COPY

In the Circuit Court for the 22nd Judicial Circuit
McHenry County, Illinois

FILED
APR 1 0 2023
KATHERINE M KEEFE
MCHENRY CTY CIR CLK

No. 19 MR 861

NUNDA TOWNSHIP ROAD DISTRICT,

Plaintiff,

vs.

J.B. PRITZKER, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF ILLINOIS,

Defendant.

ORDER

The Illinois Constitution provides for township government. ILL. CONST. 1970, art. VII, § 5. The Constitution directs the General Assembly to enact provisions for the county-wide creation, consolidation, merger, dissolution, or division of townships. *Id.* To that end, they have enacted the Illinois Township Code. 60 ILCS 1/1-1 *et seq*.

Article 25 of the Township Code provides the mechanism for discontinuing all township government in any county in Illinois. 60 ILCS 1/25-5 *et seq*. In 2019, the General Assembly enacted Article 24 of the Township Code, which provides mechanisms for discontinuing individual—rather than countywide—townships, but it applies only in McHenry County. 60 ILCS 1/24-10 *et seq*.

The question presented is whether Article 24 violates the State's constitutional prohibition against enacting a "special or local law when a general law is or can be made applicable." ILL. CONST. 1970, art. IV, § 13.

I. Facts

Established townships may only be discontinued by popular vote in a referendum. ILL. CONST. 1970, art. VII, § 5. Prior to August 2019, Article 25 of the Township Code provided the sole means of discontinuing established township government. 60 ILCS 1/25-5 *et seq*. Under Article 25, at least ten percent of the registered voters of

each township in the county must sign a petition to place the referendum on the ballot. 60 ILCS 1/25-5. The referendum question asks whether township organization shall be continued in the county. *Id.* Once submitted to the voters, this question cannot be resubmitted for four years. *Id.* If (1) a majority of voters in (2) at least three-quarters of the townships in the county, (3) which townships themselves contain at least a majority of the population of the county, vote to discontinue township organization, then all township organization ceases in the county upon the election and qualification of a county board. 60 ILCS 1/25-10.

In 2019, Article 24 of the Township Code, entitled Dissolution of Townships in McHenry County, was enacted. 60 ILCS 1/24-10 *et seq.* Under Article 24, a referendum can be initiated by either a resolution of the township board of trustees, 60 ILCS 1/24-15, or a petition presented by the township electors. 60 ILCS 1/24-20. The referendum passes, and the township is dissolved, upon a majority vote of those from the township casting votes in that election. 60 ILCS 1/24-30. As the title suggests, Article 24 only applies in McHenry County.

Article 24 begins with the legislative justification, which provides,

> "It is the intent of the General Assembly that this Act further the intent of Section 5 of Article VII of the Illinois Constitution, which states, in relevant part, that townships 'may be consolidated or merged, and one or more townships may be dissolved or divided, when approved by referendum in each township affected.' Transferring the powers and duties of one or more dissolved McHenry County townships into the county, as the supervising unit of local government within which the township or townships are situated, will reduce the overall number of local governmental units within our State. This reduction is declared to be a strong goal of Illinois public policy."

Pub. Act 101-0230, § 1 (eff. Aug. 9, 2019) (adding 60 ILCS 1/Art. 24).

Soon after Article 24 became law, this action was initiated by Plaintiff, Nunda Township Road District ("Nunda").[1] The com-

[1] The case was originally captioned McHenry Township Road District and Nunda Township Road District vs. County of McHenry, Illinois, No. 19 MR 861.

plaint sought a declaratory judgment that Article 24 is unconstitutional special legislation. Pursuant to Illinois Supreme Court Rule 19, notice of the claim of unconstitutionality was sent to the Illinois Attorney General on the date the case was filed.

The County of McHenry moved to dismiss Nunda's complaint. The motion was granted, and Nunda was afforded the opportunity to re-plead. It did so, among other things amending the complaint to add Governor Pritzker in his official capacity.

