴⁸ James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL'Y 373, 383 (2009) (citing a study done in 2009 by professors various universities on the effects of this Texas legislation). Compare the Texas strategy to demand more charity care from its hospitals with New Jersey that provide subsidies for charity care as described in FORUMS INST. FOR PUB. POL'Y, AN OVERVIEW OF CHARITY CARE IN NEW JERSEY—PAST, PRESENT AND FUTURE 4-5 (2004) and

New Jersey Hospital care Payment Assistance Program, ST. OF NJ DEP'T OF HEALTH & SENIOR SERVICES (last modified Jul. 21, 2009), <http://www.nj.gov/health/charitycare/index.shtml>.

¹⁴⁹ 4 Tex. HEALTH & SAFETY CODE § 311.031(2) (West 2010) (stipulating that charity care can be accomplished by “providing, funding, or otherwise financially supporting” services for indigent persons directly or through other nonprofit or public health care organizations); James E. Tyrrell, *Non-Profits Under Fire: The Effects of Minimal Charity Care Requirements Legislation on Not-For-Profit Hospitals*, 26 J. CONTEMP. HEALTH L. & POL'Y 373, 383 (2009) (explaining that originally, the statute only counted care rendered to “financially indigent” persons which is essential a patient granted free care because of inability to pay; however, in 1995 hospitals were able to convince the legislature to include “medically indigent” persons, defined as a patient unable to pay the outstanding balance after third-party payment, which allowed hospitals to include “bad debt” into their calculations of charity care).

¹⁵⁰ 4 V.T.C.A. § 11.1801 (Vernon 2009) (requiring not for profit hospitals to provide “charity care and government-sponsored indigent health care” and allows community benefits to be included in addition to charity care in certain instances and above certain thresholds in order to be eligible for property tax exemption under 1 V.T.C.A. § 11.18 (Vernon 2009)); § 311.031 (defining “charity care as unreimbursed costs to a hospital” incurred for inpatient or outpatient services to indigent patients, and defines “unreimbursed costs” as the remaining costs after any payment from any source, thus allowing bad debt—unpaid patient bills—to be included in the definition of charity care).

¹⁵¹ TEX. ST. AUDITOR'S OFF., AN AUDIT REPORT OF CHARITY CARE AT HEALTH-RELATED INSTITUTIONS, REP. NO. 0-034, at i-ii (2007) (pdf available for download at <http://www.sao.state.tx.us/Reports/report.cfm/report/07-034>) (explaining that institutions do not follow a consistent model for calculating charity care)

¹⁵² ILL. CONST. art. 2 § 1 (1970) (separation of powers provision).

¹⁵³ Amy G. Doehring et. al, *Illinois Supreme Court Property Tax Decision Carries Implications for Charitable Organizations* (MCDERMOTT, WILL & EMERY, Chicago) Mar. 24, 2010, http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object_id/1de01f4d-c585-440e-8732-7c79e65fa29f.cfm (last visited Oct. 15, 2011) (concluding with a discussion of the possibility of legislative response and constitutional challenges).