The County of McHenry moved to dismiss the First Amended Complaint for Declaratory Judgment ("amended complaint"). The motion was granted on March 10, 2020, which was one week before the primary election on March 17, 2020. In its dismissal decision, the trial court found the County of McHenry wasn't a proper party. The parties and the trial court agreed to continue the matter over to after the election to determine, based on the election results, whether the dismissal should be with or without prejudice. When the election was held, referenda were on the ballot to dissolve both Nunda Township and McHenry Township. Neither referendum was approved. No one returned to take further action with the dismissal order.

After more legal maneuvering, McHenry Township was granted leave to intervene as a party defendant. The Township moved to dismiss the action, but that motion was never presented for hearing. Its related entity, McHenry Township Road District, withdrew as a party to the suit.

Arguing two grounds, the Governor moved to dismiss the amended complaint with prejudice pursuant to 735 ILCS 5/2-619. First, the Governor argued the case was now moot because the referendum failed. Second, and assuming the claim wasn't moot, the Governor argued that Article 24 didn't violate the special legislation clause of the Illinois Constitution. McHenry Township orally moved to join in the Governor's motion, which was granted. The trial court agreed that the claim was now moot and that the public interest exception to the mootness doctrine didn't apply, so it dismissed the claim with prejudice.

In *McHenry Twp. Rd. Dist. v. Pritzker*, 2021 IL App (2d) 200636 ¶¶ 64-65, the Appellate Court found that the public interest exception to the mootness doctrine applied; the trial court's dismissal was thus reversed and the cause remanded to the trial court for further proceedings.

Six months after remand, Nunda filed a motion for judgment on the pleadings. In the motion, Nunda prayed that Article 24 be declared unconstitutional special legislation, and that the trial court enjoin the application and enforcement of Article 24. A month later, the Governor filed a combined response to that motion along with his cross-motion for summary judgment asking that Nunda's requested relief be denied. Both motions have been briefed, and the trial court heard arguments on the motions over two afternoons.

II. Analysis

Nunda claims it is entitled to judgment on the pleadings; the Governor disagrees, claiming the complaint can be reasonably interpreted at least two different ways—Article 24 either is or is not constitutional—which precludes judgment on the pleadings.

The Governor, though, claims he is entitled to summary judgment denying the relief sought in Nunda's amended complaint because Article 24 is legislation rationally related to a legitimate government interest or, alternatively, because Nunda will be unable to meet its burden of proof.

A. Legal Standards

"Any party may seasonably move for judgment on the pleadings." 735 ILCS 5/2-615(e). Under the Code of Civil Procedure,

> "'a motion for judgment on the pleadings is like a motion for summary judgment limited to the pleadings.' Judgment on the pleadings is proper 'if the admissions in the pleadings disclose there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law.' For purposes of resolving the motion, the court must consider as admitted all well-pleaded facts set forth in the pleadings of the nonmoving party, and the fair inferences drawn therefrom. The court must also examine the pleadings to determine whether an issue of material facts exists and, if not, determine whether the controversy can be resolved solely as a matter of law."

Employers Ins. v. Ehlco Liquidating Trust, 186 Ill.2d 127, 138 (1999) (citations omitted). Judgment on the pleadings is improper if the well-pled allegations in the complaint are reasonably subject to multiple interpretations. *People ex rel. Shapo v. Agora Syndicate, Inc.*, 323 Ill. App. 3d 543, 549 (1st Dist. 2001).

Summary judgment is like judgment on the pleadings in that both are properly granted when the pleadings disclose no genuine issue of material fact because of which the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(b). Defendants can prevail by either showing the case must be resolved in their favor or by showing that the plaintiff has insufficient evidence to support the claim. *Hutchcraft v. Independent Mech. Indus.*, 312 Ill. App. 3d 351, 355 (4th Dist. 2000).

In ruling on the parties' respective motions, the court is mindful that all statutes are presumed to be constitutional; and the party challenging the statute, which is Nunda in this case, bears the burden of rebutting the presumption of constitutionality. *Lebron v. Gottlieb Mem. Hosp.*, 237 Ill.2d 217, 227-28 (2010).

The sole pleadings at issue here are Nunda's amended complaint and the Governor's answer and affirmative defense. Except for the legislative history and intent of Article 24 and the 2018 tax rates for nine counties' townships and road districts, which are attached to the amended complaint, neither party cites to additional facts outside the pleadings in their respective motions for judgment.

Finally, there are no disputed issues of material fact. The statute speaks for itself, as does the legislative justification; the parties agree upon the additional justifications for Article 24 which are derived from the floor comments of various legislators; and the parties agree on the tax rates attached to the amended complaint. *See* Amended Complaint at Exh. D-E. This case is thus ripe for judgment on the pleadings or summary judgment.

B. Initial Considerations

Two steps precede the constitutional analysis. The first step is construing the statute because "a court cannot determine whether the statute reaches too far without first knowing what the statute covers." *People v. Minnis*, 2016 IL 19563 ¶ 25. Step two, determine whether this case can be determined on different, nonconstitutional grounds. *See, e.g., People v. Lee*, 214 Ill.2d 476, 482 (2005) (courts should avoid addressing constitutional issues where the case can be decided on other grounds).

1. Statutory Interpretation

Article 24 of the Township Code is entitled Dissolution of Townships in McHenry County. 60 ILCS 1/Art. 24 heading. Article 24 is comprised of six sections. Section 24-10 defines "electors" as the

registered voters of any individual township in McHenry County. Sections 24-15 and 24-20 set forth the steps necessary to place on the ballot a referendum to dissolve the township through either resolution of the Board of Trustees of the township, 60 ILCS 1/24-15, or a petition from the electors of the township. 60 ILCS 1/24-20. Whichever route the referendum travels to the ballot, the two means of doing so are expressly limited to McHenry County townships. Section 24-25 requires the referendum be placed on the ballot if the electors' petition satisfies the requirements of Section 24-20. Section 24-30 provides the form of the referendum question as it should appear on the ballot and provides for dissolution of the township if a majority of the township's electors vote in the election to approve the dissolution. 60 ILCS 1/24-30. Section 24-35 provides for the transfer of rights and duties from the dissolved township to McHenry County. 60 ILCS 1/24-35.

Nothing in Article 24 is ambiguous. It means what it says, and for our purposes it says it applies only in McHenry County.

2. Mootness

Nunda challenges the constitutionality of Article 24 in a declaratory judgment action. A declaratory judgment action allows the court, "in cases of actual controversy, [to] make binding declarations of rights[] having the force of final judgments." 735 ILCS 5/2-701(a). The elements of a declaratory judgment action are "(1) a plaintiff with a tangible, legal interest; (2) a defendant with an opposing interest; and (3) an actual controversy between the parties concerning such interests." *Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill. App. 3d 373, 376 (2nd Dist. 2004). "'Actual' in this context does not mean that a wrong must have been committed and injury inflicted. Rather, it requires a showing that the underlying facts and issues of the case are not moot or premature, so as to require the court to pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events." *Underground Contr. Ass'n v. City of Chicago*, 66 Ill.2d 371, 375 (1977). To have an interest in the claim, "the party seeking relief must possess a personal claim, status, or right which is capable of being affected. The dispute must, therefore, touch the legal relations of parties who stand in a position adverse to one another." *Id.* at 376.

Nunda has an interest in the litigation: Its status—its very existence—as a township for a delineated area with the same authority as all other townships in Illinois is targeted by Article 24 in a way no other township outside McHenry County is targeted. The Gov-

ernor's position is the opposite: He argues Article 24 merely provides a mechanism to reduce the size of government by making it easier to dissolve McHenry County townships.

Also, this is an actual controversy, neither moot nor premature. This analysis requires an additional step because the Governor raised mootness as an affirmative defense filed as part of its answer to the amended complaint, but Nunda never filed a reply to the allegations raised in the affirmative defense. However, the Governor continued to litigate the case as though Nunda had replied, and the Governor had full opportunity to litigate the mootness issue. Nunda's failure to reply is therefore waived. *Mitchell Buick & Oldsmobile Sales, Inc. v. Nat'l Dealer Svcs., Inc.*, 138 Ill. App. 3d 574, 586 (2nd Dist. 1985). Moreover, even if the issue is not deemed waived, "such a failure to reply merely amounts to an admission of the truth of new factual matter and does not amount to an admission that such new matter constitutes a valid legal defense." *Id.* The facts alleged in the affirmative defense, even if deemed admitted, do not constitute a valid defense.

The Appellate Court has already reviewed the mootness issue. In *McHenry Twp. Rd. Dist.*, 2021 IL App (2d) 200636 ¶ 35, the Governor argued this case became moot when Nunda Township survived the dissolution referendum in March 2020. Nunda conceded the case was moot, but it argued the public doctrine exception applied because the statute remained in effect; thus, Nunda faced future referenda under Article 24. *Id.* at ¶ 36. The Appellate Court accepted Nunda's concession of mootness for the sake of its analysis, but it expressly offered no opinion on whether the matter was, in fact, moot, *id.*; rather, it proceeded to analyze the case under the public interest exception to the mootness doctrine as was done in *Cook v. Ill. State Bd. of Elections*, 2016 IL App (4th) 160160 ¶ 15 (expressly finding the appeal wasn't moot, but then finding that even if the appeal was moot it would still be reviewable under the public interest doctrine).

This case, the Appellate Court held, met all three elements of the public interest exception to the mootness doctrine. "The public interest exception is narrowly construed and requires a clear showing that (1) the question presented is of a public nature, (2) an authoritative determination of the question is desirable for the future guidance of public officers, and (3) the question is likely to recur." *McHenry Twp. Rd. Dist.*, 2021 IL App (2d) 200636 ¶ 38. The first element was satisfied because "the question presented here was the constitutionality of [A[rticle 24—a question of law that involves the

interpretation of a statute that remains in effect and provides a mechanism to initiate the dissolution of a form of government in McHenry County. This question is a matter of public importance." *Id* at ¶ 50. The second element was satisfied because a determination of the constitutionality of Article 24 "provide[s] guidance to townships subject to [A]rticle 24 and aid[s] public officers in resolving township dissolution issues in McHenry County, [thereby] avoiding uncertainty in the electoral process." *Id.* at ¶ 57. The third element was satisfied because not only was the question likely to recur, but it has already recurred: McHenry Township has now twice been subject to dissolution referenda under Article 24. *Id.* at ¶ 59; *see also McHenry Twp. v. County of McHenry*, 2022 IL 127258 ¶ 1 (noting that McHenry Township had twice in less than eight months been the subject of a dissolution referendum, first in March 2020 and again in November 2020). Granted, Nunda was not subjected to multiple referenda as McHenry Township has been, but "'the public interest exception considers potential recurrences to *any* person [or entity], not only the complaining party.'" *McHenry Twp. Rd. Dist.*, 2021 IL App (2d) 200636 ¶ 62 (emphasis added).

Nothing has changed since the Appellate Court's decision in *McHenry Township Road District*. Even if the case is moot—and the court joins the Appellate Court in taking no stance on this issue—all three elements of the public interest exception to the mootness doctrine still apply. "Indeed, the record demonstrates that there are seventeen townships in McHenry County, any one of which faces the possibility of future dissolution pursuant to [A]rticle 24 and could raise a challenge to the legislation." *Id.* at ¶ 59.

There thus appears no way to avoid addressing the parties' constitutional arguments.

C. The Constitutional Analysis

Township government is provided for in the Illinois Constitution. The relevant provision states:

> "The General Assembly shall provide by law for the formation of townships in any county when approved by county-wide referendum. Townships may be consolidated or merged, and one or more townships may be dissolved or divided, when approved by referendum in each township affected. All townships in a county may be dissolved when approved by a referendum in the total area in which township officers are elected."

ILL. CONST. 1970, art VII, § 5. Pursuant to the third sentence of this provision, the General Assembly enacted Article 25 of the Township Code. *See* 60 ILCS 1/25-5 *et seq.* (providing the procedures necessary to dissolve all townships in a given county). Pursuant to the second sentence, the General Assembly enacted Article 24 of the Township Code. 60 ILCS 1/24-10 *et seq.* (providing the procedures necessary to dissolve individual townships in McHenry County). But this dissolution of individual townships within a county, though constitutionally allowed statewide, is only statutorily allowed in McHenry County. Nunda claims this limited application of Article 24 violates the constitutional prohibition of special or local legislation, which bars enacting a "special or local law when a general law is or can be made applicable." ILL. CONST. 1970, art. IV, § 13.

1. Burden of Proof and Level of Scrutiny

"[Statutes] carry a strong presumption of constitutionality. A party claiming that a statute is unconstitutional bears the burden of establishing the statute's constitutional infirmity. [All courts have] a duty to uphold the constitutionality of a statute if it is reasonably possible to do so." *Moline Sch. Dist. No. 40 Bd. of Educ. v. Quinn*, 2016 IL 119704 ¶ 16. Nunda, being the party claiming Article 24 is unconstitutional, bears the burden of proving the constitutional infirmity.

The appropriate level of scrutiny is tricky. Initially, the parties agreed that limiting application of Article 24 to McHenry County does not implicate any fundamental rights or suspect classes. Thus, rational basis scrutiny applies, and the statute must be upheld if the limited application to McHenry County is rationally related to a legitimate government interest. *Moline Sch. Dist. No. 40*, 2016 IL 119704 ¶ 22.

The court questioned the parties' agreement that no fundamental rights were implicated and requested additional briefing. After all, Article 24 confers on the voters of McHenry County something it confers on no other voters in Illinois: The procedural mechanisms to dissolve individual township organizations as expressly authorized by the Township clause of the Illinois Constitution. *See* ILL. CONST. 1970, art VII, § 5 (allowing, in relevant part, for individual townships to be dissolved or divided if approved by referendum in the effected townships). No other legislation confers similar procedural mechanisms for other counties to effectuate the constitutionally permissible dissolution of individual townships through a ref-

erendum. Thus, the Illinois Constitution allows the General Assembly to pass laws allowing for the dissolution or division of individual townships, but it only passed a law allowing such individual township dissolution in one of the one hundred two counties in Illinois.

However, referenda are a different creature than elections to vote for legislators. In *Spaulding v. Ill. Comm. College Bd.*, 64 Ill.2d 449, 456 (1976), the Illinois Supreme Court held that there is no fundamental right to a referendum in connection with the creation of a community college district; the court said the right to vote in a referendum was "purely a permissive one bestowed by the legislature." *See also Town of Lockport v. Citizens for Community Action*, 430 U.S. 259, 266 (1977), (upholding a New York law that permitted weighted voting in a referendum, noting that referenda elections are different than elections of legislators).

Similarly, Article 24 provides the electoral mechanism to put forward a referendum, not to elect legislators. All who live within the area of the government effected otherwise qualified to vote are also qualified to vote in such a referendum. Thus, no voting rights are implicated here. Rational basis scrutiny applies.

2. Constitutional Ban of Special or Local Legislation

Pursuant to the Illinois Constitution of 1970,

> "[t]he General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination."

ILL. CONST. 1970, art. IV, § 13. This "prohibits the General Assembly from conferring a special benefit or privilege upon one person or group of persons and excluding others that are similarly situated. Its purpose . . . is to prevent arbitrary legislative classifications that discriminate in favor of a select group without a sound, reasonable basis." *Moline Sch. Dist. No. 40*, 2016 IL 119704 ¶ 18.

Under the Illinois Constitution of 1970, the terms "special", "local", and "general" have the same meaning originally supplied by cases interpreting the Illinois Constitution of 1870. *Bridgewater v. Hotz*, 51 Ill.2d 103, 109 (1972) (the first Supreme Court case interpreting the ban of special or local legislation under the new Illinois Constitution of 1970). A general law is "alike in [its] operation upon all persons in like situation." *Bd. of Educ. of Peoria Sch. Dist. No. 150 v. Peoria Federation of Support Staff, Security/Policeman's Benevolent &*

Protective Ass'n Unit No. 114, 2013 IL 114853 ¶ 48. Local laws, by their terms, apply only to a portion of the territory of the state; special laws grant some special right, privilege, or immunity or impose a burden on some but not all the people of the state. *Hunt v. County of Cook*, 398 Ill. 412, 418 (1947). A law isn't "local" within the meaning of this clause just because it applies only in one or limited municipalities "if by its terms it includes and operates uniformly throughout the State under like circumstances." *People ex rel. Carr v. Kesner*, 321 Ill. 230, 235 (1926). "If an entity is *uniquely* situated, the special legislation clause will not bar the legislature from enacting a law tailored specifically to address the conditions of that particular entity." *Moline Sch. Dist. No. 40*, 2016 IL 119704 ¶ 22 (emphasis in original).

3. Special Legislation Two-Element Test

Courts apply a two-element test to determine whether legislation violates the special legislation prohibition. *Moline Sch. Dist. No. 40*, 2016 IL 119704 ¶ 23. First, they must determine whether the legislation is special or local legislation. *Id.* If it is, they must then determine whether the special or local classification is arbitrary. *Id.* A classification is arbitrary if it is not rationally related to a legitimate government interest. *Id.* at ¶ 24.

Article 24 is both special and local legislation. It is special legislation because it provides the procedural mechanism for the citizens of McHenry County to dissolve individual townships as allowed by the Township clause of the Illinois Constitution, ILL. CONST. 1970, art VII, § 5, but it doesn't confer similar—or any, for that matter—procedural mechanisms for the citizens of other counties to similarly dissolve individual townships within their county. Their sole recourse if unhappy with their individual township organization is to dissolve all townships in the county pursuant to Article 25. 60 ILCS 1/25-5 *et seq.* Article 24 is also local legislation because, by its express terms, it applies only to the territorial limits of one of the one hundred two counties in the State.

The next step is to determine whether Article 24 is rationally related to a legitimate government interest; if not, it is arbitrary and thereby unconstitutional. The Governor argues that the legislative history discloses three bases for the legislation, all of which are rational bases related to legitimate state interests: "to further the constitutional authorization to dissolve townships; . . . to offer a tool with which to mitigate high property tax burdens in McHenry County; . . . [and] as a mechanism to address ongoing legal fights within McHenry County." Defendant's Combined Memorandum

of Law in Support of His Cross-Motion for Summary Judgment and Response to Plaintiff's Motion for Judgment on the Pleadings at 5, 8-10.

The first justification for Article 24 is that it furthers the Constitutional authorization set forth in the Illinois Constitution to provide for the dissolution of individual townships. *See* ILL. CONST. 1970, art. VII, § 5. Enacting legislation pursuant to express constitutional authorization is a legitimate government interest in a rational basis analysis.

The remaining justifications raised by the Governor derive from the floor comments of one of the sponsors of Article 24. The sponsor, Representative McSweeney, in relevant part said,

> "[A previous version of Article 24] was vetoed by Governor Rauner. He wanted to apply it statewide. I don't want to apply it statewide. I want to see it work in McHenry County. McHenry County is an area that we have very high property taxes. We also have three townships under investigation by the State's Attorney. We have a situation where there are multiple legal fights and bills in my own home township."

Plaintiff's Amended Complaint, Exh. C at 2. The only other mention of legislative intent during the debates was from Representative Carroll, who noted similar high taxes in his district; he encouraged all counties to take a closer look at government consolidation and township government as a means of potentially addressing those high taxes. *Id.* at 14-17. No other representative spoke to a reason for supporting Article 24.

It is thus clear that the stated legislative intent of consolidating and streamlining government drove enactment of Article 24. Similarly, the relationship between reduced taxes and smaller, more efficient government was on at least two minds in the majority, Reps. McSweeney and Carroll. And Rep. Carroll urged all other counties beyond McHenry County to similarly examine ways of reducing government to reduce property taxes. *Id.* at 16.

Neither party cited a case supporting the proposition that reducing taxes was a legitimate government interest. The Governor cited *Am. Multi-Cinema, Inc. v. City of Warrenville*, 321 Ill. App. 3d 349, 359 (2d Dist. 2001), which applied rational basis analysis to a tax increase, and *Roosevelt Props. Co. v. Kinney*, 12 Ohio St. 3d 7, 14 (Ohio 1984), which applied rational basis analysis to uphold different tax

treatment for owner-occupied properties with four units or less than for larger, multi-unit properties. Yet at least one Federal court, in conducting a rational basis analysis, has held that "[r]educing the size and cost of . . . government—and therefore the concomitant burden on taxpayers—is a legitimate governmental purpose." *Flaherty v. Giambra,* 446 F.Supp.2d 153, 159 (W.D.N.Y. 2006). Though *Flaherty* is persuasive rather than binding authority, the court agrees that government efficiencies directed at reducing unnecessary taxation is a legitimate governmental interest.

Similarly, neither party cited to any authority to support the proposition that addressing legal fights is a legitimate government interest. Nothing in Rep. McSweeney's comments indicate why the State's Attorney is investigating townships in McHenry County, whether such investigations resulted in prosecution or other legal action, or the like. To the degree avoiding unnecessary legal fights coincides with reducing the size or cost of government—and its concomitant burden on taxpayers—it is a legitimate government purpose, but there is no indication whether the legal fights to which Rep. McSweeney referred were unnecessary.

Turning to the second element, "a law is an unconstitutional special law if there is no rational explanation for why that law cannot be applied to all persons or entities in the State." *County of Bureau v. Thompson,* 139 Ill.2d 323, 346 (1990). In *Moline Sch. Dist. No. 40,* the General Assembly enacted legislation that "create[d] an exemption from property taxes on leasehold interests and improvements on real estate owned by the Metropolitan Airport Authority of Rock Island County and used by a so-called fixed base operator (FBO) to provide aeronautical services to the public." 2016 IL 119704 ¶ 1. The local school board, which stood to lose substantial tax revenue, sought declaratory relief blocking implementation of the tax exemption because it was unconstitutional special legislation. *Id.* at ¶ 2. The trial court denied the relief; the Appellate Court reversed and remanded, finding the tax exemption to be unconstitutional special legislation. *Moline Sch. Dist. No. 40 Bd. of Educ. v. Quinn,* 2015 IL App (3d) 140535 ¶¶ 29-34.

The Illinois Supreme Court affirmed the Appellate Court. *Moline Sch. Dist. No. 40,* 2016 IL 119704 ¶ 37. First, the Supreme Court noted that, though there are numerous airport authorities in Illinois with FBOs, the challenged legislation limited the tax exemption to one airport authority. *Id.* at ¶ 25. The exemption was therefore special legislation. *Id.*

Next the Supreme Court considered whether the tax exemption was rationally related to a legitimate government interest. "The justification for the tax exemption . . . [was e]ncouraging Illinois businesses to expand in Illinois and facilitating economic growth of our communities[, both of which] are unquestionably legitimate functions of state government." *Id.* at ¶ 27. Still, there were problems with that justification. Notably, there was no requirement that the tax savings be used by the beneficiary to expand its business operations in Illinois. *Id.* But ill-conceived laws do not create constitutional problems; "whether a statute is wise and whether it is the best means to achieve the desired result are matters for the legislature, not the courts." *Id.* at ¶ 28.

More troubling to the Supreme Court was "that there is no reasonable basis for limiting the tax incentives to this particular type of business at this particular facility in this particular part of the state." *Id.* Illinois has many municipal airports with many FBOs, many of which—like the FBO receiving the exemption—are located near states with more favorable tax schemes. *Id.* at ¶ 29. Those airports and FBOs, along with every other business in Illinois, would benefit from property tax savings. *Id.* The Supreme Court concluded that the challenged "law presents a paradigm of an arbitrary legislative classification not founded on any substantial difference of situation or condition." *Id.* at ¶ 35.

Apply that reasoning here: The question isn't whether there is a rational basis for applying Article 24 in McHenry County, because there clearly is. Instead, the question is whether there is a rational basis for *only* applying Article 24 in McHenry County. *See also County of Bureau v. Thompson,* 139 Ill.2d at 336 (noting that "it has been argued that a special legislation analysis demands more than merely asking the same question as that asked in an equal protection analysis—Is there a rational relationship to a legitimate statutory purpose?—it also demands a determination as to whether a general law is or can be made applicable"). The Governor has advanced no reasonable basis for limiting the reach of Article 24 to the borders of McHenry County. To the contrary, the General Assembly is expressly allowed—but not required—by the Illinois Constitution to enact laws providing for the consolidation, merger, dissolution, or division of individual townships upon approval in a referendum. ILL. CONST. 1970, art. VII, § 5. Where the stated intent of Article 24 is "to reduce the overall number of local governmental units within our State," which justification "is declared to be a

strong goal of Illinois public policy," it is illogical to limit application of Article 24 to only one of one hundred two counties. Rather, uniform application would enable other counties to similarly take steps to dissolve unnecessary or unwanted townships.

Same goes for the tax reduction justification. The Governor expressly adopted Nunda's empirical data on township tax rates as "further evidence in support of the rational basis of reducing tax rates." Governor Pritzker's Combined Memorandum of Law in Support of His Cross-Motion for Summary Judgment and Response to Plaintiff's Motion for Judgment on the Pleadings at 9. But that empirical evidence also demonstrates that McHenry County is far from alone in suffering high taxes due, at least in part, to township taxes. *See* Amended Complaint at Exh. D-E. Township road district tax rates for 2018 were higher in certain townships in Sangamon, Will, Peoria, Kendall, Kane, and Winnebago Counties; and the road district tax rates for 2018 were similar between McHenry, DuPage, and Lake Counties, with DuPage and Lake Counties having lower rates. *Id.* at Exh. D. Township tax rates for 2018 were higher in certain townships in Kane, Sangamon, Winnebago, Lake, Will, and Peoria Counties; and the township tax rates for 2018 were similar between McHenry, DuPage, and Kendall Counties, with DuPage and Kendall Counties having lower rates. *Id.* at Exh. E. The comparison is far from perfect as there are townships within each of the nine compared counties that have high tax rates and there are those with very low tax rates. Still, if the goal of Article 24 is tax reduction due to reduction in the size of local government, then McHenry County is not alone in needing reduced taxes, and uniform application of Article 24 statewide is the rational means to meet this goal.

Because Article 24 can be generally applied statewide, its limitation to the borders of McHenry County violates the Illinois Constitution's ban of special or local laws.

4. Avoiding a Constitutional Decision

Courts have an obligation, whenever possible, to avoid a constitutional decision. The most obvious route to avoid invalidating Article 24 is to attempt to prune the statute of constitutional infirmities. But the only obvious way to do that is to remove the territorial limitation to McHenry County and make Article 24 a general law as the Illinois Constitution commands. Yet, the General Assembly expressly did *not* want to do that. The court thus has no means of preserving Article 24.

III. Conclusion

Article 24 is a special law and a local law that can be made applicable statewide as a general law. While there are several legitimate government interests served by Article 24, there is no rational basis for restricting Article 24 to McHenry County. The statute is therefore unconstitutional. As a result, Nunda's motion for judgment on the pleadings is GRANTED; the Governor's motion for summary judgment is DENIED.

IT IS SO ORDERED.

DATED this 10th day of April, 2023.

JOEL D. BERG, Judge